

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2016

Delivered on: 02.01.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.15196, 15197, 31491, 31492 and 31550 of 2016
and WMP.Nos.27322, 27323, 27324, 27325, 27389, 27389,
13243 and 13244 of 2016

P.Sreeram .. Petitioner in W.P.No.15196 of 2016
W.P.No.31491 of 2016

M.Kathikeyan .. Petitioner in W.P.No.15197 of 2016
W.P.No.31492 of 2016

- 1.Syed Sulaiman
- 2.K.Dasprakash
- 3.R.Jeganathan
- 4.R.Vijayaprasad
- 5.R.Karthik
- 6.P.Ranjith Kumar
- 7.T.Rajesh
- 8.G.Panneer Selvam
- 9.S.Anand
- 10.Ahamed Umar Murthar
- 11.S.Tamil Selvan
- 12.M.Prabu
- 13.S.Kanagaraj
- 14.T.Udayapandian
- 15.R.Kumar
- 16.B.Pravin Kumar
- 17.K.Raja
- 18.M.Mohammed Ali Jina
- 19.N.Alaguraja

20.M.Ashok Kumar
 21.V.Sakthi Narayanan
 22.P.Prakash Kumar
 23.P.Srinivasan
 24.B.Vignesh
 25.K.Umashankar
 26.B.Simbu

.. Petitioners in
 W.P.No.31550 of 2016

Vs.

1.The Chairman,
 Secretary to Government of India,
 Ministry of Urban Development,
 Chennai Metro Rail Ltd., (CMRL),
 Fort St.George, Chennai-600 009.

2.The Managing Director,
 Chennai Metro Rail Ltd.,
 Admin. Building, CMRL Depot,
 Poonamallee High Road,
 Koyambedu, Chennai-600 107.

.. Respondents 1 and 2 in
 W.P.Nos.15196, 15197, 31491
 and 31492 of 2016

3.The General Manager – Human Resources,
 Chennai Metro Rail Ltd.,
 Admin. Building CMRL Depot,
 Poonamallee High Road,
 Koyambedu, Chennai-600 107.

4.The Manager – Human Resources,
 Chennai Metro Rail Ltd.,
 Harini Towers, No.7, Conron Smith Road,
 Gopalapuram, Chennai-600 086.

.. Respondents 3 and 4 in
 W.P.Nos.15196, 15197, 31491
 and 31492 of 2016

Respondents 1 and 2 in
 W.P.No.31550 of 2016

Prayer in W.P.No.15196 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 3 to 4 to forthwith issue appointment letter to the petitioner for Post Code -01 Station Controller/Train Operator/Junior Engineer (Station) – as per the selection list published by the 3rd respondent during July 2013.

Prayer in W.P.No.15197 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 3 to 4 to forthwith issue appointment letter to the petitioner for Post Code -01 Station Controller/Train Operator/Junior Engineer (Station) – as per the selection list published by the 3rd respondent during July 2013.

Prayer in W.P.No.31491 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned cancellation notification dated 23.08.2016 and the consequential Advertisement No.CMRL/HR/06/2016 for the posts of Junior Engineer Grade II published by the respondents and signed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to issue appointment order to the petitioner who was already selected for the Post Code -01 Station Controller/Train Operator/Junior Engineer (Station)- as per the selection list published by the third respondent during July 2013.

Prayer in W.P.No.31492 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned cancellation notification dated 23.08.2016 and the consequential Advertisement No.CMRL/HR/06/2016 for the posts of Junior Engineer Grade II published by the respondents and signed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to issue appointment order to the petitioner who was already selected for the Post Code -01 Station Controller/Train Operator/Junior Engineer (Station)- as per the selection list published by the third respondent during July 2013.

Prayer in W.P.No.31550 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent proceedings

Nil dated 23.08.2016 and that the consequential notification in Advt.No.CMRL/HR/06/2016 dated 24.08.2016 to quash the same and to consequently direct the respondents to appoint the petitioners who have been selected as per the Notification/Advertisement No.CMRL/HR/01/2013 dated 19.01.2013 and to extend all benefits.

For Petitioners : Mrs.K.Subhashini for
for M/s.Chennai Law Associates
in W.P.Nos.31491, 31492, 15196 and
15197 of 2016.

