

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.966 of 2011

1. K.Rajarajan
2. N.Kalaivanan
3. Mohan Kumar
4. S.A.Selvakumar
5. P.Tamilarasan ... Appellants

Vs.

1. Tamil Nadu State Transport Corporation
(Salem Division-I) Ltd.,
Rep. by its Managing Director,
12, Ramakrishnan Road, Salem.
2. G.K.Sivamani
3. K.Matheswaran
4. S.Jeevarathinam
5. M.S.Loganathan ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 28.02.2011 made in W.P.No.23910 of 2006

diled under Article 226 of the constitution of India to
issue a writ of Mandamus directing the respondent to prepare the
approved list of Assistant Engineers fit for promotion as
Assistant Managers twice a year i.e. in April and October as per
Rule 24 Common Service Rules from the year of accrual of vacancies
for the vacancies existed prior to 30.12.2003, the date of
amalgamation, and to consider the petitioners for inclusion in the
said approved list and promote the eligible petitioners notionally
as Assistant Managers in the respective half year retrospectively
with all monetary benefits including arrears of pay and to treat
the petitioners as Assistant Managers on 30.12.2003 for all
purposes in the resulting company and pass such further or other
order.

For appellants : Mr.N.Subramaniyan

For respondents : Mr.P.Paramasiva Doss for R-1
Mr.S.M.Subramaniam for RR-2 to 5

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

We have heard Mr.N.Subramaniyan, learned counsel for the appellants, Mr.P.Paramasiva Doss, learned counsel appearing for the first respondent and Mr.S.M.Subramaniam, learned counsel appearing for the respondents 2 to 5.

2. What is challenged in this Writ Appeal is the order of the learned single Judge passed in W.P.No.23910 of 2006, dated 28.02.2011, wherein the prayer of the appellants-writ petitioners for issuance of a Writ of Mandamus to direct the respondents to prepare the approved list of Assistant Engineers fit for promotion as Assistant Managers twice a year, i.e. in April and October, as per Rule 24 of the Common Service Rules from the year of accrual of vacancies for the vacancies existed prior to 30.12.2003, the date of amalgamation and to consider the writ petitioners for inclusion in the said approval list and promote the eligible writ petitioners notionally as Assistant Managers in the respective half year retrospectively with all monetary benefits including arrears of pay and to treat the writ petitioners as Assistant Managers on 30.12.2003 for all purposes in the resulting Company, was dismissed by the learned single Judge.

3. While hearing the Writ Appeal, it has been brought to our notice that the appellants/writ petitioners have filed an application in M.P.No.1 of 2009 in W.P.No.23910 of 2006 for amendment of the prayer from issuance of Writ of Mandamus as stated above to issuance of a Writ of Certiorarified Mandamus to call for the records relating to the issuance of the impugned seniority list of Assistant Engineers published by the first respondent in his proceedings in No.E2/40455/TSTC(Salem)/2006, dated 27.11.2006 and quash the same insofar as including the names of the writ petitioners in the said list as Assistant Engineers and to further direct the first respondent to prepare and approve the panels of Assistant Engineers fit for promotion as Assistant Managers twice a year, i.e. in April and October, from the year 2001, to fill up the vacancies in the category of Assistant Manager, in the dissolved company that were accrued and existed prior to 30.12.2003 and to consider the writ petitioners for inclusion in the said panels and promote the eligible writ

petitioners notionally as Assistant Managers in the respective half year retrospectively and to treat the writ petitioners as Assistant Managers for all purposes from 30.12.2003 in the resulting company with all service and monetary benefits including the arrears of pay.

4. The reasons for filing the said amendment application are that the first respondent has published a seniority list of Assistant Engineers in his proceedings No.E2/40455/TSTC/(Salem)/2006, dated 27.11.2006 after filing of the Writ Petition during June 2006, that in the counter affidavit filed before the Writ Court, the first respondent has made a preliminary objection that the seniority list published on 27.11.2006 was not challenged by the writ petitioners, that this Court on 27.03.2007 in M.P.No.1 of 2007 in W.P.No.23910 of 2006 ordered that any promotions that would be made from Assistant Engineer to Assistant Manager shall be subject to the result of the Writ Petition, that since the writ petitioners seek only to treat them as Assistant Managers in the dissolved company prior to 30.12.2003 itself and the aggrieved persons would be the Assistant Managers who would be appointed in the resulting Company, that the writ petitioners by way of abundant caution, proposed to challenge the said seniority list in the Writ Petition by amending the prayer in the Writ Petition, that as the writ petitioners are eligible to be promoted as Assistant Managers prior to 30.12.2003 in the dissolved company itself and to be treated as Assistant Manager in the resulting company from the date of amalgamation itself and that placing of the writ petitioners in the category of Assistant Engineers in the resulting company in the impugned proceedings, dated 27.11.2006 is illegal and the same liable to be quashed.

