



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

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CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.235 of 2021
and
CMP.No.1005 of 2021

1. The Chairman,
The Tamil Nadu Electricity Board,
Annasalai,
Chennai - 600 002.
 2. The Chief Engineer,
North Madras Thermal Power Project,
Tamil Nadu Generation of Electricity,
and Distribution Corporation,
(TANGEDCO) Ennore, Chennai.
- ... Appellants

Vs.

1. Vada Chennai Anal Min Nilayam,
Amaya Nilam Koduthor Sangam,
Represented by its General Secretary,
A.Govindasamy
 2. The State of Tamil Nadu,
Represented by its Secretary to Government,
Revenue Department,
Fort St.Gorge,
Chennai - 600 009.
- ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the



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order dated 23.04.2019 passed in W.P.No.31158 of 2012.

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For Appellants : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For R1 : Mr.R.Ragavendran

For R2 to R5 : Mr.D.Gopal
Government Advocate

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The writ order dated 23.04.2019 in W.P.No.31158 of 2012 is sought to be set aside in the present writ appeal.

2. The Tamil Nadu Electricity Board is the appellant before us. The respondent-association was registered for the benefit of land losers. The Government acquired land for developing Thermal Power Project plant at North Chennai and lands were acquired in the year 1987. The lands acquired are utilized for developing Thermal Power Project. The scheme was approved for rehabilitation of land losers. The TANGEDCO Board approved the scheme. Under the Scheme, terms and conditions and eligibility are contemplated. The eligible land losers/legal heirs of land losers were provided



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with appointments based on the applications submitted by the respective land losers. The first respondent-association was formed in the year 2002, after a lapse of about 14 years from the completion of acquisition proceedings. The Association submitted a representation stating that all the members of the association are to be appointed in the sanctioned posts in TANGEDCO.

3. Earlier, the first respondent-association filed a writ petition in W.P.No.8992, 10919, 10920 & 10921 of 2006, seeking employment to one male member to each of 129 families of Ennore Village, 12 families of Chappakkam Village, 39 families of Ennorekuppam, 25 families of Puzhuthivakkam Village, Tiruvallur District. This court passed orders on 11.07.2007, holding that the writ petition by the Association seeking employment is not entertainable. Accordingly, granted opportunity to the members of the Association to submit individual applications, which is to be considered by the TANGEDCO for the purpose of providing employment under the Scheme approved for the benefit of the land losers.

4. The individual applications submitted were considered and Mr.Anand Gopalan, learned Counsel appearing on behalf of the appellants would submit that the eligible persons were already appointed in the Board's



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services.

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5. After a lapse of five years, again the first respondent-association filed W.P.No.31158 of 2012. The learned Single Judge disposed of the writ petition on 23.04.2019, directing the appellant/Board to provide employment to 205 members of the first respondent-association. Thus, the Board preferred the present writ appeal.

6. Mr.Anand Gopalan, learned Counsel for the appellants would contend that the writ petition by the first respondent-association is not entertainable. Employment under the Scheme is to be considered based on the eligibility of the individuals and considering various criteria fixed under the Scheme for providing employment to the land losers. Therefore, the Association cannot maintain the writ petition. On earlier occasion, the learned Single Judge in W.P.No.8992 of 2006 dated 11.07.2007 held that the individual applications should be considered by the Board for providing employment under the Scheme. Thus, the contra view taken by the learned Single Judge in the subsequent writ petition is not in consonance with the principles established.



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7. The legal principles are considered by this Court in the case of ***The Indian Southern Region Postal Pensioners Welfare Association vs. The Union of India, through the Secretary of India to Department of Pension and Pensioners Welfare*** in ***W.P.(MD)No.7555 of 2012*** dated ***14.08.2012***. In the said order, this Court considered the Judgments of the Hon'ble Supreme Court and other High Courts, which reads as under:

“2. A preliminary objection has been raised to the maintainability of the writ on the ground, that writ on behalf of the Association in service matters is not maintainable in view of the law laid down by this Court, in W.P. No.41633 of 2006 decided on 23.11.2011 (Tamil Nadu Public Works Department and Highways Employees Union Vs. State of Tamil Nadu and others) and the judgment of a Hon-ble Division Bench of this Court in W.P.(MD) No.4544 of 2012 decided on 11.04.2012 (Association of Veteran Employees of Minority Academic Recognised Institutions of all kind, vs. the Secretary to Government and others).