M/s.L.Chandrakumar,
in W.P.No.31550 of 2016

For Respondents : Mr.Jeyesh 'B' Dolia
for M/s.Aiya and Dolia for CMRL

COMMON ORDER

The issues involved and points to be adjudicated in these writ petitions are one and the same and therefore, all the writ petitions are disposed of by this common order.

W.P.Nos.15196 and 15197 of 2016

2.1. The petitioners in W.P.No.15196 and 15197 of 2016, in the affidavit filed in support of these writ petitions would aver among other things that they have completed Diploma in Electronics and Communication Engineering and Mechanical Engineering respectively. The petitioner in W.P.No.15196 of 2016 had stated that when he was about to pursue higher

education by joining B.E. (Bachelor of Engineering), he came across a notification issued by the Chennai Metro Rail Limited [in short “CMRL”] in Advertisement No.Advt.No.CMRL/HR/01/2013 inviting applications from Indian Nationals for the following posts with distribution of posts as under:

- a. Station Controller/Train Operator/Jr.Engineer (Station) –
Post Code -01
 - b. Jr.Engineer - Mechanical/Electrical/Electronics/Civil (Post
Code-2)
 - c. Technicians- Mechanical / Electrical /Electronics /Civil/
Plumbing/ Blacksmith/ Welding / Information Technology –
Post Code – 03.
-
- i. Station Controller – 60
 - ii. Train Operator – 87
 - iii. Junior Engineer – (Station) – 97.

2.2. The petitioners herein would aver that 244 posts were called for Post Code 01 and the number of posts available under Code -02 are 210 and the basic qualification prescribed was First Class (60% marks and above) 3 years diploma or equivalent discipline (Mechanical, EEE, ECE and Civil) from a Government recognized institute and the maximum age limit is 28 years and for post Code-03, the minimum qualification is SSLC passed plus Industrial Training Institute -specific trade with minimum 55% marks from

Government recognized institute and the age limit is 28 years. The petitioners would claim that since they fulfill the essential and necessary qualifications, they have applied for the same through on-line and they would further aver that as per Clause 3 of the notification dated January 2013, selection methodology for Post Code-01 comprised of four stage process and they are on-line test, psychometric test, proficiency in Tamil followed by medical examination in A-1 category and it further prescribes that the selection process would judge different facets of knowledge (attitude, apprehension, proficiency in Tamil and physical fitness) and only those successful candidates who have successfully completed on-line test, Tamil proficiency test and psychometric test, shall be called for medical examination. The petitioner would claim that in all stages, they have been provisionally selected for appointment to the post of Train Operator, Station Controller and Junior Engineer (Stations) – Post Code-01, subject to verification of identity and eligibility on the basis of original documents of medical fitness and verification of antecedents and other relevant requirements and accordingly, they have participated in the certificate verification and underwent medical tests also and was anxiously awaiting for appointment orders.

2.3. The grievance expressed by the petitioners is that though very

many candidates have participated, finally 154 candidates were selected and only 30 candidates were issued with appointment orders during September 2013 and another 30 candidates were issued with appointment orders during June 2014 and subsequently yet another six candidates were randomly selected from the remaining list of candidates and were given appointment orders and the petitioners are yet to be issued appointment orders and therefore, they have come forward with this writ petition.

2.4. Notices were ordered to the respondents and however, no interim orders have been passed.

W.P.Nos.31491, 31492 and 31550 of 2016

3.1. The petitioners in W.P.Nos.31491 and 31492 of 2016 are the petitioners in W.P.Nos.15196 and 15197 of 2016 respectively and W.P.No.31550 of 2016 has been filed by Mr.Syed Sulaiman and 25 others. Since the details as to the participation of the petitioners in W.P.Nos.31491 and 31492 of 2016 have already been stated, it is unnecessary to restate the facts once again.

3.2. The petitioners in W.P.No.31550 of 2016 would state that they

have applied for selection to the first category, namely, Junior Engineer (Stations) and they have undergone the entire selection process as that of the petitioners in W.P.Nos.15196 and 15197 of 2016 and in the select list, their names have been shown to be selected in Sl.Nos.81, 41, 36, 90, 71, 68, 56, 3, 83, 98, 129, 85, 45, 61, 65, 132, 107, 124, 54, 87, 86, 76 respectively and they were awaiting appointment orders and however, to their shock and surprise, fresh notification came to be issued on 23.08.2016 by the second respondent stating that the process of issue of orders of appointment has been completed as per their requirement and their earlier notification in which they have participated in the selection process has been cancelled and on the very next day viz., 24.08.2016, another advertisement/Notification was issued in Advt.No.CMRL/HR/06/2016 for filling up of 41 posts of Junior Engineer Grade-II (Station Control) in the scale of pay of Rs.8,000-14,140 and challenging the legality of the said notification, all these three writ petitions came to be filed.

