

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2018

Delivered on: 27.09.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.12524 of 2014

S.Chellamuthu .. Petitioner

versus

1. The Secretary to Government,  
Home (Transport) Department,  
Fort St.George, Chennai-09.

2. The Secretary,  
Tamil Nadu Public Service Commission,  
Frazer Bridge Road,  
VOC Nagar, Park town,  
Chennai-3.

3. The Controller of Examination,  
Tamil Nadu Public Service Commission,  
Fraer Bridge Road,  
VOC Nagar, Park Town,  
Chennai-3.

4. The Transport Commissioner,  
Chepauk,  
Chennai-5.

5. The Managing Director,  
Tamil Nadu State Transport Corporation  
(Coimbatore) Ltd.,  
No.37, Mettupalayam Road,  
Coimbatore-641 043.

6. The General Manager,  
Tamil Nadu State Transport Corporation  
(Coimbatore) Ltd.,  
Erode Region,  
Chennimalai Road, Erode. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents 2 and 3 to call the petitioner for interview for the

post of Motor Vehicle Inspector, Gr.II based on the notification issued by the Tamil Nadu Public Service Commission dated 24.2.2009 and 28.2.2009 in view of the fact that the petitioner has secured necessary cut off mark for calling for an interview which was held on 7.10.2010 and 8.10.2010 and further direct the respondents to select and appoint the petitioner as Motor Vehicle Inspector, Gr-II and alternatively direct the respondents 5 and 6 to reinstate the petitioner into service in the post of Selection Grade Senior Assistant Engineer with due seniority and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani, SC for  
Mr.T.Ayngaraprbhu

For Respondents : Mr.J.Pothiraj, Spl.G.P.  
for R1 & R4  
Mr.N.Devendran, SC for  
R2 and R3

## ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue of Writ of Mandamus, to direct the respondents 2 and 3 to call the petitioner for interview for the post of Motor Vehicle Inspector, Gr.II based on the notification issued by the Tamil Nadu Public Service Commission dated 24.2.2009 and 28.2.2009 in view of the fact that the petitioner has secured necessary cut off mark for calling for an interview which was held on 7.10.2010 and 8.10.2010 and further direct the respondents to select and appoint the petitioner as Motor Vehicle Inspector, Gr-II and alternatively direct the respondents 5 and 6 to reinstate the petitioner into service in the post of Selection Grade Senior Assistant Engineer with due seniority and grant him all consequential service and monetary benefits."

2. The petitioner was a Diploma Holder in Mechanical Engineering and was appointed as Junior Engineer (J.E.) in the Transport Corporation on 28.7.1983. He was subsequently promoted as Assistant Engineer and thereafter, he was also promoted as Selection Grade Senior Assistant Engineer (S.A.E. (S.G.)). While he was working as Assistant Engineer, he applied for appointment to the post of Motor Vehicle Inspector, Grade II in the Tamil Nadu Transport Sub-ordinate Service in response to a Notification issued by the Tamil Nadu Public Service Commission on 18.4.2007. According to the petitioner, he had applied through the Department and appeared for written examination and thereafter, he was eventually selected and appointed as Motor Vehicle Inspector by orders of the Transport Commissioner and he reported for duty on 2.11.2009 after resigning his post of Selection Grade Senior Engineer in the Tamil Nadu State Transport Corporation. While his first participation in the selection for appointment to the post of Motor Vehicle Inspector Grade II was yet to conclude, the Tamil Nadu Public Service Commission issued two other Notifications, viz., 24.2.2009 and 28.2.2009 once again inviting applications for appointment to the post of Motor Vehicle Inspector Grade II in the same Tamil Nadu Transport Sub-ordinate Service relating to the year 2006-2008. Since the appointment of the petitioner did not come through in respect of his earlier selection at that point of time, the petitioner had applied for consideration of his candidature once again in pursuance of 2009 Notification. In the second selection, the petitioner appeared to have secured 217.50 marks in the written examination and was called for Interview based on the written test held on 24.5.2009. However, ultimately, he was not called to attend interview in view of the fact that by that time, he came to be appointed as Motor Vehicle Inspector Grade II in earlier selection in pursuance of the original Notification dated 18.4.2007. According to the petitioner,

persons who secured much better marks than him in the written test in respect of the second selection in his category, were called for interview and thereafter granted appointment also.