3. The learned counsel for the petitioner, however, contends that the writ as framed would maintainable, in view of the law laid down by the Full Bench of Allahabad High Court in Umesh Chand Vinod Kumar and others vs. Krishi Utpadan Mandi Samiti and another (AIR 1984 46), wherein it was held that an Association of persons for enforcement of the rights of its member as distinguished from its own right is maintainable. The petitioner cannot draw any advantage from the judgment of the Hon-ble Allahabad High Court, in view of the judgments of this Court holding



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that a writ petition on behalf of the association, in service matter is not maintainable. Otherwise in this judgment also, it is held that an association whether registered or unregistered cannot maintain a petition under Article 226 of the Constitution of India for enforcement or protection of rights of its members, as distinguished from enforcement of its own rights.

4. The learned counsel for the petitioner, placed reliance in judgment of the Hon-ble Supreme Court in Committee of Management and another vs Vice Chancellor and others reported in 2009 (3) MLJ 323 (SC), laying down that the existence of alternative remedy cannot be a ground to refuse exercise of writ jurisdiction, when the order is passed by an authority without jurisdiction or is in violation of the principles of natural justice.

5. The reliance was thereafter placed on the judgment of Hon-ble Supreme Court in Ram and Shyam Company vs. State of Haryana and others (1985 (3) SCC 267). This judgment is again on the exercise of writ jurisdiction in spite of availability of alternative remedy.

6. The learned counsel for the petitioner also placed reliance on a judgment of the Hon-ble Supreme Court in

(i) Babubhai Jamnadas Patel vs. State of Gujarat and others (2009(9) SCC 610);

(ii) Fertilizer Corporaton Kamagar Union (Regd)., and others vs. Union of India and others (AIR 1981 SC 344);

(iii) State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others reported in (2010 (3) SCC 571);

(iv) The Union of India and another vs. SPS VAINS (RETD) AND OTHER reported in 2008(9) SCC 125 and

(v) The judgment of the Hon-ble Supreme Court in D.S.Nakara and others vs.Union of India (1983 (1) SCC 305) ;

7. In none of these cases, the question whether the writ petition on



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behalf of association in service matters, has not been decided or considered.

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8. In absence of any decision to the contrary of the Hon-ble Supreme Court holding that a writ on behalf of the association in service matters is competent, this Court is bound by the decision of this Court in W.P. No.41633 of 2006 decided on 23.11.2011 (Tamil Nadu Public Works Department and Highways Employees Union Vs. State of Tamil Nadu and others) and the judgment of a Hon-ble Division Bench of this Court in W.P.(MD) No.4544 of 2012 decided on 11.04.2012 (Association of Veteran Employees of Minority Academic Recognised Institutions of all kind, vs. the Secretary to Government and others).

9. The writ petition on behalf of the association therefore is not competent, and is accordingly dismissed as not competent.

10. However, this order shall not a bar to individual members of an association to have their grievances redressed by filing a writ petition in their capacity, as singularly or jointly with the permission of this Court. No costs."

8. Appointment is to be provided based on the application submitted by the individual land losers. Eligibility of the individuals are to be ascertained with reference to the terms and conditions stipulated under the Scheme. Therefore, Association cannot maintain a writ petition for providing employment to the members of their Association. The right of an individual to secure employment under the Scheme is to be scrutinized with reference to the documents to be produced by such individuals. Therefore, we are of the



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considered opinion that for providing employment, the aggrieved individuals have to file application and such applications, if received to be considered strictly in accordance with the terms and conditions stipulated under the welfare scheme approved for the benefit of the land losers.