3.3. The petitioners in W.P.Nos.31491 and 31492 of 2016 have also filed an additional affidavit stating that they are willing to accept orders of appointment in respect of the impugned notification also and therefore, their claim may be sympathetically considered.

4. The respective learned counsel appearing for the petitioners would contend that in the earlier round of litigations, more than one lakh and odd applications have been filed and 185 candidates, who undergone four stage of selection process, were found to be successful and out of them, 117 have been issued with appointment orders and rest of them which include the petitioners herein have not been issued with orders of appointment and they were awaiting for posting orders and further, the present notification is in respect of 41 posts of Junior Engineer Grade-II (Station Control) which in fact for earlier selection and only difference is in respect of Scale of Pay and most of the petitioner who jointed B.E.[Bachelor of Engineering] course by way of lateral entry have discontinued their studies and though they were ineligible to be considered, had participated in the selection process and came out successful and meritoriously and as such, their hopes and dreams sought be set at nought by issuing the impugned notification. It is the further submission of the respective learned counsel appearing for the petitioner that though the selection in pursuant to the impugned notification is for the post of Junior Engineer Grade-II Station (Control) with lesser Scale of Pay, the petitioners are yet to be issued with orders of appointment in terms of the first notification, ought to have been given choice to get themselves accommodated

in the present post and admittedly, it has not been done and therefore, the act of the respondents bristles with arbitrariness and it is in gross violation of Articles 14, 16 and 21 of the Constitution of India. Lastly it is submitted by the learned counsel appearing for the petitioners that admittedly in terms of the first notification, 185 candidates came to be successful and out of them 117 candidates have been issued with orders of appointment and the impugned notification dated 23.08.2016 does not spell out the reasons for cancellation of the earlier notification. Since the petitioner is having vested right on account of meritorious performance and shortlisted for appointment, in all fairness, they should have been issued with orders of appointment for selection to the post, which is the subject matter of present impugned notification and therefore, prays for quashment of the impugned notification with a further direction directing the respondents for appointing them as Junior Engineer Grade-II (Station Control) and other consequential orders.

5. The learned counsel appearing for the petitioners in W.P.No.31550 of 2016, on instructions, would submit that the petitioners are also willing to be appointed as Junior Engineer Grade-II (Station Control) with lesser Scale of Pay and also drawn the attention of this Court to ground (e) and prays for appropriate orders.

6. *Per contra*, Mr. Jayesh B Dolia, learned Standing Counsel appearing for the respondents/CMRL has drawn the attention of this Court to the counter affidavit filed in W.P.Nos.31941 and 31942 of 2016 and would submit that the petitioners made a representation to the Hon'ble Chief Minister's Special Cell on 22.01.2016 and CMRL, vide letter dated 03.05.2016 informed the petitioner that offers of appointment for the provisional list will be issued only on the basis of operational requirement and such information was also uploaded in the website at the time of publishing the provisional list. It is the further submission of the learned Standing Counsel appearing for the respondents that as per the advertisement, 244 posts were notified for Post Code No.1 and 244 candidates were provisionally shortlisted and out of them, 6 candidates were absent for certificate verification and 19 candidates were found over qualified and 26 candidates were medically unfit and 183 candidates were finally shortlisted and offers of appointment were issued to 115 candidates and the offer of appointment could not be issued in respect of remaining 68 candidates which includes the petitioner as there was no operational requirement. It is further contended by the learned Standing Counsel appearing for the respondents that as per their website information, offers of appointment to the provisionally selected

candidates will happen in a staggered manner as and when operational requirement arises and the petitioners are very well aware of the same and with open eyes, they had participated in the selection process and therefore, they cannot take a diametrically contra stand. On the legal plea, it is the submission of the learned Standing Counsel appearing for the respondents that the petitioners having participated in the selection process, cannot turn around and challenge the conditions in the impugned advertisement/notification.

