



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 07.03.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAMW.P.(MD) No.14365 of 2011andM.P.(MD) No.1 of 2011

M.P.Raja Suresh

...Petitioner

Vs.

1.The District Employment Officer,
District Employment Exchange (Technical)
Trichy.

2.The Managing Director,
Regional Office,
Tamil Nadu State Transport Corporation Ltd., (Kumbakonam)
Trichy Division,
Periya Milaguparai,
Trichy.

3.The District Employment Officer,
District Employment Office,
Karur.

4.M.Thamaraiselvan, Unit I,
Tamil Nadu State Transport Corporation Ltd., (Kumbakonam)
Trichy Division, Trichy.

5.J.Kannan

6.V.Kirankumar

7.R.Muruganantham

8.S.Mathialagan

9.T.Siva

10.Muthusamy

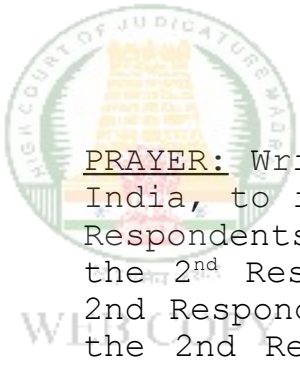
11.Karthi

12.The District Employment Officer,
Perambalur.

<https://hcservices.ecourts.gov.in/hcscservices/>

R12 is suo motu impleded vide order
dated 09.02.2018.

...Respondents



PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the appointment of Respondents 4 to 12 as Junior Engineer (Mechanical) in the Office of the 2nd Respondent as illegal and void and consequently direct the 2nd Respondent to conduct interview for the candidates sponsored by the 2nd Respondent Office by giving equal opportunity and appoint the Petitioner in the post of Junior Engineer (Mechanical) vide the order passed by this Honourable Court in W.P.No.8798 of 2009, dated 20-08-2010.

For Petitioner : Mrs.R.Saraswathi for
Mr.D.Saravanan

For R1 to R3 and R12 : Mr.Chellapandian
Additional Advocate General
assisted by M.Muthu
Additional Government Pleader and
Mr.K.Sathiyasingh
Standing counsel

For R5 to R8 : M/s.J.Anandavalli

For R4, and
R9 to R11 : No appearance

O R D E R

The case on hand is for a writ of declaration to declare the appointment of respondents 4 to 11 as Junior Engineer Mechanical in the second respondent office / The Government of Tamil Nadu State Transport Corporation Limited (Kumbakonam) as illegal and void and to direct the second respondent to conduct interview for the candidates sponsored to the second respondent office by giving equal opportunity and appoint the writ petitioner in the post of Junior Engineer Mechanical as per the order passed in W.P.(MD) No.8798 of 2009 dated 20.08.2010.

2.Earlier, the writ petitioner has filed W.P.(MD) No.8798 of 2009 and this Court had passed an order in a batch of writ petitions on 20.08.2010. The relief sought for in the earlier writ petition was to quash the rejection order passed by the Transport Corporation and direct the respondents to sponsor the name of the writ petitioner for the post of Junior Engineer (Trainee) / Technical Assistant.

3.There was a ban for public employment between the years 2001 and 2006. However, the ban was lifted on 07.02.2006, vide G.O.Ms.No.14. In view of the ban imposed for about 5 years, the Government had granted age relaxation of upper age limit for entering into the Government service for 5 years to the unemployed persons, who are deprived of securing public employment during the ban period in G.O.Ms.No.98 dated 17.07.2006. The second respondent issued a notification for recruitment to the post of Junior Engineer (Trainee) / Technical Assistant, on 09.07.2009. The



application submitted by the writ petitioner was negatived on 28.07.2009 and the same was challenged by the writ petitioner in the earlier W.P.(MD) No.8798 of 2009.

4.This Court elaborately dealt with the factual circumstances aroused during the relevant point of time and pass orders as under:

"27. In W.P.Nos.7349 of 2009 and in 8798 of 2009 the petitioners applied for the post of Assistant Engineer and Junior Engineer Trainee/Technical Assistant respectively and they belong to Backward Community and they are also entitled to the relaxation of upper age limit as per G.O.Ms.No.98 and hence, the order passed in proceedings nNo.Ka.E.A1/9696/2009 dated 26.07.2009 by the Employment Exchange which is impugned in W.P.No.8798 of 2009 is liable to be quashed and the Employment Exchange should consider the case of the petitioner in W.P.No.8798 of 2009 for the post of Junior Engineer Trainee/Technical Assistant by giving the benefit of relaxation of upper age limit. Similarly, the petitioner in W.P.No.7349 of 2009 is also entitled to the benefit of relaxation of upper age limit as per G.O.Ms.No.98 and the second respondent is directed to sponsor his name for being considered for the post of Assistant Engineer."

