

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.19014 of 2000

1.G.K.Narendran
2.S.Kumaragurubaran
Petitioners

Vs

Metropolis Transport Corporation Limited
by Managing Director,
Pallavan House, Chennai-600 002
Respondent

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondent to give retrospective effect from 1987 to the promotion of the Petitioners as Assistant Manager (Traffic) and consequently promote them as Deputy Manager and Senior Deputy Managers in 1993 and 1997, respectively with due seniority arrears of salary and other attendant benefits.

For Petitioner : Mr.C.Chandrasekar

For Respondent : Mr.P.Paramasivadosh,
Standing Counsel

ORDER

This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondent to give retrospective effect from 1987 to the promotion of the Petitioners as Assistant Manager (Traffic) and consequently promote them as Deputy Manager and Senior Deputy Managers in 1993 and 1997 respectively with due seniority arrears of salary and other attendant benefits.

2. The learned counsel for the Petitioners would contend that the Petitioners were denied promotion to the posts of Assistant Manager (Traffic) with retrospective effect from 1987 in spite of the fact that they were the senior most eligible candidates in the Traffic Wing and it is a feeder category as per the Rules. The Petitioners have joined the service in the Traffic Wing as Traffic Inspectors. Originally they were governed by the Pallavan Transport Corporation

Limited Service Rules. The Petitioners were the senior most Traffic Inspectors and they were waiting for promotion. Under the Service Rules, the vacancy could be filled up as follows:-

"Traffic Superintendent/Public Relations Officer/
Principal, Training School.

i. By promotion from among the Assistant Branch Manager (Traffic)/ Traffic Managers/publicity Assistant who are in possession of minimum general educational qualification; or

ii. Appointment by interchanging these posts; or

iii. By direct recruitments".

3. The learned counsel for the Petitioners would further contend that only the Traffic Managers or other personnel mentioned in category-I could be promoted as Traffic Superintendents. The interchangeability of posts was also permissible only from among the posts of Traffic Superintendent/ Public Relation Officers/Principal, Training School, which were also in the Traffic Wing. But, the Respondent in utter violation of the Rules, posted an Assistant Manager (Technical) by appointment on transfer as Traffic Superintendent and the Traffic Wing has been given a step-motherly treatment. But, in the technical wing there are more persons and more chances are available to them. The Petitioners became eligible for promotion in the year 1987 itself when the post was known as Traffic Superintendent. However, the same was denied despite the fact that there were vacancies available.

4. The learned counsel for the Petitioner would further contend that when it came to their turn, instead of promoting them as Traffic Superintendents (redesignated as Assistant Manager (Traffic)) the Respondent promoted them as Senior Traffic Managers on 5.1.1990. Such a post was never in existence. Therefore, by denying the promotion, they have been stagnated in the supervisor category from 1984. Therefore, earlier they have filed WP.No.12568 of 1993 for declaration to hold that the item IV in part A of Branch II of Appendix II to the Pallavan Transport Corporation Service Rules was illegal and the same was dismissed on 25.2.1997 because at that point of time, the rules were only draft rules. Against that order, they preferred WA.No.330 of 1997. Though the Division Bench of this court dismissed the said writ appeal on 7.9.1999, but observed that the dismissal will not preclude them from agitating the matter in accordance with law.

the Petitioner that even the Respondent in the earlier Writ Petition has stated that there is a provision for transfer from one wing to another wing, but , there is no such provision for such transfer in the Service Rules, 1975. The Petitioners were given promotion to the post of Assistant Manager (Traffic) belatedly on 11.11.1996 and 25.12.1996 respectively though it was due to them as early as in 1987. Even the promotion given in 1996 was after the issuance of a legal notice dated 5.5.1996 for filing second contempt proceedings. In such circumstances, this Writ Petition has been filed.

6. The learned standing counsel for the Respondent, by filing a counter, would contend that in so far as the 1st Petitioner is concerned, he was initially appointed by the erstwhile Pallavan Transport Corporation Limited as Traffic Supervisor on 23.11.1976 and promoted as Traffic Inspector on 14.3.1977 and then as Traffic Manager on 5.1.1990 and thereafter, as Assistant Manager (Traffic) on 11.11.1996. In so far as the 2nd Petitioner is concerned, he was initially appointed as Checking Inspector on 11.10.1976 and then promoted as Traffic Supervisor on 29.11.1976, Traffic Inspector on 12.3.1977, Traffic Manager on 6.6.1984 and Senior Traffic Inspector on 5.1.1990 and as Assistant Manager (Traffic) on 27.12.1996. They were given promotion in the normal course and none of their juniors in Traffic Department have been promoted by depriving the opportunity to the Petitioners and they were also parties to the earlier writ petition. As averred in the earlier Writ Petition, the Respondents 2 to 5 therein were given the promotion on 5.6.1990, but now in the present Writ Petition, the Petitioners are seeking for promotion retrospectively from 1987.