7. It is also the submission of the learned Standing Counsel appearing for the respondents that as per the present impugned notification, selection and appointment to the post of Junior Engineer Grade-II (Station Control) was called for and the prescribed qualification is just a Diploma with 55% marks and the pay scale is only Rs.8000-14140 and the duties and responsibilities of the selectees are to man only those stations which are categorized as category-II stations and they will be engaged in the following stations viz., Nanganallur Road, Meenambakkam, Little Mount, Arumbakkam, Ashok Nagar and Ekkattu Thangal and stations which may come up during the course of its implementation of the extended phase of the project. It is the further submission of the learned Standing Counsel

appearing for the respondents that more than 7000 applications have been received and some of the earlier selected candidates had applied and it is unnecessary on the part of the CMRL/respondents to give reasons for cancellation of the earlier notification dated 23.08.2016 and they have every right to cancel the said notification and as such, plea of the petitioner that their constitutional right is violated, is *per se* unsustainable.

8. This Court has also put a specific question to the learned Standing Counsel appearing for the respondents/CMRL as to the number of persons participated as per the earlier notification dated 23.08.2016 and on instructions, it is submitted that large number of candidates had participated and out of them only 183 candidates were finally shortlisted which include the petitioners also.

9. In sum and substance, it is the submission of the learned Standing Counsel appearing for the respondents that admittedly the petitioners have not been issued with appointment orders in pursuant to the selection done as per the earlier notification and as such, they have no vested right to claim appointment in a lower post with lesser scale of pay and as a matter of right, nothing prevented them from participating in the selection process in terms of

the impugned notification and on instructions, would further submit that the petitioners and other candidates, who have not been issued with appointment orders, will be kept in the waiting list for a period of one year and as and when operational requirement arises, their claim for appointment will be considered.

10. This Court paid it's best attention to the rival submissions and also perused the entire materials placed before it.

11. Admittedly, in pursuant to the earlier notification dated 23.08.2016, the petitioners had applied for the post of Code No.1, namely Station Controller, Train Operator and Junior Engineer (Stations) with Pay scale of Rs.13500 – 25520/- and large number of candidates have participated in the selection process which consists of four stages as enumerated above and only 183 candidates were finally shortlisted and out of them 115 candidates were issued with orders of appointment and according to the respondents/CMRL, remaining 68 candidates have not been issued with appointment orders as there was no operational requirement. Thereafter, the respondents had issued notification dated 23.08.2016 stating as follows:

“It is hereby notified that the order of appointment issued w.r.t. Employment Notification No.CMRL/HR/01/2013 hitherto

to the provisionally selected candidates are final and the process of issue of offer of appointments has been completed as per the requirement of CMRL.

2. Accordingly, the provisional selection of candidates for whom the offer of appointment was not issued so far with reference to the above mentioned employment notification, stands cancelled.”

The respondents/CMRL subsequently issued Advertisement No.CMRL/HR/06/2016 inviting applications for selection and appointment to the post of Junior Engineer Grade-II (Station Control) in the Scale of Pay of Rs.8,000-14,140/- for filling up 41 posts. As per the counter affidavit of the respondents, 7000 applications have been received and the learned Standing Counsel appearing for the respondents, on instructions, would submit that the candidates have also been shortlisted and appointment orders are going to be issued shortly and therefore, this Court, after taking note of the said submission, has passed interim orders dated 16.12.2016 by making it clear that any selection in terms of the impugned advertisement, is subject to the result of these writ petitions.

12. It is a well settled position of law that the executive authorities have expertise in administrative matters and it is ordinarily not proper for the Court to sit in appeal over their decisions unless it is something totally arbitrary or shocking. [see *M.Rathinaswami and Others v. State of Tamil Nadu and*

Others – (2009) 5 SCC 625].

13. In ***S.S.Balu and another v. State of Kerala and Others [2009 (2) CTC 172]***, right to appointment of selected candidates came up for consideration and it is held that “The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to filling up of the vacancies or an arbitrariness is committed, the concerned candidate will have no legal right for obtaining a writ of or in the nature of mandamus”. In the said decision, reliance was also placed upon earlier decisions of the Hon'ble Supreme Court in ***Pitta Naveen Kumar & Ors. v. Raja Narasaiah Zangiti & Others [2006 (10) SCC 261]*** and ***Batiarani Gramiya Bank v. Pallab Kumar & Ors. [2004 (9) SCC 100]***.