5.However, the order of this Court was not implemented and the writ petitioner sent a contempt notice. Accordingly, the District Employment Officer, Thiruchirapalli had included the name of the writ petitioner in the list and sent the same to the second respondent on 07.01.2011. The said list was not acted upon by the second respondent. The writ petitioner sent a representation on 01.02.2011 under the Right Information Act seeking the present position of selection. The second respondent furnished a reply by stating that the list sent by the District Employment Officer, Thiruchirappalli, had been returned back on administrative grounds. The writ petitioner sent further representation on 12.02.2011 under the Right to Information Act. However, the reply of the District Employment Officer, Karur states that no name has been recommended. However, 9 persons had been selected based on the list sent by the Employment Office, Karur.

6.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner belongs to Backward Class Community and completed his Diploma in Mechanical Engineering in the year 1992. The writ petitioner enrolled his name in the District Employment Exchange on 10.03.1983. The first respondent sent a list of candidates including the name of the writ petitioner to the second respondent pursuant to the advertisement dated 09.07.2009. The name of the writ petitioner was not sponsored by the first respondent. However, the second respondent has appointed the respondents 4 to 11, who were not residing within the jurisdiction and they were Juniors to the writ petitioner in the employment seniority. Thus, the respondents 1 to 3 had not provided equal opportunity in appointment.

7. The learned counsel for the writ petitioner states that even without receiving the list of eligible candidates as per seniority from the District Employment Office, Trichy and District Employment Office, Perambalur, the second respondent had acted at his whims and fancies and selected all the 9 candidates only based on the list sent by the Employment Exchange, Karur, whose names were sponsored. As per the rule, the first respondent ought to have obtained the District vice seniority list in respect of three Districts falling within the jurisdiction of the Tamil Nadu State Transport Corporation Limited (Kumbakonam, Tiruchirappalli Division). However, the entire selection of the respondents 4 to 11 are based on certain corrupt activities on the part of the respondents 2 and 3. Thus, the selection is liable to be set aside.

8. The learned Special Government Pleader appearing on behalf of the first respondent states that the second respondent notified 15 vacancies for the post of Junior Engineer, vide his letter dated 11.06.2009, prescribing the educational qualifications as Diploma in Mechanical Engineering and the age limit between 18 to 30. The reservation details prescribed by the first respondent are as follows:

Reservation	Number of Vacant	Number of sponsoring candidates in 1:5 Ratio
SC Priority	1	3 (Available)
SC Non Priority	1	5
BC Priority	1	2 (Available)
BC Non Priority	2	10
MBC Priority	1	1 (Circulated other Employment Candidate)
MBC Non Priority	1	5
OC Non Priority	3	15
Total	10	40 + 1

The 1st respondent sponsored 40 Eligible candidate according to Age, Qualification, communal reservation prescribed by the 2nd respondent vide letter No.X2/86/09, X2/87/09, X2/88/09 dated 01.07.2009. The sponsoring list received by the 2nd respondent on 14.07.2009. For the MBC Priority category the eligible candidates were not available in Trichy Employment Office. Since this reservation was circulated all other employment office and only one Candidate list received from Chennai Technical Employment Office and sponsored to the 2nd respondent on 24.08.2009. Since the petitioner is over aged at the time of nomination his name was not considered for nomination of the 1st respondent.

<https://hcservices.ecgdn.gov.in/hcservices/> The learned Special Government Pleader states that the writ petitioner filed W.P.(MD) No.8798 of 2009 and the same was allowed by this Court on 20.08.2010. Meanwhile, the second respondent

cancelled the sponsored list on account of certain administrative reason and therefore, the name of the writ petitioner was unable to be sponsored in the same vacancy, which was notified.

