

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.1734 of 2018 and CMP.No.13839 of 2018

The Metropolitan Transport Corporation,
No.2, Pallavan Salai,
Chennai-2.

... Appellant

Vs

1. B.Magesh
2. K.Gowri
3. N.Sangeetha
4. S.Lakshmi
5. S.Ganapathy
6. B.Bhuvaneshwari
7. M.Gayathri
8. S.Bhaskar
9. L.Ramesh Kumar
- 10.B.N.Kavitha
- 11.V.Manipaul
- 12.K.Srinivasan
- 13.A.Elangovan

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 29.01.2018 made in W.P.No.31831 of 2012 by a learned Single Judge.

W.P.No.31831 of 2012: Directing the respondent Corporation to place the petitioners in time scale of pay with effect from 3 years from the date on which they were recruited on compassionate grounds as Non ITI helper/trainees and pay them the difference in salary as arrears with effect from the said date including the increment night duty wages off duty wages leave wages bonus revision and all superannuation benefits and award interest at 12% in respect of arrears payable.

For Appellant :: Mr.S.R.Rajagopal,
Addl. Advocate General
assisted by Mr.S.Rajeni Ramadas

For Respondents :: Mr.V.Prakash,
Senior Counsel
for Mr.M.Suresh

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 29.01.2018 made in W.P.No.31831 of 2012 by a learned Single Judge.

2. The said Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondent Corporation to place the writ petitioners in time scale of pay with effect from 3 years from the date on which they were recruited on compassionate grounds as Non ITI Helper/Trainees and pay them the difference in salary as arrears w.e.f. the said date, including the increment, night duty wages, off duty wages, leave wages, bonus, revision and all superannuation benefits and award interest at 12% in respect of arrears payable. By order dated 29.01.2018, the said Writ Petition was disposed of by the learned Single Judge of this Court by issuing a Mandamus to the respondent. Aggrieved over the same, the respondent Transport Corporation is before this Court with this Writ Appeal.

3. Learned Additional Advocate General appearing for the appellant Transport Corporation relying on a decision of this Court in W.A.Nos.2642 to 2655/2012 and 681 to 686/2012 dated 02.02.2018 contended that though the learned Single Judge gave a direction to regularise the services of the respondents herein on the date of completion of three years of their service, during that period, since there was a total ban on recruitment by the Government, they cannot brought under the time scale of pay. Hence the present Writ Appeal has to be allowed.

4. Learned Senior Counsel appearing for the respondents submitted that there is no bar to regularise the services of the individuals who were already recruited after completion of three years, though there is ban on recruitment during that relevant period. The learned Senior Counsel further submitted that in regular course, those persons, who were originally appointed as trainees for the period of three years on consolidated pay, on completion of the same, they were all placed on regular time scale of pay. But, the services of the respondents alone were regularised only on 01.09.2005 citing that there was ban on recruitment.

5. Considered the submissions made on either side and we have also perused the materials available on record carefully.

6. At the outset, the fact remains that the writ petitioners/respondents herein were appointed as trainees initially in the year 1998 for a period of 36 months. However, it appears that after completion of 3 years training period,

they were not placed on regular time scale of pay like other similarly placed persons, but, continued to be paid on consolidated pay at Rs.850/-per month until 2005. Only on 1.9.2005, they were placed on probation in the regular time scale of pay of Rs.4270-60-5710 and after declaration of their probation, their services were confirmed thereafter. Now the grievance of the respondents is that other batch of compassionate appointees, who were recruited in the year 2009 and in their case, the Corporation had placed them on regular time scale of pay on completion of 3 years of service and on declaration of their probation, their services came to be confirmed in 2012 and thus in respect of their batch alone, the Corporation has shown a different treatment in the matter of placing them in the regular time scale of pay and denied placing them on regular time scale of pay for over 5 years. While so, the learned Single Judge while disposing of the Writ Petition has held as follows:

'17. Therefore, a direction is issued to the respondent Corporation to place all the petitioners on regular time scale of pay on completion of 3 years of the training period as given to all other similarly placed compassionate appointees and regularise their services on the deemed date of completion of probation from such date with all consequential and other attendant benefits, on such regularisation.

18. The Corporation is directed to pass orders as indicated above, within a period of 10 weeks from the date of receipt of a copy of this Order.

19. With the above directions, the Writ Petition stands allowed. No costs.'

7. But, considering the factual position, we are of the view that it is no doubt true that conferment will not happen on the ban period for recruitment. In this regard, it is relevant to extract paragraph 10 of the decision of this Court in W.A.Nos.2642 to 2655/2012 and 681 to 686/2012 dated 02.02.2018 here under:

'10. As projected by the Management, between the years 1999 to 2005, there was a ban on recruitments by the Government, during which period the private respondents alleged to have been working for 480 days within a period of 24 calendar months. However, permanent status cannot be conferred during the currency of the said ban period from the year 1999 to 2005. It is not disputed by the learned counsel for the workmen that the alleged dates of conferment of

permanent status on these workmen, falls during the ban period. When such being the case, we find no hesitation to come to the conclusion that permanent status cannot be conferred on the workmen, on the dates falling within the ban period.'

The said view taken by this Court earlier is squarely applicable to the facts of the present case. Accordingly, though the respondents were appointed on consolidated pay during the years 1997 and 1998 respectively and they have been working without any break continuously, their regularisation was postponed, due to the ban on Government Recruitment and they came to be brought under the time scale of pay on 01.09.2005 by the appellant. We find no error or illegality in the said regularisation. However, considering their continuation of service on consolidated pay from the date of their initial appointment, we are of the view that the period during ban has to be treated as one for continuity of service for pension benefits.

8. With the above modification of the order of the learned Single Judge, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

tsi

To

1. The Metropolitan Transport Corporation
No.2, Pallavan Salai.
Chennai 2.

+1 CC to Mr.S.Rajeni Ramadas, Advocate sr 61861.

+1 CC to Mr.K. Sudalai Kannu, Advocate sr 61055

W.A.No.1734 of 2018

SP(18/09/2018)