

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.13818 to 13822 of 2018 &
WMP Nos.16307 to 16316 of 2018

1.E.Purushothaman .. Petitioner in W.P.No.13818 of 2018
2.P.Devaraj .. Petitioner in W.P.No.13819 of 2018
3.C.Iyal Selvam .. Petitioner in W.P.No.13820 of 2018
4.K.Karthikeyan .. Petitioner in W.P.No.13821 of 2018
5.R.Narayanan .. Petitioner in W.P.No.13822 of 2018

Vs

1.The State of Tamilnadu,
rep. by its Secretary,
Transport Department,
Fort St.George,
Chennai-600 009.
2.Metropolitan Transport Corporation,
(Chennai) Limited rep. by its Managing Director,
Pallavan Salai,
Chennai-600 002.
3.Metropolitan Transport Corporation,
(Chennai) Limited rep. by its Director(Human Resources),
Pallavan Salai,
Chennai-600 002. ... Respondents in all Wps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent herein in relation to the impugned order in Memo No.522/PS(E) 2/MTC/2017 dated 15.05.2018 passed by the second respondent quash the same and consequently direct the respondents to permit the petitioner to continue in the post of Assistant Engineer.

For Petitioners(in all Wps) : Mr.Dakshayani Reddy
For RR1 (in all Wps) : Mr.N.Srinivasan, AGP
For RR2 & 3 : Mr.S.Sai Prasad

ORDER

In all these writ petitions similar questions of law and facts be involved, all are heard together and disposed of, at the stage of admission, on consent of the parties.

2. It appears that the writ petitioners in the aforesaid writs are the different technical staff of the second respondent Corporation, which is a Government of Tamilnadu undertaking. Since there was stagnation in the services of the workmen of the respondent Corporation, they made grievance before the respondent no.2 as well as the Government. The Government thereafter, examined their grievance and ultimately a Settlement under Section 12(3) of the Industrial Disputes Act was arrived at between the management and workmen and pursuant to the said Settlement, some of the posts were re-designated and the workmen/employees were given promotion/re-designated with necessary pay scale as per the Settlement. These petitioners are some of the workmen, who are benefited by such settlement and as such working in the higher post/re-designated post with necessary pay. But behind their back, the second respondent subsequently took a decision, to revert them. The second respondent Board in its 295 Meeting on 11.04.2018, held that the re-designation of the Junior Engineers to Assistant Engineers vide Memo No.522/PS(E)2/MTC 2017 to be ultra vires and as such, the second respondent issued a notice of show cause on 10.05.2018, as to why such re-designation/provision shall not be cancelled. It appears that 3 days time was given to file such show cause. The petitioners thereafter, though sought for some more time but the time was not extended to them and in the meanwhile, they having been re-designated, they have come to challenge the same in these writ petitions, being violative of the principle of natural justice so also contrary to the law. It is the case of the petitioners that since they have not been given a reasonable opportunity to show cause, the impugned order dated 15.05.2018, re-designating them are liable to be quashed and they be allowed to work as the Assistant Engineers. An interim prayer has also been made to stay the operation of such order.

3. The learned counsel for the petitioner submits that the orders impugned cannot be sustained, those suffer from the vice of non observance of the principle of audi alter partem as a salutary principle of natural justice. The learned counsel appearing for the respondents however, submits that the petitioners are not availed of the opportunity given and their re-designation being illegal and contrary to law, the Board has passed the impugned order and as such, these writ petitions are prima facie devoid of merit and hence, liable to be dismissed. It is further submitted that the petitioners have not come to this Court with clean hands inasmuch as in the earlier writ petitions filed vide in WP.Nos.12644 to 12653

of 2018 dated 17.05.2018, challenging the show cause notice, which was subsequent to the impugned order, this Court while issuing notice when an action of the authority visits a person with civil consequence/ adversely affect him, did not stay the order but only protected the pay of the petitioners, hence, pending disposal of the same the petitioners could not have filed this writ petition.

4. Needless to say that the principle of audi alter paltrem is a salutary principle of natural justice. The said principle speaks that no one should be condemned without being heard. It appears that in these cases, the re-designation/provision of the petitioners, which was made by the Board, by the conscious decision of the Board was reviewed in a subsequent Meeting as the same was held to have been done not in consonance with the rule/law and as such, show cause notices were issued to the petitioners, to which the petitioners came to challenge before this Court, is not in dispute. But, by then, the petitioners were already re-designated. In the said writ petition, however, an interim order was passed protecting their pay and the same is pending. The petitioners in view of the fact that without giving them an opportunity to file their show cause, the impugned order was passed, came forward to file these writ petitions. From the impugned show cause notice, it appears that the petitioners were given only 3 days time to file the show cause thereafter, the petitioners' prayer to extend the time for filing of the show cause was not acceded to and the impugned orders were passed. The principle of natural justice demands that when an action of the authority visits a person with civil consequence, not only an opportunity of hearing require to be given before proceeding against a person by the authority, but such opportunity must be reasonable and fair one. Considering the aforesaid when the case in hand is addressed it appears to this Court that the petitioners were only given a very short time to show cause even though there was no such urgency in the matter. Therefore, the petitioners prayer for extension of time to file the show cause was refused and the impugned orders were passed against them. From the aforesaid, it can very well be said that no reasonable opportunity was given to the petitioners to file their show cause and the impugned orders were passed. The same was therefore, violative of the principle of natural justice and cannot be sustained. But considering the fact that the pay of the petitioners in the earlier post has already been protected in the interim order passed in the earlier writ petitions and there also no stay was granted and in the meanwhile, they have been re-designated, this Court instead of directing the respondent to allow them to continue in the designation of Assistant Engineer, by quashment of the impugned order, disposed of the writ petition with a direction to the second respondent to accept their show cause pursuant to the notice dated 10.05.2018, to be filed by them within 10 days from date of receipt of a copy of this order

and with a direction to the respondents to take an informed and considered decision on the same, taking note of the Settlement arrived under Section 12(3) of the Industrial Disputes Act and all other relevant materials but oblivious to the orders impugned, by a speaking order within three weeks on receipt of the copy of this order and also communicate the same to the petitioners. However, it is made clear that the petitioners shall continue to receive their pay so long as the interim order in the earlier writ petitions is in force.

5. With the aforesaid, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

- 1.The Secretary,
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Chennai-600 009.
- 2.Metropolitan Transport Corporation,
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- 3.Metropolitan Transport Corporation,
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RK(CO)
sm:2.7.2018

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