10. The second respondent also filed a counter affidavit stating that the post of Junior Engineer (Trainee) was notified by the Tamil Nadu State Transport Corporation Kumbakonam, Trichy Region to the following Employment Exchanges as detailed below:

SI.No.	Name of the Employment Exchange	No.of vacancies Notified	Notified on
1.	Trichy	10	11.06.2009
2.	Perambalur	03	11.06.2009
3.	Karur	02	11.06.2009

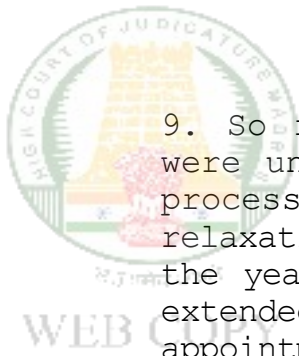
4. In continuation with the above process, the Karur Employment Exchange, sent a list consisting of 10 numbers of candidates vide their letter dated 22.06.2009. On receipt of the list, the 2nd respondent corporation, despatched call letter for interview to all the 10 candidates to appear in person for the interview held on 09.07.2009. Out of 10 candidates, 9 candidates had attended the interview and they were selected by the interview committee.

5. The Trichy Employment Exchange has sent a list consisting of 41 candidates and also a list of 10 candidates was also received from Perambalur District Employment Exchange on 14.07.2009 ie. After the date of interview already held by the 2nd respondent corporation.

6. Pursuant to the selection made in the interview held on 09.07.2009, the appointment orders were issued to 9 persons by the 2nd respondent corporation in two spells. In 1st spell, appointment orders have been sent to 4 candidates by an order dated 18.09.2009 and in 2nd spell, appointment orders have been sent to remaining 5 candidates by an order dated 13.11.2009.

7. The list of candidates which were received from the District Employment Exchange, Trichy and Perambalur were returned to the concerned Employment Exchange on 10.12.2009 due to administrative reasons.

8. The petitioner's name was not forwarded by the District Employment Exchange, Trichy, since the petitioner was not eligible on date of call for by the 2nd respondent corporation. It is to be noted that the petitioner had already crossed the upper age notified for the post of Junior Engineer. The District Employment Exchange, Trichy had accordingly sent reply to the petitioner.



9. So far as the 2nd respondent corporation is concerned they were under impression that, the relaxation of age is one time process as per the letter of the Govt., dated 25.01.2007. Since relaxation has already been given in the previous instance during the year of 2007 by the corporation, the age relaxation was not extended 2nd time when it was notified by date 11.06.2009 for the appointment of Junior Engineers.

10. In so far as the petitioner is concerned, he has filed WP No.8798/2009, seeking relief for age relaxation and direction against the District Employment officer, Trichy to sponsor his name by applying the Govt. letter dated 25.01.2007. This Hon'ble High court has allowed the prayer of the petitioner and ordered for sponsoring his name to the notified post by a common order dated 20.08.2010.

11. Thereafter there was no notification for the post of Junior Engineer and therefore the petitioner could not be appointed by the 2nd respondent corporation.

12. Based on direction issued by the Hon'ble High Court, the District Employment Exchange, Trichy had sponsored the above petitioner's name alone to 2nd respondent corporation and it was received on 07.01.2011 and the 2nd respondent corporation has also returned the list to the District Employment Exchange, Trichy on 01.02.2011 since at that time no recruitment was made in the year 2011 for the post of Junior Engineer (Trainee) and fact was also informed to the petitioner also.

11. The 8th respondent namely, Mathialagan filed a counter affidavit stating that his name was sponsored by the District Employment Exchange and he has passed Diploma in Mechanical Engineering and further he states that the names of the respondents 5 to 7 also were sponsored and they were possessing the requisite qualifications. The respondents 5 to 8 were called for interview by the second respondent and the respondents 5 to 7 were appointed on 13.01.2009 and the 8th respondent was appointed on 18.09.2009. The services of the respondents 4 to 8 were regularized in the year 2011. It is pleaded that the respondents 5 to 8 are not aware of the order passed by this Court in W.P.(MD) No.8298 of 2009. Further, the respondents 5 to 8 are not aware of the Government Orders relied by the writ petitioners.

12. At the outset, the respondents 5 to 8 states that they had registered their names in the District Employment Exchange, Trichy and further their names were transferred to the Employment Exchange, Karur as early as in the year 1998 and their names were sponsored and accordingly, the selection was completed and they were appointed. The respondents stated that they are possessing the requisite educational qualification and also within the age limit and therefore, there is no irregularity in their selection. This being the factum, the writ petition deserves to be rejected.