3. Be that as it may, one of the unsuccessful candidates in the earlier selection, challenged the selection of the petitioner and others by filing a writ petition before this Court in W.P.No.22647 of 2010. The learned Judge of this Court dismissed the said Writ Petition on 12.11.2011. Thereafter, a writ appeal in W.A.No.2175 of 2011 was filed and the learned Division Bench of this Court, allowed the said writ appeal on 12.6.2012 in favour of the appellant therein by setting aside the appointment of the petitioner herein as Motor Vehicle Inspector Grade II. Against the said order passed by the Division Bench of this Court, the petitioner filed Special Leave Petition before the Hon'ble Supreme Court, which also came to be dismissed on 31.7.2012 and thereafter a review petition was filed, however, it was withdrawn by the petitioner on 16.1.2013.

4. In the meanwhile, the petitioner was terminated from service by order dated 28.6.2013 in pursuance of the order of the learned Division Bench of this Court dated 12.6.2012. In fact, the petitioner appeared to have filed a review application before the Division Bench in W.A.No.2175 of 2011 and the same was rejected on 18.2.2014. In the above circumstances, the petitioner had approached this Court with a prayer to direct the respondents 2 and 3 to call the petitioner for interview for the post of Motor Vehicle Inspector Grade II based on the Notifications of the TNPSC dated 24.2.2009 and 28.2.2009 in view of the fact that the petitioner had secured sufficient cut of marks to be called for interview. However, during the pendency of the writ petition, the original prayer as sought for, was amended and an alternative prayer was included to the effect that- 'to reinstate the petitioner as Selection Grade Senior Assistant Engineer in his erstwhile post with Transport Corporation'. This amendment was insisted due to the fact that the selection in pursuance of the Notification issued by the TNPSC in 2009 had been concluded and no vacancies were remaining unfilled in the said selection. Further, the petitioner had worked in the erstwhile post J.E./S.A.E.(S.G.) since 1983 till 2009, i.e. for a period of 26 years and his services stood wiped out and the appointment as Motor Vehicle Inspector Grade II had also been set aside. In the result, the petitioner had been completely deprived of any benefit which is consequence of long years of service as J.E./A.E. in the erstwhile Transport Corporation.

5. Shri K.Venkataramani, learned Senior Counsel appearing for the petitioner would passionately appeal to this Court that this is a fit case, where this Court has to amend and mould the relief in order to provide a basic succour to the petitioner in view of extraordinary and peculiar circumstances in which the petitioner was placed at the end of his career. Although the petitioner had worked as J.E./S.A.E.(S.G.) for 26 years, he had opted to become Motor Vehicle Inspector Grade II in 2009 and though he was appointed on the basis of selection, his hopes of working as Motor Vehicle Inspector were short-lived since selection itself came to be set aside by the Division Bench of this Court. Hence, the petitioner was neither treated as A.E./S.A.E.(S.G.) in his erstwhile department nor continued in service as Motor Vehicle Inspector Grade II and ultimately, he was left nothing in the end of his career.

6. According to the learned Senior Counsel, he had applied to the post of Motor Vehicle Inspector Grade II only through the Department and he produced a copy of his resignation letter dated 30.10.2009 while joining the said post. In the said resignation letter, the petitioner had sought for permission from the Department for relieving him from the post in order to join the post of Motor Vehicle Inspector Grade II. Therefore, the learned Senior Counsel would urge this Court to treat the resignation as a technical resignation and count the entire period of service he rendered as J.E./S.A.E.(S.G.) atleast for the purpose of terminal benefits if not for reinstatement. It is brought to the notice of this Court that the petitioner has almost reached the age of superannuation when the matter was finally taken up by this Court.

7. Upon notice, Mr.J.Pothi Raj, learned Special Government Pleader entered appearance for respondents 1 and 4 and he would submit that the petitioner had consciously resigned his earlier post and participated in the selection for appointment to the post of Motor Vehicle Inspector Grade II and it is unfortunate that his selection came to be set aside at the instance of the unsuccessful candidate and therefore, he could not be called for interview in the second selection since by then, the selection was already over and the vacancies were filled up. The situation in which the petitioner was placed was entirely brought upon by himself and therefore, none one could be blamed for the pathetic situation in which the petitioner is placed. He would however, submit that in law, there cannot be any relief as sought for in the writ petition, could be granted.

8. At this, the learned Senior Counsel would rely a decision reported in " (1981) 3 SCC 528 (B.R.Ramabhadraiah versus Secretary, Food and Agriculture Department, Andhra Pradesh and others)", wherein, the Hon'ble Supreme Court has held that a lesser relief was still available to the litigant due to subsequent change in the circumstances. The Hon'ble Supreme Court has held that the Court should, in the interest of justice, suitably mould the relief having regard to the subsequent changes. The learned Senior Counsel would urge this Court to take note of the subsequent development which had completely undone the career benefit as admissible to the petitioner and pass appropriate orders to secure ends of justice.

