
(2011) 06 MAD CK 0278

In the Madras High Court

Case No : Writ Petition No. 33441 of 2007

K. Devier and Others

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0278

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : P. Jayaraman, Counsel for G. Elanchezhiyan, for the Appellant; K. Balasubramanian, Spl. Govt. Pleader for R.1 to R.3 and P. Jawakar Sundaram, for R.4, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The Petitioners were all working as Cholera Mazdoor in Nagapattinam District under various Panchayat Unions. They were all appointed by the Commissioner of Panchayat Union from 1981, who is the competent authority. When the services of the Petitioners were not regularized, they approached the Tamil Nadu State Administrative Tribunal by filing O.A. No. 374 of 1998 for regularization, wherein the Tribunal granted an interim direction, not to terminate the services of the Petitioners. Accordingly, the Petitioners were working till 1998 and thereafter, the Petitioners were ousted for want of vacancy, instead of regularization. The Petitioners made representations to Respondents 1 to 3, requesting to appoint them in any of the suitable vacancies based on the Tribunal's order dated 23.03.1998, since they were working for more than 15 years.

2. In the meantime, the Government in G.O. Ms. No. 114 Rural Development Department dated 06.05.2000, enabling the filling up the vacancies arising in the basic service cadre from among the candidates kept in waiting list in the compassionate appointment list being maintained in each District, and if no such persons are available, then the Panchayat Unions can make appointment by

direct recruitment after getting list from the Employment Exchange. It was, aggrieved by the said Order, the Cholera Mazdoor Association has filed O.A. No. 3214 of 2001 before the Tamil Nadu State Administrative Tribunal on the ground that already the members of the ousted Cholera Mazdoor Association are available, awaiting appointment as basic servants. Therefore, the Tribunal granted an interim stay in respect of G.O. Ms. No. 114 dated 06.05.2000 in respect para 2(e) alone, in the order dated 07.06.2001, based on which the Director of Rural Development has also sent instructions to all the District Collectors, requesting not to fill up the vacancies till the final decision in the original application is taken. Though the interim order was vacated on 22.01.2004, the Original Application is still pending.

3. Even thereafter, some of the Petitioners have filed Original Applications by approaching the Tribunal and there has been a direction to consider their representations. On representation, the Collector, Thiruvavur, has given instructions to the Panchayat Union Commissioners, based on which the ousted Cholera Mazdoors have got appointment. However, in Nagapattinam District, the ousted Cholera Mazdoors were not appointed and their claim was rejected on the ground that a clarification was called for from the Government and the same is pending.

4. The Government has issued certain instructions to the Collector, Nagapattinam on 21.07.2005, to appoint the ousted Cholera Mazdoors purely on temporary basis in the Panchayat Union, on priority. After knowing the Government letter, the Petitioners made representations to the District Collector, in respect of which the Collector, Nagapattinam has sought for certain clarification regarding the age of Petitioners, for making appointment in the existing vacancies and thereafter, there was no reply. Some of the Petitioners have approached this Court by filing Writ Petitions for direction to consider their representations, and this Court also directed to consider the representations of the Petitioners by taking into consideration the Government letter dated 21.07.2005 and pass appropriate orders, but the Panchayat Union Commissioner was yet to consider the same.

5. In the meantime, the Government has issued G.O. Ms. No. 55 Rural Development and Panchayat Department dated 15.06.2006 absorbing 978 Fitter Assistants working throughout the State in various Panchayat Unions on time scale of pay of the post of Office Assistant/Night Watchman in the existing vacancies. Pursuant to that, the Collector, Nagapattinam has appointed 20 Fitter Assistants of the Vellore District in various Panchayat Unions as Office Assistants/Night Watchman. Aggrieved by the said order of the Collector dated 08.09.2007, the Petitioners and others made representation to the Government on 17.09.2007 and requested that as per the earlier order of the Government and Court Order, the Petitioners are entitled for appointment. If the persons from outside Nagapattinam District are considered, the Petitioners will be having no chance of appointment as per the Government Order/letter dated 21.07.2005.

