

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1249 of 2020 and
WMP No.1397 of 2020

1. K.Perumalsamy
2. V.Shanmugam
3. R.Kuppusamy
4. D.Muthusamy
5. V.Rusinran
6. K.Selvaraj
7. P.Ganesan
8. P.Kandasamy
9. J.Rajan
10. S.Arjunan
11. K.Sanjeevi Kumar



... Petitioners

1. The Secretary,
Government of Tamil Nadu,
Personal and Administrative Reforms Department,
Chennai – 600 009.

2. The Secretary,
Animal Husbandry Dairy and
Fisheries (MP II) Department,
Fort St. George, Chennai – 9.

3. The Commissioner,
Milk Production and dairy Development,
Madhavaram, Chennai – 51.

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4. The General Manager,
The Coimbatore District Cooperative
Milk Producers Union Ltd,
Now Dairy Complex, Pachapalayam,
Kalampalayam Post,
Perur (Via), Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to consider our representation dated 28.10.2020 in respect of our service regularization within the time limit fixed by this Court in pursuant of the order in W.P.No.17195/2010 and the same was implemented by the 4th respondent in their proceedings under reference No.1032/ESTT./NRTSS./2019 dated 15.02.2019.

For Petitioner : Mr.C.Kanagaraju

For Respondents : Mr.J.Pothiraj,
Special Government Pleader (for R1)
Mr.D.Venkatesan,
Government Advocate (for R2 to R4)

ORDER

सत्यमेव जयते

This writ petition has been filed, seeking a direction to the respondents to consider the representation of the petitioners dated 28.10.2020 in respect of their service regularization pursuant of the order of this Court made in W.P.No.17195 and 2010.

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2. The learned counsel for the respondents would submit that the respondents are willing to consider the representation of the petitioners in terms of orders of the Authority under Tamil Nadu Industrial Establishment (Conferment of permanent status to Workmen) Act, 1981.

3. Admittedly, the petitioners have got a favourable order from the Authority under Tamil Nadu Industrial Establishment (Conferment of permanent status to Workmen) Act, 1981 (hereinafter referred to as “the Act, 1981”) and it is also not in dispute that the petitioners have completed more than 480 days in 24 calendar month and therefore, in terms of the decision of this Court reported in **1999 (1) LLJ 622 [N.Mamundiraj and others vs. Bharat Heavy Electrical Ltd., Trichy and another]** and as per the provisions of Section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, the petitioners have attained permanent status. However, it is seen that the employees have not been made permanent and the monetary benefits have also not been extended to them. Though periodical extension has been given and their request has been forwarded to the authorities concerned, the petitioners have not enjoyed the fruits of the order of the Authority under the Act till now, which necessitated for the petitioners to send one more representation dated 28.10.2020.

4. It is pertinent to mention here that the Hon'ble Supreme Court in the case of *The Life Insurance Corporation of India vs. D.J.Bahadur and Others*, reported in *1980 AIR 2181* held that the Award or the Settlement would continue to be in force till such time the same is substituted by another Award or Settlement. Since the petitioners have obtained an order from the concerned Authority under the Act, it is incumbent on the part of the respondents to pass a favourable order on the representation of the petitioners in a time bound manner.

5. Accordingly, the respondents are directed to pass favourable orders on the representation of the petitioners, within a period of two months from the date of receipt of a copy of this order, failing which, it is open to the petitioners, apart from approaching this Court (dehors the orders of this Court), to initiate criminal proceedings against the officers concerned, who are liable to implement the orders of the Authority in terms of provisions of Tamil Nadu Industrial Establishment (Conferment of permanent status to Workmen) Act, 1981. It goes without saying that if any complaint is made by the petitioners, criminal action should be taken against the officers, who are responsible for implementing the order, and the Government will have to sanction prosecution against those persons to bring the issue into logical end. The Government shall also take into account the principles laid down in the decision of the Apex Court in

the case of *Rajkumar Gupta vs. Lt. Governor, Delhi* reported in *1997 (1) LLJ 994*.

Even though the yardstick enunciated therein is applicable to cases falling under the provisions of the Industrial Disputes Act, the same principle is applicable to cases under the Act, 1981 for prosecuting the criminal offences. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end. The presence of the Officer, who has not complied with the order of the Court, must appear before the Criminal Court in all the hearings and the presence shall not be dispensed with by any Criminal Court, unless it is a case of hospitalization or death in the family (documentary proof to be produced) and the genuineness of hospitalization can be verified by the concerned Criminal Court. The main reason for directing the presence of the Officer before the Criminal Court is to make them realize the pain and suffering undergone by the employees, who have been litigating before Courts for years together in order to get justice and owing to non-compliance of the orders of this Court by the Officers concerned, the employees are made to face economical death, which is worse than criminal offences on account of the act

S.VAIDYANATHAN,J.

vum

With the above direction, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

22.01.2021

Index: Yes / No

Speaking order /Non speaking order

vum

Note: Registry is directed to send a copy of this order to all the Criminal Courts in the State of Tamil Nadu as well as to the Chief Secretary of Tamil Nadu, who, in turn, shall communicate it to all the IAS Officers in the State.

Issue order copy on 10.02.2021.

To:

1. The Secretary,
Government of Tamil Nadu,
Personal and Administrative Reforms Department,
Chennai – 600 009.
2. The Secretary,
Animal Husbandry Dairy and
Fisheries (MP II) Department,
Fort St. George, Chennai – 9.
3. The Commissioner,
Milk Production and dairy Development,
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4. The General Manager,
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W.P.No.1249 of 2020