5. The copy of the said amendment petition was also served on the respondents on 22.4.2009 as seen from the endorsement made on the amendment petition and the said amendment petition was filed before the Registry on 22.04.2009 and it was numbered accordingly. But it is to be noticed that the Writ Court has not looked into the said amendment petition in ordering either way and the same was kept pending on the file of the Writ Court.

6. Learned counsel appearing for the appellants/writ petitioners seriously contested the matter on the vires of the impugned order passed by the first respondent on 27.11.2006 with regard to the seniority list, which is the crucial material for consideration, and therefore, they have sought for amendment of the prayer in the Writ Petition and they have presumed that the amendment petition has come to the notice of the Writ Court after filing of the Writ Petition and accordingly, they have raised a strong plea that the learned single Judge has not given due consideration to the amendment petition and the prayer originally

filed in the Writ Petition was only considered by the learned single Judge while disposing of the Writ Petition.

7. Learned counsel appearing for the first respondent as well as the learned counsel appearing for the respondents 2 to 5 also submitted that there was an application for amendment of the prayer originally sought for by the writ petitioners while filing the Writ Petition, which was not the subject matter while the Writ Petition was disposed of by the learned single Judge.

8. In order to ascertain as to whether the amendment petition was actually disposed of by the learned single Judge or not, we have called for the Writ records from the Registry and accordingly, the entire Writ records are placed before us. We have verified that there is an amendment petition in M.P.No.1 of 2009 for amendment of the original prayer sought for by the writ petitioners and the Writ Court has not considered that petition and the same is kept pending. The impugned order of the Writ Court in the operative portion in paragraph 15 reveals as follows:

"15. The contentions raised on behalf of the writ petitioners that they would have been promoted to the cadre of Assistant Manager, if the seniority panel had been prepared during the months of April and October, 2001, as per the applicable service rules, cannot be countenanced. As such, the writ petition is devoid of merits and therefore, it is liable to be dismissed. Hence, it is dismissed. No costs"

9. Thus, it is seen that the Writ Court has not considered and passed any order as to the amendment sought for by the writ petitioners in M.P.No.1 of 2009 in W.P.No.23910 of 2006, which has now resulted in the appellants/writ petitioners in making a plea as to the vires of the order of the first respondent, dated 27.11.2006.

10. When that is the position, we have no other option but to remand the matter back to the Writ Court. Accordingly, the Writ Appeal is allowed and the impugned order passed by the learned single Judge is set aside not on the merits of the matter, but for not considering the prayer in the amendment petition, which will have a bearing on the main Writ Petition and accordingly, the matter is remanded to the Writ Court for giving due consideration of the amendment petition in M.P.No.1 of 2009 in W.P.No.23910 of 2006 and after considering the prayer in the amendment petition and passing appropriate orders on the same, the Writ Court shall proceed further afresh in accordance with law and dispose of the Writ Petition. It is open for the learned counsel appearing for both parties to raise all the pleas that are raised before this Court in this Writ Appeal, before the Writ Court. We request the

learned single Judge to first take up the amendment petition in M.P.No.1 of 2009 and then decide the Writ Petition in W.P.No.23910 of 2006 on top priority. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

cs

Copy to

1. The Managing Director
Tamil Nadu State Transport Corporation
(Salem Division-I) Ltd.,
12, Ramakrishnan Road, Salem.

2. The Section officer
writ Section,
High Court, Madras

1 cc to Mr.S.M. Subramaniam, Advocate, sr. 5933

1 c to Mr.P. Paramasivadosh, Advocate, sr. 5881

W.A.No.966 of 2011

TS (CO)
kk 20/2

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