6. It is in those circumstances, the said G.O. Ms. No. 55 dated 15.06.2006,

issued by the first Respondent/Government insofar as it relates to para 4(f), and also the proceedings of the third Respondent dated 08.09.2007 have been challenged by which the District Collector, Nagapattinam has appointed 20 Fitter Assistants from Vellore District as Office Assistant/Night Watchman and also for direction against the Respondents 2 and 3 to appoint Petitioners in any of the basic services as per the Government letter dated 21.07.2005.

7. In the counter affidavit filed by the third Respondent, District Collector, while it is admitted that the Petitioners were all working as Cholera Mazdoors on daily wages basis, the said appointments were made as per the recommendations of the Deputy Director of Health Services and the appointments were made at the time of break of cholera, which occurs seasonally during flood and natural calamity and the appointments were purely on daily wages and on NMR basis and not in the capacity of Government servants. The services of the Cholera Mazdoors were utilized by the Health Department and they worked under the supervision of the Health Inspectors and were paid from the Panchayat Unions General fund and their appointments were only for a particular period and not throughout the year. It is stated that O.A. Nos. 374 of 1998 and 979 of 1998 are still pending. That apart, various original applications were filed in the Tamil Nadu State Administrative Tribunal. As per the impugned G.O. Ms. No. 55, the Government has ordered to appoint Fitter Assistants on regular basis in the State in various units of Rural Department as Night Watchman and Office Assistants. As per the Government Order, the regular appointments were made in respect of the said posts and the said Government Order is not applicable to the Petitioners. It is stated that the Petitioners are not governed by the service rules applicable to the Government servants and there is no post as Cholera Mazdoor created by the Government. It is stated that the appointments made as per G.O. Ms. No. 55 is not illegal and that is relating to permanent appointment. The Petitioners were appointed only as Cholera Mazdoors on seasonal employment basis. On the basis of the recommendations of the Deputy Director of Health Services, the Panchayat Unions used to appoint them during the time when there was a break of cholera which is seasonal and they were appointed on daily wages basis for certain period not exceeding 58 days in a year.

8. A reference to the impugned Government Order in G.O. Ms. No. 55 dated 15.06.2006, shows that the purpose of the said Government Order is only to regularize the services in the post of Night Watchman/Office Assistant with Fitter Assistants working on daily wages from 1982 to 1.4.1997 in various Panchayat Unions and that is in respect of 933 vacancies. The Government Order also in categorical terms states that those who have worked as Fitter Assistants from 1982 to 1.4.1997 continuously for 10 years, based on their qualifications, can be regularized either in the post of the Nigh Watchman or Office Assistant and the Government Order has also given some other duties to such persons, who were regularized.

9. On the face of it, the impugned Government Order, viz., G.O. Ms. No. 55 dated

15.06.2006, has nothing to do with the Cholera Mazdoors and the Petitioners cannot claim any right or challenge the said Government Order. Even in the letter of the Secretary to Government, to the Collector, Nagapattinam dated 21.07.2005, which is heavily relied upon by the Petitioners, it is only stated as follows:

The ousted Cholera Mazdoors who were working in various Panchayat Union of Nagapattinam District may be appointed in the future vacancies under purely temporary basis/daily wages basis/priority basis in the Panchayat Union in Nagapattinam District.

10. It is, consequent to the said Government Order, the District Collector, viz., the third Respondent has passed the order on 08.09.2007, by regularizing 20 persons working in Vellore for continuously 10 years, in the 978 vacancies of Pump Operators subject to various conditions. There is absolutely no reason to question the said Government Order or the consequential order passed by the Respondents. The Petitioners are coming under a totally different category, viz., Cholera Mazdoors appointed on daily wages basis and therefore, I am of the view that the writ petition as such is misconceived and is liable to be dismissed, accordingly, the same is dismissed. However, the dismissal of the writ petition does not stand in the way of the Respondents 1 to 3 to consider the representations of the Petitioners dated 17.09.2007, to appoint them in any of the vacancies which are either in existence or which may arise in future. No costs. Connected miscellaneous petitions are closed.