9. Pertinently, the first respondent-Association, in the present case was formed in the year 2002, after a lapse of 14 years from the date of year of completion of the acquisition proceedings. The Association submitted representation in the year 2006 and filed a writ petition. The learned Single Judge in the writ order reiterated that individuals must submit application seeking employment and such applications are to be considered by the Board. The said principle laid down by the learned Single Judge is in consonance with the principles settled by the Constitutional Courts.

10. The learned Counsel appearing on behalf of the 1st respondent would oppose by stating that the members of the first respondent/association are found eligible for employment. The Revenue Divisional Officer and Tahsildar have ascertained their eligibility and recommended their case for appointment in Board's services. Therefore, the Board has no option but to



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appoint 205 members of the first respondent/association as directed by the learned Single Judge.

11. We are unable to accept the said argument, in view of the fact that an employer is empowered to verify the eligibility and suitability of a candidate for appointment. The indigent circumstances or other criteria assessed by the District Collectors, Revenue Divisional Officers or Tahdildars are of recommendatory in nature. The appointing Authority is independently empowered to consider the eligibility with reference to the Scheme for providing appointments. In this context, G.O.Ms.No.656, Labour and Employment Department dated 29.06.1978 issued for providing employment assistance to families displaced on account of acquisition of land indicates that "The Appointing Authorities concerned of the respective Public Sector Undertakings etc., shall themselves as certain and decide whether the lands was the major source of assistance of Family displaced from the land acquired, without insisting on production of any certificates from Revenue Authorities before recruitment is made." Therefore, it is the prerogative action of an employer to independently assess the eligibility, suitability, educational qualification, age etc., based on the conditions approved under the scheme



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provided for the benefit of the land losers. The Board proceedings in B.P. (Per) No.3 dated 25.01.1990 also stipulates that only one person in the family identified by the Collector, Chengai-Anna District as eligible for employment assistance to the post of Helper (Trainee). Therefore, the eligibility to consider alone is to be ascertained by the Revenue Authorities. For providing appointments the employer is empowered to independently assess the eligibility, suitability and other criteria applicable to the post in which appointments are to be made.

12. Therefore, we are of the considered opinion that the writ instituted by the first respondent-association is not entertainable and as rightly held by the writ Court in W.P.No.8992 of 2006 etc., individual aggrieved persons have to submit their respective application to competent Authorities and the applications, if any, already received are to be scrutinized by the TANGEDCO Authorities with reference to the terms and conditions stipulated under the Scheme and by taking a decision, eligible land losers have to be considered for providing appointment.

13. Right to property is a constitutional right under 300-A of the



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Constitution of India. Such right can be taken away by the Authority of law and by following due process. The lands are acquired for public purposes.

The land owners are entitled for compensation under the provisions of the Statutes. Once the lands are acquired and compensation is settled, then the land absolutely vest with the Government. The title transferred in the name of the Government and for public usage. Providing an employment assistance is a concession granted by the Government or requisitioning body as a welfare measure. Such concessions cannot be claimed as an absolute right. Concessions are to be given strictly in accordance with the terms and conditions stipulated under the Scheme.

14. Pertinently, in the present case, land was acquired in the year 1982 and 35 years have lapsed. The method of recruitment to Board's services underwent many changes. All appointments are to be made under the constitutional scheme and by providing equal opportunity to all the aspiring candidates, who all are waiting to participate in the open competitive process. Therefore, such concessional schemes granted in the year 1987 cannot be allowed to continue in perpetuity, so as to infringe the fundamental right of teeming millions of citizen, who all are longing to secure public employment



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through open competitive process on merits and under the Rules of reservations.

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15. With the above observations, the Writ Order dated 23.04.2019 in W.P.No.31158 of 2012 is set aside and the Writ Appeal stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [C.K., J.]

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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Annasalai,
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2. The Chief Engineer,
North Madras Thermal Power Project,
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(TANGEDCO) Ennore, Chennai.

3. The State of Tamil Nadu,
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