13. The second respondent filed a list of documents and the notification sent to the District Employment Exchange Trichy, Perambalur and Karur dated 11.06.2009. As per the said notification, 10 posts of Junior Employee Trainee were notified for Trichy and 3 posts were notified for Perambalur and 2 posts were notified for Karur. The details regarding reservations are also prescribed and the qualification and the number of vacancies are also stated in the notification.

14. Page No.13 of the list of documents is the list of names sponsored by the District Employment Exchange Karur, on 20.06.2009.. The names of 10 candidates were sponsored. Out of 10 candidates, one S.Pandian S/o. P.Subramani remained absent and all other 9 candidates, sponsored by the District Employment Office Karur, had been selected and appointed. At the outset, it is made clear, by all the parties, to the present list that out of 10 candidates, sponsored by the District Employment Office, Karur, 9 candidates appeared before the interview committee and all the 9 candidates, who attended the interview, were selected and accordingly, order of appointments were issued by the second respondent and the selection was concluded. The selection committee report is enclosed in page No.23 of the typed set of papers. The committee, with the assistance of the Deputy Manager, (Personal Administrative, Trichy Region, The General Manager, Trichy Region, and the General Manager, Technical cadre) interviewed the candidates and selected the 9 candidates in the order of priority for the post of Junior Assistant (trainee) Mechanical.

15. On a perusal of the interview committee report, this Court is of an opinion that the marks are awarded for all the 9 candidates and all the 9 candidates were selected. This Court is having a genuine doubt that all the 9 candidates appeared before the selection committee were interviewed and all those 9 candidates were declared as selected. The report of the committee is extracted hereunder:

TAMILNADU STATE TRANSPORT CORPORATION (KUM) LTD.,
TRICHY REGION
COMMITTEE REPORT

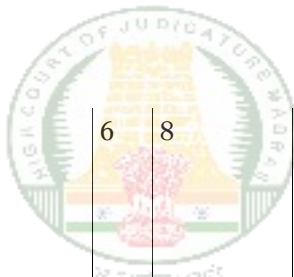
Sub : Interview for the post of Junior Engineer Trainee (Mechanical) held on 09.07.2009-Result of Selection intimated - Regarding.

A total number of 10 candidates have been sponsored from the employment exchange, Karur for the post of Junior Engineer Trainee (Mechanical). Accordingly, all the candidates have been called for an interview on 09.07.2009 at Regional Office, Trichy. Out of 10 candidates called for interview, only 9 candidates have attended the interview and remaining one candidate have not attend the interview.



The committee consisting of Deputy Manager (Personnel & Admn.,) Trichy Region, General Manager, Trichy Region and General Manager (Technical) Corporate interviewed the candidates and recommends the following 9 candidates in the order of priority for the post Junior Engineer Trainee (Mechanical) under the existing terms and conditions.

Sl. No.	Sl.No in interview Chart	Name, Address & Community	Educational / Technical Qualification & Apprenticeship	Date of Birth & Age	Marks			Total R	Remarks
					DMP	GM TRY	GM CORP		
1.	2	1998M01512 P.Sukumar S/o.K.Paneerselvam 33, Jayamahal Avenue Balaji Nagar Kulithalai Tk, Karur Dt., Hindu/Paraiyan/SC	SSLC passed 301/500 DME 1 st class Apr.1991 CRC Ltd., Kumbakonam	15.07.71 37 years	24	24	26	74	
2	1	1998M03256 A.Muthusamy S/o.Arumugam Poyyamani Post, Kulithalai Tk., Karur Dt.-639 112 Hindu/Paraiyan/SC	SSLC passed 364/500 DME 1 st class Apr.1989 BHEL, Trichy	11.06.70 39 years	21	24	26	71	
3	4	1998M05381 S.Chinnaraj S/o.M.Savariyar 8 Kanakkupillai Street Vengamedu Post Karur Dt., H/Adidraavidar/SC	SSLC passed 321/500 HSC passed DME 1 st Class Apr, 1993 BHEL, Trichy	14.04.73 36 years	24	21	24	69	
4	3	1998M02009 S.Mathialagan S/o.M.Singaram Arugampalayam Kathapparai Post Karur Dt., Hindu/Paraiyan/SC	SSLC passed 255/500 DME 2 nd Class Oct, 1992 Chettinad Cement, Chennai	15.02.71 38 years	21	24	21	66	
5	10	1998M04316 T.Siva S/o.V.Therakkan Inungur Po Kulithalai Tk Karur Dt., H/Ambalakarar/MBC	SSLC passed 297/500 DME 1 st Class Apr, 1997 TNPL, Karuri	29.07.79 29 years	18	24	21	63	



