IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.21186 of 2015
&
M.P.Nos. 1 to 3 of 2015

Tamil Nadu State Construction Corporation
Limited Staff & Employees' Association,
(Regn.No.842/TIN),
Rep. by its General Secretary,
No.4, Sivan West Street,
Tirunelveli – 627 009. ...Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Highways and Minor Ports Department,
Fort St. George, Chennai – 600 009.

2.Tamil Nadu State Construction Corporation Ltd.,
Rep. by its Managing Director,
206/N, Jawaharlal Nehru Salai,
Jai Nagar, Arumbakkam,

Chennai – 600 106. ...Respondents

Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorarified Mandamus to call for the records relating to G.O.Ms.No.65, Highways and Minor Ports (HF2) Department dated 03.06.2015 from the files of the 1st respondent and to quash the same insofar as it directs the 2nd respondent to take immediate action to transfer the building belonging to the 2nd respondent to Tamil Nadu Road Infrastructure Development Corporation Limited (TNRIDC) as being illegal and for consequential direction directing the respondents to settle all the service and terminal benefits due to the members of the petitioner association within a time frame.

For Petitioner : Mr. K.M.Ramesh
Senior Counsel
for M/s. R.Sandhya

For Respondents : Mr. P.Kumaresan
Additional Advocate General
Assisted by Mr. P.Ganesan
Government Advocate.

ORDER

The above Writ Petition has been filed by the Tamil Nadu State Construction Corporation Limited Staff and Employees' Association, seeking to quash the order passed by the 1st respondent in so far as it directs the 2nd respondent to take action to transfer the building belonging to the 2nd respondent to the Tamil Nadu Road Infrastructure Development Corporation Limited as illegal and to direct the respondent to settle all the service and terminal benefits due to the petitioner Association.

2. The petitioner would submit that its members were the employees of the 2nd respondent Corporation which was formed in the year 1980 as a public sector undertaking owned by the Government of Tamil Nadu. The Government had issued orders directing all the Government Department and other Government owned institution to place orders for construction projects and activities.

3. The 2nd respondent was paying salary to the staffs and workmen from out of the income so earned. However, from the year 2003 the Government did not allot the construction to the 2nd

respondent and deliberately allowed the same to become sick. Thereafter, since the 2nd respondent was not in a position to pay salary to its staffs, the 2nd respondent Corporation had flouted a scheme for voluntary retirement by circular dated 29.09.2004.

4. The circular stated that in the event of the employees not opting for the scheme they would be retrenched from service. About 80 employees opted for the scheme and were relieved from duty on 30.09.2004. The Association had challenged G.O.Ms.No.258 dated 20.09.2004 and circular dated 30.09.2004 in W.P.No.31393 of 2004 and obtained a stay. The writ petition was pending when this writ petition was filed.

5. The petitioner would submit that 168 employees of the 2nd respondent Corporation were sent on deputation to various Government Department and public sector undertakings. The Government issued G.O.Ms.No.27 dated 24.01.2007 prescribing

guidelines for the permanent absorptions of the employee working in sick undertaking. Pursuant to this, 74 employees were absorbed into Departments / Corporations on permanent basis, 53 employees who are under deputation had not been absorbed. Likewise 13 employees were neither deputed nor retrenched and continued to be on the rolls of the 2nd respondent Corporation.

6. The petitioner would submit that 32 employees who were absorbed in other Government Departments and Corporations had retired from service on reaching the age of superannuation and some of them are on the verge of retirement. Those of the employees who have absorbed and retired from service in other Government Departments and Corporations, have not had their terminal benefits settled and there is an apprehension as to whether the past services in the 2nd respondent Corporation would be taken into account.

7. The petitioner would submit that when these employees were

working with the 2nd respondent Corporation they were covered under the EPF scheme and the monthly contribution was being remitted to the EPF organisation both towards EPF scheme and towards pension scheme. However, after the absorption of the employees into other Government Departments / Corporations EPF has not been paid and there is no coverage under the EPF Scheme.

8. The petitioner would submit that the 2nd respondent without resolving its issues with the employees were attempting to transfer the building owned by them to the TNRIDC. The petitioner association would submit that it is from out of the rental income from this building that the workmen are being paid their salary. If the building is permitted to be transferred it would work grave injustice to the employees. Therefore, the present writ petition has been filed challenging that order seeking to transfer the building to the TNRIDC.

9. In their counter filed by the 1st respondent it is stated that out of 252 employees, 80 of the employees opted for VRS and the Government had sanctioned a sum of Rs.250.26 lakhs to settle VRS benefits to these 80 employees. The Government vide its letter dated 11.04.2005 had directed the 2nd respondent to get employment for the remaining employees in other Government organisations on deputation / contract / permanent absorption / redeployment basis and accordingly the Corporation had taken necessary follow up action and deputed 172 staffs to various Government organisations and Departments.

10. Though the writ petition had been filed for the relief set out above it has been submitted by the learned Additional Advocate General that out of 172 employees who had been sent on deputation 117 were absorbed, 50 persons had retired of which 49 had been settled their retiral benefits, one of them retired on 30.06.2024, 5 persons were deputed to the HR & CE Department, 7 employees had

passed away and their retirement benefits had been settled on their legal heirs, 9 of them were dismissed due to unauthorised long leave and they have been settled their dues.

11. However, the learned counsel appearing for the petitioner would submit that most of them had not been settled their entire terminal benefits and the same has been calculated not taking into consideration the earlier employment with the 2nd respondent. He would rely upon the Judgement of this Court in W.P.No.10396 of 2015, wherein one of the employees of the 2nd respondent who had been deputed to the HR & CE Department had moved this Court seeking mandamus directing the respondents to pay the retirement benefits including gratuity leave encashment benefits. Taking into consideration his early services, the learned Judge had also observed that in the case of the employees of the 2nd respondent they have been transferred by the Government not at their request and therefore benefits already accrued to them cannot be refused to be granted.

12. The learned Judge relied on G.O.Ms.No.154 (Handlooms, Handicrafts, Textiles and Khadi (F2) Department, dated 21.11.2009 and G.O.Ms.No.125 (Handlooms, Handicrafts, Textiles and Khadi (F1) Department dated 02.09.2010 particularly clause 8 wherein it is stipulated that employees who had deputed from the said Department to other state owned Corporation and boards would be entitled to pay protection alone and not service protection. However, by subsequent G.O.Ms.No.152 dated 12.07.2012 the said clause was modified and the deputed employees were entitled to service protection as well. Extending the same analogy the learned Judge held that the petitioner would not be entitled to pay protection. They would however not be entitled to promotion, selection grade appointment etc., This order has been followed in W.P.No.12935 of 2024. Therefore, the petitioners who are similarly placed cannot be discriminated and are therefore entitled to the very same relief.

13. In view of the above, the writ petition is disposed of directing the respondents to re-work and disburse the terminal benefits to the members of the petitioner association. Consequently, the connected miscellaneous petitions are closed. No costs.

30.07.2024

Index : Yes/No
Internet : Yes/No
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