7. The learned standing counsel for the Respondent would further contend that the earlier Writ Petition was dismissed on the ground that the rules have not been brought into force and even the writ appeal filed as against the same was also dismissed. Therefore, when the vacancy arose, necessary proposals have been placed before the Finance Committee and Board and after getting approval of the Board, the Petitioners were promoted in the Assistant Manager cadre on 11.11.1996 and 27.12.1996 respectively. The next promotion (on time bound basis) from Assistant Manager to Selection Grade Assistant Manager will be considered on completion of six years qualifying service in the Assistant Manager cadre. The present Writ Petition has been filed for subsequent promotions as Deputy Manager and Senior Deputy Manager as if they became eligible to hold the post of Traffic Superintendent/ Assistant Manager as early as 1987, which is a new plea taken in the Writ Petition. But, they have agreed to the promotion from the year 1995 when this court has observed

that there was no vacancy and the Petitioners will be considered on priority basis when the vacancy arises. As per their undertaking given to this court, they were considered for promotion when vacancy arose. They have also accepted and joined the new post on 11.11.1996 and 27.12.1996 respectively and retired from service on 30.11.2004 and 8.2.2006 respectively.

8. The learned standing counsel for the Respondent would further submit that the promotion from the supervisory cadre to Assistant Manager cadre is not an automatic or time bound one and it was considered taking into account the vacancy, seniority, eligibility and other factors. Further, the Writ Petition has been filed with a delay of more than 4 years and no proper reasons has been given for such a delay. In fact, the Respondent Corporation in order to have an effective managerial functioning, rotates the job of the officers in the managerial cadre and post them in all fields to develop their skills. Due consideration was given to all the wings like administration, traffic and technical considering the nature and requirement in that particular wing as per the rules in force. After introduction of longevity of pay scheme and conditions with effect from 1.5.1975, the service conditions, pay, etc. in all the State Transport Undertakings became uniform and the same has been followed in 12(3) wage settlement arrived for every three years. Therefore, the Respondent Corporation has to follow the uniform procedure and scheme and the guidelines became imperative to be followed. Further, fixation of pay of promotees from supervisory cadre to managerial cadre is being done as per the rules in force by maintaining the minimum assured increase by protection of existing gross salary. The terminal benefits of the Petitioners have also been settled. In such circumstances, this Writ Petition is not maintainable.

9. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

10. The grievance of the Petitioner is that they have been given step-motherly treatment though they became entitled to the benefits even in the year 1987. But, as rightly pointed out by the learned standing counsel for the Respondent, in the earlier Writ Petition, the Petitioners were also the parties and they have challenged the promotion given to the Respondents 2 to 5 therein and the writ petition was of the year 1993, which was dismissed in 1997. In the writ appeal filed as against the order of dismissal of the Writ Petition, the same was confirmed in the year 1999. Of course, an observation was made that the said dismissal of Writ Petition may not be a bar to agitate the issue by filing a fresh Writ Petition. In the said Writ Petition, the

Petitioners herein have challenged the promotions of the Respondents 2 to 5 therein. Hence, can they be permitted to now to question the very same issue that too retrospectively is the question.

11. It is very clear that subsequently the merger of the rules has been made in that particular wing. When they have not challenged that one, though at the original point of time, it was only at the stage of preliminary, later on, they have not chosen to challenge the same in the manner known to law. Above all these things, as rightly pointed out by the learned counsel for the Respondent, they have also accepted the subsequent promotion and joined in the year 1996 respectively and retired in 2004 and 2006 respectively. Thereafter, they have admittedly been settled with the retirement benefits. When that being the case, having accepted the earlier promotion order and availed all the benefits applicable to that post, the present Writ Petition seeking for retrospective promotion with effect from 1987 is not maintainable and hence, this Writ Petition deserves to be dismissed.

12. In the result, this Writ Petition is dismissed.
No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Srcm

To:

The Managing Director,
Metropolis Transport Corporation Limited
Pallavan House, Chennai-2

1 cc to M/s.Row & Reddy, Advocate, sr.44551

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msm co
kra 28.09.2016