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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A(MD)Nos.57 and 58 of 2013

and

M.P(MD)Nos.1 and 1 of 2013

W.A(MD)Nos.57 of 2013:

- 1.The General Manager,
Tamil Nadu State Transport Corporation (MDU) Ltd.,
Bye-Pass Road, Dindigul,
Dindigul District.
 - 2.The Divisional Manager,
Central Administrative Division,
Tamil Nadu State Transport Corporation (MDU) Ltd,
Bye-Pass Road, Dindigul,
Dindigul District.
 - 3.The Branch Manager,
Tamil Nadu State Transport Corporation (MDU) Ltd,
Natham,
Dindigul District.
- : Appellants/Respondents
- Vs.
- Kamal Batcha : Respondent/petitioner

Prayer:This Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 12.04.2011 passed by this Court in W.P. (MD)No.8991 of 2007.

Prayer in WP(MD). 8991/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents not to proceed with the selection of driver instructors in pursuance of the present seniority list, without disclosing the educational qualifications in the relevant column in the seniority list as published as per the communication of the 1st respondent dt. 03/10/2007 in Ref. MA.Ni.PI.S.S. 1868.



For Appellants : Mr.V.Muruganantham,
Additional Govt. Pleader
For Respondent : Mr.S.Natarajan

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W.A(MD)Nos.58 of 2013:

- 1.The General Manager,
Tamil Nadu State Transport Corporation (MDU) Ltd.,
Bye-Pass Road, Dindigul,
Dindigul District.
- 2.The Divisional Manager,
Central Administrative Division,
Tamil Nadu State Transport Corporation (MDU) Ltd,
Bye-Pass Road,
Dindigul, Dindigul District. : Appellants/Respondents 1 & 2

Vs.

- 1.Kamal Batcha : Respondent/petitioner
- 2.Durai Pandian
- 3.T.Gurusamy
- 4.Kasi Rajan
- 5.S.Balan
- 6.C.Jeyaraj
- 7.Sardar Ali
- 8.Mohan : Respondents/Respondents 3 to 9

Prayer:This Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 12.04.2011 passed by this Court in W.P. (MD)No.458 of 2008.

Prayer in WP(MD) . 458/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent dt.24.10.2007 in Ref:Admn/P1/738 and quash the same and further direct the respondents 1 and 2 to prepare a fresh seniority list in accordance to the rules and give due promotion to the petitioner.

For Appellants : Mr.V.Muruganantham,
Additional Govt. Pleader
For Respondents : Mr.S.Natarajan
for R.1
: No Appearance
for R.2 to R.8

**COMMON JUDGMENT**

(Judgment of the Court was made by **T.S.SIVAGNANAM**)

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. These appeals are directed against the common order passed in W.P.(MD)Nos.8991 of 2007 and 458 of 2008, dated 12.04.2011. The issue involved in these writ petitions is with regard to the promotion to the post of driving instructor and the seniority list which was drawn by appellant corporation for effecting promotion to the said post.

3. The contention of first respondent/writ petitioner was that the appellant had acted in utter breach of stipulation under the Service Rules and promoted ineligible candidates. The candidates who were promoted were impleaded as respondents in the writ petitions and they did not choose to appear before the Writ Court and they did not file any counter affidavit.

4. The Service Rules which was framed by the Government and notified in G.O.(Ms)No.1373, Transport Corporation, dated 02.12.1985 prescribes the qualification for the post of driving instructor, which is a post in Part C working group/miscellaneous group in Serial No.5. The appointment to the said post is by promotion from among the holders of the posts of selection grade drivers (HTV) who have passed Std.X or SSLC and who have been regular attendance during the last three years. Thus the requirement to be fulfilled is that the candidates should be a selection grade driver (HTV) and should have passed Std.X or SSLC

5. It is not in dispute that the first respondent/writ petitioner has completed PUC even at the time when he was appointed. Though, the first respondent was granted selection grade on 01.08.1994, he was not promoted, which necessitated him to approach this Court by way of a Writ Petition.

6. Before the Writ Court the appellant Transport Corporation filed their counter affidavit stating that there is no specific mention of educational qualification in the common service rules and it is not a criteria for promotion. Furthermore there is no amendment to the service rules. That apart, the private respondents are juniors to the first respondent/writ petitioner and this fact was not disputed by the appellant Corporation before the learned Single Judge.

That apart, the appellant admitted that the first respondent/writ petitioner is also a Special Grade Driver as on

01.04.2004. One more objection which was raised by the appellant was that the first respondent/writ petitioner had not challenged the seniority list.

8. This contention was also negated by the writ Court by observing that there was no provisional list drawn and published and objections invited on the same. However the petitioner filed the writ petition, immediately on the publishing of the seniority list questioning the seniority list. Therefore, the said contention also does not merit consideration. For all the above reasons, the appellants have not made out any ground to interfere with the order passed by the Writ Court. Accordingly, the Writ Appeals fail and the same are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

9. It is submitted by the learned Counsel for the first respondent/writ petitioner that the first respondent retired from service on attaining the age of superannuation during the pendency of these appeals.

10. Therefore, the appellants are directed to give notional promotion to the first respondent/writ petitioner and consequently revise the pension payable to the first respondent/writ petitioner by promoting him to the post of driving instructor notionally over and above the private respondents. The above directions shall be complied with by the appellants within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

+1cc to S.NATARAJAN Advocate in Sr.No.54576
MRN/SSL
JS/KKR/SAR.1/8.6.2017/4P-2C

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