



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)Nos.15773, 17321 & 17444 of 2017
and

WMP (MD)Nos.12468 to 12470, 13866 to 13868
and 13969 to 13971 of 2017

WP (MD)No.15773 of 2017 &
WP (MD)No.17321 of 2017

B.Selva Gomathi Kumar ... Petitioner
in WP (MD)No.15773 of 2017

P.Poliah ... Petitioner
in WP (MD)No.17321 of 2017

Vs.

The Principal Secretary &
Additional Chief Secretary to
Government,
Government of Tamil nadu,
Transport (D) Department,
Fort St.George, Chennai - 600 009.

... Respondents
in both writ petitions.

COMMON PRAYER in WP(MD)Nos.15773 & 17321 of 2017 : Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent in G.O.Ms.No.196 Transport (D) Department dated 10.08.2017, quash the same and consequently direct the respondent herein to promote the petitioner as Managing Director in the State Transport Corporation in accordance with Resolution No.79 of the Tamil Nadu State Transport Corporation passed in its 141st Meeting dated 08.12.2000 considering the recommendation for promoting the petitioner as Selection Grade Assistant Manager/Deputy Manager.

WP (MD)No.17444 of 2017 :
R.Muthukrishnan

... Petitioner

Vs.

1.The Additional Chief Secretary
to Government,
And Chairman of STU,
Transport Department, Fort St.George, Chennai - 600 009.



2.The Convener,
Career Planning Committee,
Tamil Nadu State Transport
Corporation, Tiruvalluvar House,
Pallavan Salai, Chennai - 600 002.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files of the first respondent pertaining to its order in G.O.Ms.No.196 Transport (D) Department dated 10.08.2017 and to quash the same.

For petitioner
in WP(MD)No.15773 of 2017 : Mr.Veera Kathiravan,
Senior Counsel
for M/s.Veera Associates

For petitioner
in WP(MD)No.17321 of 2017 : Mr.G.Sankaran

For petitioner
in WP(MD)No.17444 of 2017 : Mr.S.C.Herold Singh
for M/s.Ajmal Associates

For respondents : Mr.Chellapandian,
in all writ petitions Addl., Advocate General
Asst.by Mrs.S.Srimathy,
Spl., Government Pleader

COMMON ORDER

The petitioners in all these three writ petitions are working as General Managers in transport corporations. The next promotional post for the petitioners is that of Managing Director. Contending that the issuance of G.O.Ms.No.196, Transport (D) Department dated 10.08.2017 would adversely affect their career, these writ petitions have been filed questioning the validity of the said Government Order and for the consequential relief of directing the Government to promote them as Managing Directors. This Court while admitting the writ petitions granted an interim order of status quo.

2.The learned Additional Advocate General appearing for the Government contended that the impugned Government Order has been issued pursuant to the directions made by the Hon'ble Division Bench of this Court by order dated 13.03.2017 in WA(MD)Nos.1 and 105 of 2017. According to him, the hierarchy of the managerial cadre of officers in the State Transport Corporation undertaking is as



- 1.Senior Manager
- 2.Manager
- 3.Senior Deputy Manager
- 4.Deputy Manager
- 5.Assistant Manager

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3.The learned Additional Advocate General for the Government took this Court through the contents of the impugned G.O. He also pointed out that the impugned G.O has been issued to set right the anomalies that had earlier crept up while implementing the G.O.Ms.No.761, Transport (Committee) Department, dated 30.04.1993. He also took this Court through its contents. According to him, in order to alleviate the problem of stagnation in the cadre of Assistant Manager, it was decided to confer selection grade on those who have put in 6 years of service. They would be given enhanced pay scales but that would not make them Deputy Manager as such. He further submitted that for the post of Senior Deputy Manager, the post of Deputy Manager alone can be considered as the feeder category. Conferment of selection grade on the Assistant Manager who have put in 6 years/8 years of service will not amount to grant of promotion as Deputy Manager. He would also point out that Selection Grade Assistant Managers were promoted as Deputy Managers and then only given promotion as Senior Deputy Managers. Now the issue is reckoning of inter-se seniority. Since certain anomalies that have been set out in Para No.6 of the impugned G.O arose, the same has been now rectified in the following manner.

