

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10523 of 2016

N. Sampath

.. Petitioner

vs

The General Manager,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai-600 004

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any Writ, order or direction in the nature of Writ, directing the respondent to re-designate the petitioner as Junior Assistant retrospectively from the date of appointment dated 01.12.1988, since the petitioner possessed degree qualification as on the date of appointment as record clerk as per rule 59(b) and (c) of the Common Service Rule in pursuant to the petitioner's representation dated 30.06.2015.

For Petitioner : Mr. D. Soundararaj

For Respondents : Mr.P. Paramasivados

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondent to re-designate the petitioner as Junior Assistant retrospectively from the date of appointment on 01.12.1988, as Record Clerk as per rule 59(b) and (c) of the Common Service Rule. In view of the fact that the writ petitioner passed the degree qualification in pursuant to the petitioner's representation dated 30.06.2015.

2. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was appointed as Record Clerk on 01.12.1988, despite the fact that he has

completed the degree. The person who is in possession of degree qualification is to be appointed in the post of Junior Assistant and not to the post of the Record Clerk, is the claim made by the writ petitioner. Thus, the writ petitioner made a representation in this regard to re-designate him as Junior Assistant with effect from acquiring from the date of qualification of the degree.

3. The very concept of the claim itself is unsustainable. The service rules governing the post of Record Clerk and Junior Assistant are entirely different. Mere acquisition of qualification of degree will not confer any right to the writ petitioner to seek re-designation to the post of Junior Assistant. The post of Junior Assistant is governed by the separate service rules and appointment to the post of Junior Assistant should be made in accordance with the recruitment rules by conducting exam through open competitive process and by providing opportunity to all the eligible persons. The post of Record Clerk falls under fourth category and the recruitment process rules are entirely different and it is no way connected with the rules relating to the appointment for the post of Junior Assistant. This be the difference in between the cadres, the writ petitioner cannot claim re-designation to the post of Junior Assistant automatically from the date on which he acquired degree qualification. In this Country there are many youths possessing the qualification of degree and Post Graduate degrees. Merely on that ground, they cannot claim appointment to a particular post or cadre. Every person has to participate in the process of selection for the post against which the notification was issued for recruitment and mere completion of degree in the class four service will not confer the right of the employee to seek higher post of Junior Assistant automatically.

4. In this regard, the learned counsel appearing for the writ petitioner submitted that in the judgment of the Division Bench of this Court dated 30.01.2017, in W.A(MD).No.83 of 2017, it was held that if the benefit of re-designation is extended to similarly placed person, the same has to be extended to the writ petitioner also.

5. Mr. Paramasivadosh, learned counsel appearing for the respondent submitted another judgment of the Division Bench of this Court dated 25.08.2014, in W.A.No.1123 of 2014 wherein it has been held that the concept of re-designation in this regard has not been provided under common service rules and therefore such a re-designation can never been claimed as a matter of right. The Hon'ble Division Bench passed the following orders, which are extracted here under:

"6. Learned counsel appearing for the appellant contended that had the appellant been appointed as Junior Assistant straightaway, as per the Service Rules, he would have been promoted as Assistant, Senior Assistant, Superintendent and then as Assistant Manager depending upon the vacancy in the hierarchy and as the respondent had wrongly appointed him as a Junior Clerk, he had to wait for 6 years to get promoted as a Junior Assistant. According to the learned counsel for the appellant, excepting the appellant, the other persons, appointed along with him, were all only SSLC holders and he was the only Graduate. He further contended that one Sivajothi, similarly placed person, who also possessed Bachelor Degree and made a claim for re-designation after 29 long years, was favourably considered and submitted that the same benefit should be extended to the appellant and denial of the same would amount to gross discrimination offending Article 14 of the Constitution of India.

7. From the materials available on record, it is seen that the appellant, having accepted the post of Junior Clerk at the time of appointment without any objection, cannot seek for re-designation by way of writ proceeding after a lapse of fourteen years. Law is well settled that in the matters relating to service, settled list should not be unsettled after a long lapse of time. The learned single Judge also turned down the request of the appellant on the ground that there was an inordinate delay in his claim for re-designating him as Junior Assistant from Junior Clerk.