6	8	1998M02886 M.Thamaraiselvan S/o.K.K.Mahudeswaran 35 Mangai Illam Vengamedu Po Karur H/Andipandaram/MBC	SSLC passed 254/500 DME 1 st Class Apr, 1995 BHEL, Trichy	06.07.74 34 years	18	21	21	60	
7	9	1998M03730 R.Muruganantham S/o.K.Rajalingam Chinnadevanpatti Vellapatti Po Chinthamanipatti Karur Hindu/Uraligoundar/ DNC	SSLC passed 330/500 DME 1 st Class Apr, 1996 BHEL, Trichy	15.06.76 33 years	20	18	19	57	
8	7	1998M02919 V.Greankumar S/o.M.Vaithiyalingam 66 East Vanjaiamman Koil st., Karur Dt., Hindu/Ambalakarar/ MBC	SSLC passed 272/500 DME 1 st Class Apr, 1995 DCTC, Trichy	30.05.76 33 years	18	18	18	54	
9	6	1998M02978 J.Kannan S/o.K.Jayaraman 15G Rajiv Gandhi Nagar Vengamedu Po Karur Dt., Hindu/Isai Vellalar/MBC	SSLC passed 298/500 DME 1 st Class Apr, 199 DCTC, Trichy	11.07.76 32 years	17	17	18	52	

16.A serious question arises, Where is the process of selection? Then where is the merit assessment and where are the remaining candidates sponsored from the District Employment office, Trichy and District Employment Office, Perambalur as per the recruitment notification issued by the second respondent on 11.06.2009. There are no convincing answers from any one of the respondents. Contrarily, it was contended that there was a delay in sponsoring the names by the District Employment Exchange, Trichy and Perambalur. The list was sent by these two employment exchanges after completion of the selection by the selection committee. The interview was conducted on 09.07.2009. In fact, the recruitment notification contains the details of vacancies notified.

17.Accordingly, only two vacancies are notified in respect of Karur District. Therefore, in all means two candidates alone can be selected and appointed from amongst the list received from the District Employment Exchange, Karur. There was no error on the part of the Employment Exchange, Karur because the Employment Exchange, Karur followed the ratio of 1:5 as per the rules and sponsored 10 candidates for the purpose of filling up the two vacancies of Junior Engineers from the District Employment Exchange, Karur. When 10 candidates were sponsored by the Employment Exchange, Karur for the purpose of selecting two persons for appointment to the post of



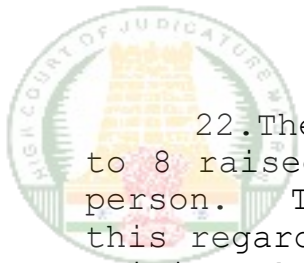
Junior Engineer (Trainee). It is a great surprise how the selection committee had selected all the 9 candidates appeared in the interview and appointed all those 9 candidates, who all are the respondents 4 to 11 in the present writ petition.

18. It is brought to the notice of this Court that the 4th, 9th and 10th respondents were already dismissed from service by the second respondent and the 11th respondent had also left the job.

19. The list received from the District Employment Office, Trichy and Perambalur, dated 14.07.2009 is enclosed in page No.25 of the list of documents filed by the second respondent. Verifying the dates, it is relevant to note that the recruitment notification was issued on 11.06.2009. The District Employment Exchange, Karur sent the list of 10 candidates for filling up two vacancies on 22.06.2009 and the District Employment Exchange, Trichy and Perambalur sponsored the names of 41 persons and 10 persons respectively on 14.07.2009 for filling up of 10 posts and 3 posts respectively. However, an interview was conducted prior to the sending of the names from the District Employment Exchange, Trichy and Perambalur on 09.07.2009. Thereafter, on 10.09.2009, appointment orders were issued to the 4 selected candidates and on 13.11.2009 remaining appointment orders were sent to other 5 selected candidates. Thus, the list of candidates, which were received from the District Employment Exchange, Trichy and Perambalur, even before the issuance of the appointment order by the second respondent was not acted upon.

