



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2016

C O R A M

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition(MD)Nos.16458 of 2016

P.Thenmoli

.. Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Tirunelveli) Limited
Kattabomman Nagar,
Tirunelveli.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Tirunelveli) Ltd., Tirunelveli Region,
Vannarpettai, Tirunelveli.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 01.02.2016 and re-designate the petitioner as Junior Assistant retrospectively from the date on which the petitioner obtained the degree in the same manner as done with the posts of the persons, who were appointed along with the petitioner as Record Clerks were re-designated as Junior Assistant from the date of their acquiring degree.

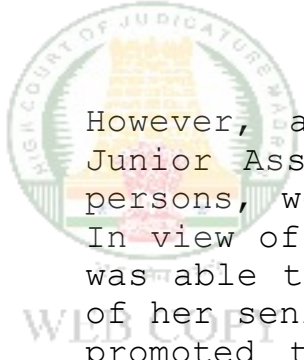
For Petitioner : Mr.S.Loganathan

For Respondents : Mr. K.Sathiyasingh

ORDER

The petitioner, who was appointed as Record Clerk on 10.08.1985, on compassionate ground on the basis of the qualification, namely, 12th Pass.

2. Learned counsel appearing for the petitioner would submit that initially the petitioner did not complete the degree course on the date of appointment and she was appointed as Record Clerk. As per Rule, any person has to be appointed in the post of Junior Assistant provided he possess the degree. Later on, on acquiring the degree in the year 1987, the petitioner gave representation to the respondents to re-designate her post as Junior Assistant. As there was no response, she kept on making reminders continuously.



However, after a gap of seven years, she was re-designated as Junior Assistant only in the year 2002. In the meantime other persons, were directly appointed to the post of Junior Assistant. In view of several appointments made prior to their promotion, she was able to become Assistant in the year 2008. Only on the basis of her seniority in 2002 in the post of Assistant, she was further promoted to the post of Selection Grade Assistant in the year 2014. Therefore, her grievance is that if the respondents considered her representations for her re-designation to the post of Junior Assistant immediately on acquiring B.A., degree in the year 1987, she would have further promoted to the higher post. Referring to 3 orders granting re-designation to J.Anthony Manokar Gnanasekar, C.Sivaji and P.Thangasamy, who were also given re-designation immediately on acquiring the higher qualification, namely, B.A., the learned counsel sought for a direction to extend the same benefit to the petitioner for re-designation, otherwise, this would amount to discrimination. Concluding his arguments, it has been further submitted that if the respondent comes forward to consider the case of the petitioner for her re-designation from the date of acquiring B.A qualification i.e., 1987, the learned counsel submitted that the petitioner is prepared to give up her huge back-wages from the date of acquisition of the degree i.e., 1987. The said statement is recorded.

5. A detailed counter affidavit has been filed by the respondent.

6. Learned Standing Counsel appearing for the respondent would submit that when the petitioner was appointed as Record Clerk, she was not having requisite qualification for the post of Junior Assistant. As per Rule 59(c) Branch III Part (c)(1) of the Common Service Rules, minimum qualification required for the post of Junior Assistant is graduate in Arts or Science or Commerce awarded by a recognized University. Therefore, when the petitioner is not having the requisite qualification as per the said Rule, as she is a compassionate appointee, she was appointed with her qualification in the post of Record Clerk. Therefore, the petitioner cannot seek promotion without acquiring the necessary qualification at the time of entering into service. In the case of J.Anthony Manokar Gnanasekar, C.Sivaji and P.Thangasamy, on the date of acquiring qualification there were vacancies, therefore, although they were initially appointed as Record Clerk, they have acquired degree qualification in various subjects. Considering the said vacancy available they were immediately re-designated to the post of Junior Assistant in the existing vacancies. Therefore, the petitioner cannot compare her case with the case of J.Anthony Manokar Gnanasekar, C.Sivaji and P.Thangasamy. Concluding his arguments, he would submit that as the petitioners have raised the issue of re-designation belatedly, the prayer has to be dismissed on the ground of long laches of

7. This Court is not able to find any merits in this Writ



Petition. In the case of J.Anthony Manokar Gnanasekar, C.Sivaji and P.Thangasamy, originally, they were appointed in the post of Record Clerk, however, as they obtained degree in various subjects on subsequent dates, the respondent has issued separate order re-designating them in the post of Junior Assistant, may be taking into the existing vacancies available then. But in the present case also, the proceedings dated 19.04.1994, issued in favour of Ms.P.Thenmozhi, Mr.T.Antony Xavier Raj, Mr.P.Maruthiah, Mr.S.Heber Joseph Sellakumar and Mr.S.Saint Ravirajan, dated 19.04.1994, also shows that there were vacancies even in the year 1994, in the post of Junior Assistant. Therefore, it is not open to the respondent to say that due to non-availability of vacancies for the post of Junior Assistant, the petitioner was denied re-designation on earlier occasions. In any event, when the learned counsel appearing for the petitioner has consistently requested this Court that the petitioner is not pressing her benefit of back-wages from date of acquisition of degree and she is asking the notional promotion for the purpose of promotion and seniority and pension alone, this Court has no hesitation to direct the respondent to re-designate the petitioner as Junior Assistant from the date of acquisition of degree without granting benefit of back-wages. Accordingly, the respondent is directed to redesignate the petitioner as Junior Assistant, from the date of acquisition of degree without granting benefit of back-wages.

8. With the above direction, these Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Tirunelveli) Limited, Kattabomman Nagar,
Tirunelveli.
2. The General Manager,
Tamil Nadu State Transport Corporation,
(Tirunelveli) Ltd., Tirunelveli Region,
Vannarpettai, Tirunelveli.

+ 1 CC TO MR.S.LOGANATHAN, ADVOCATE IN SR No. 49624
+ 1 CC TO MR.K.SATHIYA SINGH, ADVOCATE IN SR No. 48700

VS