8. In this regard, it would be useful to make a reference to the decision of the Supreme Court in Union of India Vs. International Trading Company and another [(2003) 5 SCC 437] wherein, in paragraph 13, it has been held as follows:-

"...A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India, 1950 (in short "the Constitution") cannot be pressed into service in

such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on par. Even if hypothetically it is accepted that wrong has been committed on some other cases by introducing a concept of negative equality respondents cannot strengthen their case..."

9. In view of the above proposition, the order of the learned single Judge does not suffer from any illegality or infirmity warranting interference of this Court. Hence, Writ Appeal stands dismissed confirming the order of the learned single Judge. No costs. Consequently, connected Miscellaneous Petition is closed."

6. However, the learned counsel appearing for the respondent made a submission that the re-designation from the post of Record Clerk to the post of Junior Assistant has not been provided to any other person and further the promotion are given only in accordance with rules to the eligible candidates. In this regard the Government also issued G.O.No.79, Transport (C1) Department dated 30.06.2015, so as to grant promotion to the eligible candidates, and all such promotion ought to be made considering the eligibility and seniority and all other relevant rules in this regard. However, this Court is inclined to follow the Judgment of Division Bench rendered in W.A.No.1123 of 2014, wherein the legal principles regarding re-designation has been dealt with. This Court is of the opinion that the earlier Division Bench judgment has laid down the legal principles in this regard and thus, the relief sought for re-designation of the writ petitioner from the post of Record Clerk to Junior Assistant can not be granted.

7. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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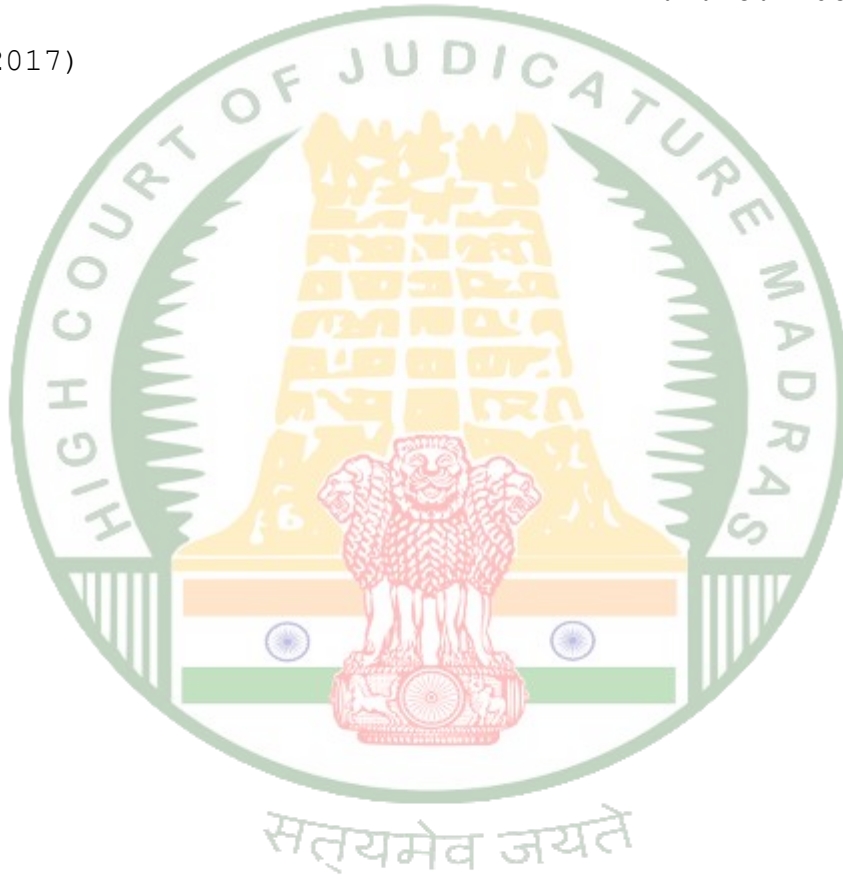
To

The General Manager,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai-600 004

+1cc to Mr.P.Paramasivadoss, Advocate sr.66404

W.P.No. 10523 of 2016

ss(12/10/2017)



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