20. It is needless to state that unless an appointment order is issued, the selected candidates will not get any right. Thus, there was an opportunity for conducting interview in respect of all the 51 candidates sponsored by the District Employment Exchange, Karur, Trichy and Perambalur. The respondents ought to have conducted interview in respect of all the candidates sponsored by the District Employment Exchange, Karur, Trichy and Perambalur. Thereafter, the final list of selected candidates would have been issued. Contrarily, even before the receipt of the list of sponsored candidates on 14.07.2009, the second respondent issued appointment orders to the 9 candidates, who were selected only from the District Employment Exchange, Karur on 18.09.2009 and 13.11.2009. Thereafter, the list of candidates sponsored by the District Employment Exchange, Trichy and Perambalur were returned on 10.12.2009.

21. The learned counsel for the respondents 4 to 11 pleads that the respondents 4 to 11 had not committed any mistake. Their names were sponsored through the District Employment Exchange, Karur and they are innocent of all those allegations and further it is pleaded that the writ petitioner is not a correct person and not selected and therefore, the selection of the respondents cannot be interfered with.

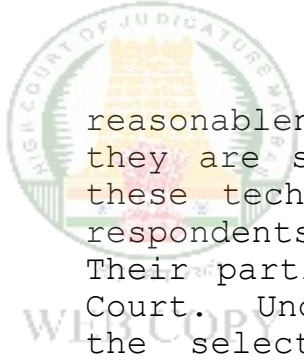


22. The learned counsel appearing on behalf of the respondents 5 to 8 raised a contention that the writ petitioner is an ineligible person. Therefore, the writ petition cannot be entertained. In this regard, the learned counsel for the respondents 5 to 8 is of an opinion that the writ petitioner became eligible only on 20.08.2010 after the order passed by this Court in W.P.(MD) No.8798 of 2009. However, the learned counsel for the respondents 4 to 8 has failed to take note that the writ petition itself was filed based on the fact that the writ petitioner was denied with an opportunity to participate in the process of selection. The learned counsel for the respondents 5 to 8 further states that the writ petitioner is not a correct person and as per the judgment of the Hon'ble Supreme Court reported in AIR 1973 S.C.964 (V 60 C 214) when the respondents are entitled for appointment as Lecturers, the writ petitioner is not eligible for recruitment to the post of Lecturers.

23. The learned counsel appearing on behalf of the respondents 5 to 8 states that the writ petitioner has not impleaded the persons, who were appointed and other two persons appointed along with the respondents were not impleaded in the present writ petition. Therefore, the writ petition has to be rejected on the ground of non impleading of the necessary parties. This point deserves no consideration, in view of the fact that all the 9 candidates recruited based on the sponsorship of the District Employment Exchange Karur, were impleaded.

24. Finally, the learned counsel appearing for the respondents 5 to 8 contended that notice was served to the respondents. The writ petitioner has impleaded all appointed candidates namely, the respondents 4 to 11 and the notices were issued to the official address of the selected candidates through the second respondent. The Court notice was also issued to the official address. The responsible officials should have delivered the notices to the employees, who are working under their control. Thus, it was the responsibility of the second respondent to hand over the notices to the respondents 4 to 11. Even, if the learned counsel pleads that they had no knowledge about the pendency of the present writ petition, this Court at the time of final hearing once again directed the second respondent to serve notice to the respondents 4 to 11 and it is pertinent to note that the learned counsel for the second respondent filed proof of affidavit stating that the notice was served to all the respondents, private notice was also served and pursuant to the notice served on the respondents 5 to 8 the learned Counsel also appeared and argued the case after filing the counter affidavit, written arguments and the typed set of papers. This being the factum the opportunity as per law was provided to all the respondents to contest the writ petition. This being the fact, the learned counsel cannot say that the notice was not properly served.

25. Except these technical points, the learned counsel for the respondents 5 to 8 is unable to substantiate the principles of



reasonableness or fairness adopted in their selection. Contrarily, they are seeking that the writ petition to be rejected only on these technical grounds. This Court is of an opinion that the respondents 4 to 11 were also parties to such fraudulent selection. Their participation or collusion is also to be considered by this Court. Under these circumstances, this Court is of an opinion that the selection was absolutely unfair, illegal and a fraud on constitution.

