

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.42051 of 2016

M.Thirunavukkarasu

... Petitioner

Versus

M/s. State Express Transport Corporation Ltd.,
Rep. by its Managing Director,
No.2, Pallavan Salai,
Chennai - 600 002.

... Respondent

Writ petition filed under Article 226 of the Constitution of India seeking the issuance of writ of mandamus, to direct the respondent to appoint the petitioner as Junior Engineer from the date of acquiring Diploma in Mechanical Engineering, i.e. from 1989 or as Assistant Engineer from the date of acquiring degree in Mechanical Engineering as per Rule 59(b) and 59(c) of common service rule and in the light of the orders of this Court in W.P.(MD) No.11076 and 11476 of 2014 and 4479 of 2015 dated 12.10.2015 and in W.P.No.31075 of 2016, dated 07.09.2016 by considering the representation of the petitioner dated 22.06.2016.

For Petitioner : Mr.D.Soundarraaj

For Respondent : Mr.P.Kannan Kumar

ORDER

By consent of both parties, the present writ petition is taken up for final disposal.

2. The present writ petition has been filed to direct the respondent to appoint the petitioner as Junior Engineer from the date of acquiring Diploma in Mechanical Engineering, i.e. from 1989 or as Assistant Engineer from the date of acquiring degree in Mechanical Engineering as per Rule 59(b) and 59(c) of common service rule and in the light of the orders of this Court in W.P.(MD) No.11076 and 11476 of 2014 and 4479 of 2015 dated 12.10.2015 and in W.P.No.31075 of 2016, dated 07.09.2016 by considering the representation of the petitioner dated 22.06.2016.

3. The case of the petitioner is that he was appointed as Junior Tradesman on 01.06.1987. He acquired Diploma in Mechanical Engineering during April 1989 and Degree in Mechanical Engineering during April 2002, while in service, after getting permission from the Management. The petitioner represented the respondent in person as well as in writing for several times to promote him as Junior Engineer from the date of acquiring Diploma in Mechanical Engineering, but, the same have not been considered.

4. According to the petitioner, similar persons, who are the Diploma Holders, were appointed as Junior Engineers in the respondent Corporation. When the petitioner made a representation dated 08.05.2003 to the respondent, seeking to promote him as Assistant Engineer from the date of acquiring Mechanical Engineering Degree, the respondent replied vide his letter dated 07.06.2003 stating that his case will be considered when vacancy arise. Even though B.E. Graduates were promoted and appointed as Assistant Engineers, the petitioner's case was not considered. After repeated request, the petitioner was appointed as Junior Engineer instead of Assistant Engineer as fresh entrant vide Order No.036355/HR5/SETC TN/2011, dated 27.02.2013 instead of Assistant Engineer as per rule 59(b) and 59(c) of the Common Service Rule.

5. It is the further case of the petitioner that if he had been promoted as Assistant Engineer with effect from April 2002, i.e. after acquiring B.E. Degree, he would have been reached the level of Branch Manager post at present or if he had been promoted as Junior Engineer from April 1989, he would have been promoted as Senior Assistant Engineer at present, as per service rule 59 (b) and (c) and G.O.Ms.No.13, Transport (C1) Department, dated 14.01.2000.

6. It is the further case of the petitioner that as per Rule 59(b) of the Common Service Rule, (a) 50% of appointment should be filled up by transfer from among the holders of the posts of Foreman/Junior Engineer, who possess Degree or Diploma in Automobile or Mechanical Engineering or by promotion from among the holders of the posts of Senior Tradesman or Tradesman in the working group under the Technical Department, who have completed not less than five years of service in the grade of Assistant Foreman/Tradesman; (b) remaining 50% of the appointments from among others, but without detriment to the seniors if any possessing Diploma; (c) Tradesman in other trades may also be considered for promotion as Foreman (Mech.) without detriment to their seniors in the category of Tradesman (Mech.); by direct recruitment, the ratio between the appointment by promotion and by direct recruitment shall be 1:1. Without following the above rule, nine Tradesman were promoted as Foreman in the cadre of Junior engineer vide order dated

22.01.98 and seven Tradesman were promoted as Foreman vide order dated 03.06.2006 and Ten Tradesman were promoted as Foreman vide order dated 04.10.2007 in the respondent Corporation. If the respondent had been followed the above service rule, he would have been appointed/promoted as Junior Engineer. When the petitioner came to know about the existing vacancies of Assistant Engineer through news paper, he applied for the same, but, the respondent without considering his case filled all the Engineering posts vide order dated 06.04.2015, 09.04.2015, 19.05.2015, etc. In order to avoid stagnation in giving promotion to technical supervisors, the Government has issued G.O.Ms.No.13, Transport Department dated 14.01.2000. As per the said G.O., after completion of six years, Junior Engineer has to be promoted as Assistant Engineer or after twelve years, Junior Engineers to be promoted as Assistant Engineers or after completion of twenty two years, Junior Engineer to be promoted as selection grade senior Assistant Engineer. The time bound promotion was cancelled by the Government for Technical supervisors vide G.O.Ms.No.142 Transport (C1) Department, dated 21.08.2006 and then Government issued G.O.Ms.No.63, Transport (D) Department dated 05.02.2010 stating that promotion to Technical supervisors can be given based on the availability of the vacancies and qualification prescribed in the common service rule. When vacancy arise, the case of the petitioner was not considered for promotion. Hence, he made a representation dated 22.06.2016 seeking promotion to the post of Junior Engineer from 1989 and Assistant Engineer from 2000 as per Rule 59(b) and 59 (c) of Common Service Rule and G.O.Ms.No.13 Transport Department, dated 14.01.2000, but, the same has not been considered by the respondents. Hence, the present writ petition has been filed.

4. When the matter was taken up for consideration, the learned counsel for the petitioner submitted that in identical situations, the Madurai Bench of this Court in W.P.(MD) No.11076 and 11476 of 2014 and 4479 of 2015 by order dated 12.10.2015 has directed the respondents to appoint the petitioner therein as Junior Assistant from the date of acquisition of degree. Hence, following the same, similar order may be passed.

5. Though the petitioner prayed for a larger relief, instead of giving such a positive direction, I am of the opinion, it would be appropriate to direct the respondent to consider the representation of the petitioner dated 22.06.2016 in the light of the order of the Madurai Bench of this Court dated 12.10.2015 made in W.P.(MD) Nos.11076 and 11476 of 2014 and 4479 of 2015.

6. Accordingly, without going into the merits of the claim made by the petitioner, this Court directs the respondent to consider the representation of the petitioner dated 22.06.2016

seeking to appoint the petitioner as Junior Engineer from the date of acquiring Diploma in Mechanical Engineering, i.e. from 1989 or as Assistant Engineer from the date of acquiring degree in Mechanical Engineering as per Rule 59(b) and 59(c) of Common Service Rule and pass appropriate orders thereon, on merits and in accordance with law and also in the light of the order of the Madurai Bench of this Court dated 12.10.2015 made in W.P.(MD) Nos.11076 and 11476 of 2014 and 4479 of 2015, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

sd/

Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

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To

The Managing Director,
M/s. State Express Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai - 600 002.

+1 CC to Mr. D. Soundarraaj, Advocate SR 71360

W.P.No.42051 of 2016

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