"8.Hence, it is inevitable that the fixation of seniority due to the observations listed above in para 7 (a), 7(c) now be clarified :-

(i) The entire promotion by seniority takes place based on Common Service Rules and orders/guidelines issued by the Government then and there which has defined the eligibility requirements at each stage.

(ii) In G.O.(Ms)No.761, Transport (Committee) Department, dated 30.04.1993, the senior most Selection Grade Assistant Managers are to be promoted in the vacancy likely to arise in the post of Deputy Manager within the respective Corporations after all other requirements are fulfilled.

(iii) The post of Deputy Manager is the feeder category for promotion to the post of Senior Deputy Manager and for being considered, all requirements and eligibility criteria shall need not to be fulfilled.

(iv)The Individuals who have completed six years as Assistant Manager till 14.09.2003 shall be eligible to be called as Selection Grade Assistant Manager and their pay shall be revised in accordance with the guidelines issued by the Government.

9.Based on the above clarification,

(a) The Managing Directors of all State Transport Undertakings are directed to take appropriate action to re-fix the seniority as clarified in para 8 above.



(b) The Convener, Career Planning Committee is also directed to take appropriate action to revise the combined seniority for the post of Senior Deputy Manager based on the date of joining in the post of Deputy Manager in the respective corporation. The above revision as clarified in para 8 above should be carried out within a period of eight weeks from the date of issue of this order.

10. Consequent on the re-fixation of seniority, it is hereby directed to all the Managing Directors of all State Transport Undertakings that the fixation of pay ought to be given notionally from the date following completion of 6 years and monetary effect from the date of issue of this order. This order will also be applicable to the retired persons who were affected by this issue, by way of notional fixation and monetary effect from the date of issue of this order."

4. This Court is unable to agree with the contentions raised by the learned Additional Advocate General for the Government. As rightly pointed out by Shri. Veera Kathiravan, learned Senior Counsel and Mr. G. Sankaran, learned counsel appearing for the petitioners, the impugned G.O. proceeds on a complete misreading of G.O. Ms. No. 761, Transport (Committee) Department, dated 30.04.1993.

5. The learned Senior Counsel/learned counsel appearing for the petitioners drew the attention of this Court to the relevant lines occurring in G.O. Ms. No. 761 dated 30.04.1993. Even the "Abstract" of the said G.O. talks about convertible designation of the Selection Grade Assistant Manager/Deputy Manager. Recommendation Nos. 169 and 170 made by the Expert Committee on Transport Sector constituted by the Government of Tamil Nadu reads as under :

"169. Time bound promotions shall be extended to all the streams in the managerial grade in the State Transport Undertakings viz. Technical/ Traffic / Personnel / Finance and Accounts, but at only one level viz. Assistant Manager to Deputy Manager. For all other grades, the promotion should be by merit-cum-seniority.

170. Introduction of time bound promotion only at one level, that is, Assistant Manager to Deputy Manager had created problems of placement. Deputy Managers are posted as Branch Managers also for want of positions, while his colleagues are posted as unit heads in the Head Office. It is better that instead of promoting them as Deputy Managers, they may be given the benefit of scale of pay applicable to the Deputy Manager cadre at the end of 6 years by calling them as Selection Grade Assistant Managers. Only when a post of Deputy Manager falls vacant, the Senior Most Selection Grade Assistant Manager can be posted as Deputy Manager. This concept may be followed in all disciplines.