26. Under these circumstances, this Court has to consider all the events in relation to the process of selection. Thus, all the issues are important, which are to be considered by this Court for the purpose of identifying the illegality or irregularity if any occurred in the process of selection.

27. As far as the writ petitioner is concerned, he was not even provided with an opportunity to participate in the process of selection. Thus, he cannot be considered as a candidate in the process of selection. In fact, his name was subsequently, sponsored by the District Employment Exchange pursuant to the direction of this Court. In the typed set of papers filed by the Special Government Pleader, the document dated 07.01.2011 is enclosed at page No.21. The said letter of the District Employment Officer, Trichy, categorically states that the name of the writ petitioner was sponsored to the second respondent. However, the said list was returned. Therefore, the opportunity to participate in the process of selection itself was denied to the writ petitioner and also to all other persons, whose names were sponsored by the Employment Exchange Office, Trichy and Perambalur. However, none of those candidates were permitted to participate in the interview and the entire list was returned by the second respondent to the concerned Employment Exchange. Thus, it is apparently clear that the right of participation to the said candidates, whose names were sponsored by the District Employment Exchange, Trichy and Perambalur were totally denied. Thus, the selection was conducted by the second respondent at their whims and fancies and the second respondent has fixed the list of 10 candidates and out of 10 candidates one candidate remained absent and other 9 candidates participated in the interview were selected and appointed. Appointment can never be claimed as a right. However, participation in the selection process is a fundamental right of an eligible citizen. Denial or deprivation of an eligible candidate is unconstitutional. Equal opportunities in public employment is a constitutional mandate. In the case on hand, equal opportunities were denied to the eligible candidates, who were sponsored.

28. It is a settled principle that the selection must be conducted by adopting the fair procedures and the test of reasonableness also to be satisfied. Conducting an interview for 9 persons and appointing all those 9 persons cannot be considered as a



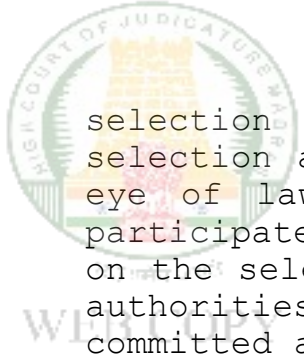
29. United Nations Handbook on civil service laws and practice was quoted. The relevant para is 4. It is being quoted.

"Selection based on merit, tested impartially and objectively, is the essential public service. So, open competitive examination has come to be almost universally as the gateway to public service, with unfairness". United Nations handbook on civil service laws and practice; competitive examinations were the answer to the twin problems represented by democracy and the requirement of good administration. They were the means by which equality of opportunity was to be excluded and the goal of securing the best man for every job was to be achieved". Public Personnel Administration by O. Glenn Stahl. "Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull" every one stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence." Introduction to the study of Public Administration by Leonard White."

30. Now let us look into the manner in which the selection was conducted and to analyze whether the process of selection conducted by the second respondent is satisfying the principles of the test of reasonableness and fairness.

31. 10 vacancies were notified for Trichy District, 3 vacancies were notified for Perambalur District and 2 vacancies were notified for Karur District. The list of sponsored candidates received from Trichy and Perambalur were returned even before appointing the 9 selected candidates from Karur District. Thus, no opportunity was provided in respect of the candidates sponsored by the respective employment exchanges of Trichy and Perambalur. The candidates sponsored by these two exchanges were absolutely deprived of their right of participation even in the selection process. Thus, the selection was certainly conducted based on the killer principles of favoritism and nepotism. The authorities have fixed the selection so as to conduct interview only for the 9 candidates, who were sponsored from District Employment Exchange Karur, and ultimately appointed all those 9 candidates participated in the interview.

32. As far as the District Employment Exchange Karur is concerned, the Employment Officer sponsored 10 candidates so as to fill up 2 posts notified for Karur District at the ratio of 1:5. Thus, there is no irregularity on the part of the District Employment Exchange Karur. This Court is unable to understand what prompted the second respondent to conduct interview in respect of the 9 candidates alone and appoint all the 9 candidates. The serious question arises in the mind of the Court that is it a



selection and what exactly the second respondent meant for selection and at the outset there was "NO SELECTION" at all in the eye of law. The 9 candidates from the same District at Karur participated, were selected and appointed is nothing but a mockery on the selection process. It is a fraud on the Constitution. The authorities had acted in a whimsical manner. The authorities had committed an act of crime against the constitution. The said crimes are to be enquired into by the competent officials and all those indulged in such act of unconstitutionality must be prosecuted under the law. Even, if they have retired from service, the corrupt activities in relation to the selection is to be traced out and if any illegality is established then they are to be prosecuted under the law.