14. This Court has carefully scanned through the entire materials and considered the factual issues as well as the legal position as enunciated by the Hon'ble Supreme Court in the above cited decisions.

15. No doubt, mere empaneling of a candidate does not give any vested right and at best, is a condition of eligibility for the purpose of appointment.

The facts of this case would clearly reveal that in terms of the first notification dated 23.08.2016, large number of candidates had participated and out of them only 183 candidates were shortlisted which include the petitioners also and admittedly, offers of appointment, in pursuant to the earlier notification, issued to the provisionally selected candidates have become final and it has been completed as per their requirements and in respect of provisionally selected candidates who have not been issued with offers of appointment stands cancelled and it is followed by another impugned notification inviting applications for selection and appointment to the post of Junior Engineer Grade-II (Station Control) with lesser scale of pay of Rs.8,000-14,140/-. It is stated by the respondents that 183 candidates were shortlisted for appointment after selection process which runs to four stages and therefore, such meritorious selection is not under dispute. According to the respondents/CMRL, though offers of appointment were issued to 115 candidates, for rest of them which includes the petitioner, it could not be issued as there was no operational requirement.

16. It is the stand of the petitioners that since they were anxiously awaiting for orders of appointment, for the reason that 115 candidates similarly placed were issued with appointment orders and they have also

joined and as such, they have not submitted applications in respect of the second impugned notification and in the additional affidavit as well as the learned counsel appearing for the petitioners in W.P.No.31550/2016, on instructions, submitted that if the CMRL/respondents invited their options, they would have gladly and willingly opted for appointment to the post of Junior Engineer Grade-II (Station Control) in the scale of pay of Rs.8,000 -14,140. Admittedly, in response to the second impugned notification, only 7000 candidates alone appeared and out of them, candidates were shortlisted and are yet to be issued with orders of appointment till this Court reserved judgment on 21.12.2016. The meritorious selection of the petitioners out of the large volume of candidates who have participated in the selection process is not at all in dispute. In all fairness, the respondents/CMRL would have given them option so as to enable them to join the post of Junior Engineer Grade II (Station Control) and admittedly, the said exercise has not been carried out. CMRL is running its operations on professional line and therefore, candidates like the petitioners, who are found to be meritorious, may be suited for the job recruitment. It is also the submission of the respective learned counsel appearing for the petitioners that most of them had joined Bachelor of Engineering by way of lateral entry and they have discontinued their studies for applying Code No.1 post in terms of the earlier

notification dated 23.08.2016.

17. This Court, taking into consideration the peculiar facts and circumstances of the case coupled with the stand of the respondents/CMRL as to the merit-wise selection of the petitioners herein, is of the view that the following orders would meet the ends of justice:

(i) W.P.Nos.31491, 31492 and 31550 of 2016 are partly allowed and the impugned cancellation notification dated 23.08.2016 and the consequential Advertisement No.CMRL/HR/06/2016 for the posts of Junior Engineer Grade II published by the respondents and signed by the third respondent are set aside. The respondents/CMRL are directed to call for the willingness of the petitioners in the order of merit ranking, within a period of four weeks from the date of receipt of a copy of this order and thereafter shall consider their claim for appointment to the post of Junior Engineer Grade-II (Station Control) in the Scale of Pay of Rs.8,000 -14,140, subject to exercise of option by them and fulfillment of eligibility criteria and issue orders of appointment within a period of six weeks thereafter and communicate the decision taken to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

(ii) In the light of the orders passed in W.P.Nos.31491, 31492 and 31550 of 2016, no further orders are necessary in W.P.Nos.15196 and 15197 of 2016. Hence, W.P.Nos.15196 and 15197 of 2016 are closed. No costs. Consequently, connected miscellaneous petitions are closed.

(iii) It is made clear that since this order came to be passed on peculiar facts and circumstances, it cannot be cited as a precedent in future cases.

02.01.2017

Index : / No

Internet : Yes

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NOTE:-Issue order copy on 05.01.2017.

To

- 1.The Chairman,
Secretary to Government of India,
Ministry of Urban Development,
Chennai Metro Rail Ltd., (CMRL),
Fort St.George, Chennai-600 009.
- 2.The Managing Director,
Chennai Metro Rail Ltd.,
Admin. Building, CMRL Depot,
Poonamallee High Road,
Koyambedu, Chennai-600 107.
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