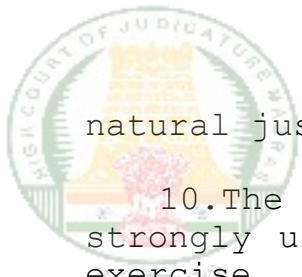


6. After a careful consideration of the aforesaid recommendations, the Government specifically ordered that the position of the Selection Grade Assistant Manager and Deputy Manager are to be convertible and on the same scale. There are two recommendations referred to in the said G.O. One is recommendation No.169 and the other is Recommendation No.170. The Recommendation No.169 was accepted and directed to be implemented. As regards the Recommendation No.170, the Government took the view that the line of control and Superintendence is to be ensured and hierarchy is to be maintained and confusion to be avoided. Therefore, the Recommendation No.170 was accepted subject to the condition that the scale of pay of Deputy Manager is not to be revised and the position of Selection Grade Assistant Manager and Deputy Manager are to be convertible and on the same scale. Thus that the Government was very clear in its understanding of Recommendation No.170. Since the post of Selection Grade Assistant Manager and Deputy Manager are to be convertible, as and when the vacancy falls in the post of Deputy Manager, the senior most Selection Grade Assistant Manager would be "posted" as Deputy Manager. Even though the language set out in G.O.Ms.No.761 dated 30.04.1993 is clear and unambiguous and categorical, the respondents has now chosen to understand it as if this posting of the senior most Selection Grade Assistant Manager as Deputy Manager is one of promotion.

7. This Court is of the view that had this faulty understanding of G.O.Ms.No.761 dated 30.04.1993 has led to the present confusion. It is seen that the petitioners herein were Selection Grade Assistant Managers for long time and in due course when vacancies arose in the post of Deputy Manager, they were posted in the said position. Thereafter, they became Senior Deputy Manager and then as General Manager. These are all accrued civil rights. As a result of this G.O, if seniority would be completely redrawn, they would certainly face reversion. Such consequences were probably not foreseen. If such consequences were to result, the petitioners ought to have been duly put on notice. Notice issued in this regard ought to have been clear and specific.

8. The learned Senior Counsel/learned counsel for the petitioners would submit that they were merely called upon to submit their representations as to whether they should have been made as Selection Grade Assistant Managers after 6 years/8 years. Only in this regard they were called upon to submit their representations.

9. Comparison of the two Government Orders namely, G.O.Ms.No.761 dated 30.04.1993 and G.O.Ms.No.196 dated 10.08.2017 indicates a drastic departure of policy. It is open to the Government to make policy changes. But then a long and well settled practice cannot be departed from without reason. If that be so, this Court would have no hesitation in holding that the impugned Government Order suffers from the vice of arbitrariness also. Therefore, the impugned G.O is liable to be quashed on the ground of violation of principles of



natural justice and also arbitrariness.

10. The learned Senior Counsel for the petitioners would also strongly urge that the issuance of G.O is totally an uncalled for exercise. The scope of writ appeal order was as to whether the selection grade was to be conferred after 6 years or 8 years. The petitioners' claim was accepted by this Court. On appeal by the Transport Corporation, this Court directed the Government to revisit the issue. But, then the scope of controversy has been needlessly expanded. As a result, the impugned G.O came to be issued.

11. For all these reasons, the order impugned in these writ petitions are quashed. As regards granting of promotion to the petitioners, it is for the Government to take appropriate decision in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

12. These writ petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary & Additional Chief Secretary to Government, Transport (D) Department,
Fort St. George, Chennai - 600 009.

2. The Additional Chief Secretary to Government,
And Chairman of STU, Transport Department,
Fort St. George, Chennai - 600 009.

3. The Convener, Career Planning Committee,
Tamil Nadu State Transport Corporation, Tiruvalluvar House,
Pallavan Salai, Chennai - 600 002.

+2CC to M/s. Veera Associates, Advocate, SR.No. 57468 and 57030

+1CC to Mr. G. Sankaran, Advocate, SR.No. 57467

+1CC to M/s. Ajmal Associates, Advocate, SR.No. 56992

+1CC to the Special Government Pleader SR.No. 57661

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