

(2009) 09 MAD CK 0300

In the Madras High Court

Case No : Writ Petition No. 12633 of 2009 and M.P. No. 1 of 2009

A. Ragounandanan and N. Manivannane

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 3

Citation : (2009) 09 MAD CK 0300

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : P.R. Thiruneelakandan, for the Appellant; M.R. Thangavelu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The writ petition is filed by the petitioners seeking the writ of mandamus directing the respondents to recruit the candidates from the list of eligible candidates through the Pondicherry Employment Exchange for the post of Construction Helper (Work- Charged).

2. The case of the petitioners is that without following the seniority list furnished by the Employment Exchange, the respondents are seeking to appoint the persons for the post of Construction Helper by issuing notification. Therefore, the learned Counsel submitted that the non-following of the said procedure which was followed earlier is bad in law. According to the learned Counsel, the seniority list maintained by the Employment Exchange alone should be the criteria for selection.

3. The learned Counsel for the respondent raised the preliminary objection stating that the issue raised by the petitioners is pertaining to the service case and therefore the petitioners can only file an application before the Central Administrative Tribunal and not before this Honourable Court.

4. According to the learned Counsel for the respondent, the posts involved in the

present writ petitions are civil post and they are permanent in nature and therefore the writ petition is not maintainable. In support of his contention the learned Counsel for the respondents relied upon a judgment of the Division Bench of this Court rendered in 1994 W L.R 690 (Government of Tamil Nadu etc., and 2 Ors. v. P. Hepzi Vimala Bai) and contended that even pre-recruitment cases are also covered by Section 19 of the Administrative Tribunal Act and hence the writ petition is not maintainable.

5. The learned Counsel for the petitioner submitted that inasmuch as the post sought to be filled is only the Work-Charge post, the writ is maintainable. According to the learned Counsel for the petitioner, the work-charge employment is related to the specific work and therefore, the same being temporary in nature, it cannot be construed that it is the Government post and therefore, the writ petition is maintainable.

6. The learned Counsel relied upon the judgments reported in State of Punjab and others Vs. Jit Singh, and State of Rajasthan Vs. Kunji Raman, in support of his contention that work-charged employees and the employees on regular establishment are two separate and distinct category of employees and therefore, the writ petition is maintainable.

7. The learned Counsel for the respondent submitted that the post is a Civil post. He further stated, on instruction, that the said post ought to be filled up by the notification issued by the respondent is a permanent post. Therefore, once there is a Civil post and the same is permanent in nature, this Court cannot entertain the same by passing an alternative remedy provided under Administrative Tribunal Act. The Central Administrative Tribunal has been constituted for the purpose of deciding all disputes pertaining to the Government employees, which is inclusive of pre-recruitment disputes as well.

8. In the judgement reported in 1994 Writ law reported in 690 (Government of Tamil Nadu etc., and 2 Ors. v. P. Hepzi Vimala Bai) of Honourable High Court has held as follows:

In our view, the use of the expression "matters concerning recruitment" is wide enough to cover and include all matters concerning recruitment. There is no warrant to make a distinction between "pre-recruitment matters" and "recruitment matters". We are of the opinion that the view expressed by the Division Bench in Ruban's case that only "in service" candidates can raise disputes in respect of matters pertaining to recruitment and not a person not in service is not acceptable. On the contrary, "recruitment" is a process which would cover within its ambit all the necessary steps commencing from the stage of notifying the vacancies and ending with appointment of selected candidates. The fact that the definition of the expression "service matters" in Section 3(q) of the Act does not make any reference to recruitment is wholly irrelevant. "Recruitment" is separately referred to in the preamble as well as in the relevant provisions of the Act. In addition thereto, the expression "conditions of service of

persons appointed" is also found. Section 3(q) of the Act is applicable to persons appointed to service. That is why that Section does not make any reference to "recruitment".

9. Therefore, this court is of the opinion that the present writ petition is not maintainable and the only remedy open to the petitioners is to file an appropriate application before the Central Administrative Tribunal.

10. The judgments relied upon by the petitioner reported in State of Punjab and others Vs. Jit Singh, and State of Rajasthan Vs. Kunji Raman, are not applicable to the present case of hand. In the said judgments, the respondents therein are admittedly work-charge employees. The question involved in the said cases is as to whether the procedure adopted for the Government servant will have to be followed for a work-charge employee or not. Therefore, the Honourable Supreme Court was pleased to hold the said procedure which is contemplated for a regular employee, need not be followed for a work-charge employee, since a work-charge employee is not a regular employee. However, in the present case, the grievance of the petitioner is that the notification issued without following the seniority list of the Employment Exchange is not correct.

11. As observed earlier the said question cannot be decided by this Court since the post sought to be filled up as a permanent Civil post and therefore the dispute being the pre-recruitment dispute, the same can only be adjudicate before the Central Administrative Tribunal. Hence, while dismissing the writ petition, liberty is given to the petitioners to agitate their grievances before the Central Administrative Tribunal. With these observations, the writ petition is dismissed. No costs.

Consequently the connected Miscellaneous Petition is also closed.