9. This Court has given its anxious consideration to the submissions made by the learned Senior Counsel appearing for the petitioner as well as learned Special Government Pleader for the respondents.

10. As rightly submitted by the learned Senior Counsel, this is not a run off the mill case where the relief could be put in a straight jacket formula. In view of the peculiarity of the case and in extraordinary situation which calls for extraordinary remedy, an out of box relief need to be conceived and had to be rendered by this Court which is exercising inter alia equitable jurisdiction. Admittedly, the petitioner has rendered 26 years of service earlier as J.E./S.A.E.(S.G.) having been appointed originally, from 1983 and worked till 2009 before he migrated to become Motor Vehicle Inspector Grade II in 2009. Admittedly, an application was forwarded through his Department and even the resignation was submitted to his earlier Department to relieve him officially. But unfortunately, the situation which prevailed then, it was not treated as a technical resignation or there was no requirement to hold as such, as the petitioner did not continue in service for long as Motor Vehicle Inspector Grade II in view of the decision of the Division Bench of this Court which rendered on 12.6.2012 itself within three years from the date of appointment of the petitioner as Motor Vehicle Inspector Grade II. The petitioner was also placed in a pathetic situation since he was qualified in the second selection also to be called for interview for appointment to the post of Motor Vehicle Grade II, but he could not be called for the interview because by then, he had already been appointed as Motor Vehicle Grade II in the earlier selection. If only the petitioner known about the impending situation of setting aside his appointment, he could have participated in the second selection de horse the appointment of the earlier selection. Unfortunately, the petitioner could not be aware of the impending danger of his losing job at that point of time. The result of such unfortunate circumstance which be fallen the petitioner had taken away the entire service rendered by him in the Government from 1983 onwards. Ultimately, the petitioner neither had the benefit of service as Selection Grade Senior Assistant Engineer nor as Motor Vehicle Inspector Grade II and unfortunately, by the orders of this Court, he was terminated not because he was not qualified, but because the other persons who had moved this Court were more qualified. Therefore, it cannot be gainsaid that the situation was brought upon by the petitioner's own action, as the petitioner could not have foreseen such disastrous consequence would fallow in respect of his appointment as Motor Vehicle Inspector Grade II within a matter of three years.

11. Although the alternative prayer as such made in the Writ Petition to reinstate the petitioner in the post of Selection Grade Senior Assistant Engineer, but in view of the pendency of the litigation for some time, such relief could not be granted as by now the petitioner might have reached the age of superannuation. In any event, this Court is of the view that the ends of justice need to be served particularly in the present case where the petitioner had lost the entire service benefits not because of his fault or because of his contribution, but because of the order passed by this Court. Therefore, the petitioner ultimately cannot be left high and dry when he admittedly served the Government for nearly 26 years from 1983 till 2009 as J.E./S.A.E.(S.G.). Being a Constitutional Court, this Court has to see how best to secure ends of justice when the law becomes an obstacle to dispense justice, then the Court has to search for equity based solution. This is a fit case in the opinion of this Court to apply larger principles of equity in order to secure the noble ends of justice. In fact, this Court has inherent power and jurisdiction to deal with any extraordinary situation, particularly in the larger interest of administration of justice and in order to prevent manifest injustice being done. In this case, absolutely, there was no fault on the part of the petitioner, but because of the authorities who had not properly selected more qualified persons than the petitioner, which led to removal of the petitioner from the post of Motor Vehicle Inspector Grade II. Had the authorities properly done the selection, the petitioner would have remained in his erstwhile post or he might have been selected as Motor Vehicle Inspector Grade II in the second selection, wherein, he was selected for interview. In view of these peculiar circumstances and taking note of the subsequent changed circumstances, this Court, in order to render substantial justice, is inclined to mould the relief and grant the appropriate relief to the petitioner.

12. For the above said reasons, this Court directs the respondents to treat the resignation letter of the petitioner dated 30.10.2009 as one of the voluntary retirement from service with the Transport Corporation wherein he worked from 1983 to 2009 by treating the resignation as VRS and the petitioner shall be paid all retirement benefits as admissible to any other regular employee who goes on VRS. It is made clear that this order is passed in the peculiar circumstances of the case in order to render justice. The respondents are directed to pass orders by treating the resignation of the petitioner as one of VRS and pay him all retirement and other pensionary benefits as admissible and payable to him, within a period of eight weeks from the date of receipt of a copy of this order.

13. The Writ Petition is disposed of on the above terms. No costs.

27-09-2018

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Index: Yes/No

Internet: Yes/No

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V.PARTHIBAN, J.  
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Pre delivery Order in  
W.P.No.12524 of 2014

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