33. The second respondent / Transport Corporation is unable to substantiate the reasons for the non consideration of the sponsored candidates from Trichy District and Perambalur District. Contrarily, the second respondent pleads that the lists were received belatedly and therefore, they had returned the list on administrative grounds. Admittedly, even before the publication of official selection list and issuance of appointment order to the 9 selected candidates, the second respondent had received the list of sponsored names from the District Employment Office Trichy and Perambalur District. There was enough time to conduct interview for all the sponsored candidates. However, they had simply returned the list to the employment exchange concerned.

34. Even, if there was a delay on the part of the employment exchange Trichy, and Perambalur, the second respondent ought to have selected 2 candidates notified for Karur District alone, if 2 candidates were selected and appointed, which was notified for Karur District then this Court need not question the genuinity in the actions on the part of the second respondent. Even if the names were not sponsored for Trichy and Perambalur, the authorities cannot act against the recruitment notification. Simply because there was a delay in sponsoring the list of names, the respondents cannot fill up all the posts notified for the Districts of Trichy and Perambalur. The posts are allotted by way of administrative decisions. When 10 posts are sanctioned to Trichy District and 3 posts are sanctioned to Perambalur District, those posts cannot be filled up by receiving the list of candidates from the District Employment Exchange Karur. If such practice is adopted then the equality class enshrined in the constitution is violated. The very object of calling eligible candidates from the respective employment exchange is to provide equal opportunity to all the eligible candidates, who have registered their names in the respective employment exchanges. When the sponsored candidates from Karur is appointed as against the notified vacancies for Trichy and Perambalur, then the candidates, who had registered in District Employment Exchange Trichy and Perambalur are denied of their opportunity to participate in the selection process and therefore, the action of the second respondent is clearly in violation of



article 14 and 16 of the Constitution of India.

35. Equal opportunity in public employment is the constitutional mandate. All the persons registered in the employment exchanges are to be provided with an opportunity to participate in the process of selection in accord with the seniority. The writ petitioner cannot be construed as a non selected candidate. He was not even permitted to participate in the interview. The right of participation in the interview itself was denied by the second respondent. Thus, the actions of the second respondent is certainly a malpractise and a fraud on the selection process.

36. This Court cannot come to a conclusion that the second respondent had done it in a routine manner. The sequences of events in respect of the selection conducted by the second respondent shows that the selection process was conducted in a calculated manner, so as to select only 9 candidates, who participated in the selection and issued appointment orders to them. In this regard, this Court cannot come to the conclusion that the respondents 4 to 11 are innocents. All these respondents appointed are also responsible in one way or other and they are parties to the fraud committed by the second respondent. But the reasons behind such collusion are to be culled out only by way of an investigation by the department of Vigilance and Anti Corruption. Such internal aspects in respect of certain malpractises, collusion and corrupt activities are to be investigated only through the agency namely, the Department of Vigilance and Anti Corruption. However, the process of selection is liable to be set aside based on the test of reasonableness and fairness.

37. In any angle, this Court is unable to come to the conclusion that the second respondent had acted in the manner known to law. However, the process of selection was irregular and illegal. Considering the manner in which the process of selection was conducted and the respondents 4 to 11 were appointed is ambiguous that the entire selection is to be held as a fraud on selection process and the Constitution of India.

38. This Court is of an opinion that the writ petitioner was not even allowed to participate in the process of selection, the writ petitioner was illegally prevented by the second respondent from participating in the selection process. This apart, the other 51 candidates, whose names were sponsored by the District Employment Exchange Trichy and Perambalur were also prevented from participating in the selection process. When there is a large scale of malpractices or irregularities in the process of selection, the same is liable to be set aside. This Court is of an opinion that the process of selection and an appointment order was issued to all the 9 candidates, who were participated in the interview. How, such a selection can be called as a "SELECTION" at all. The very meaning of the word selection itself is diluted on account of the illegal conduct of the officials, who conducted the process of selection



during the relevant point of time.

39. The Hon'ble Division Bench of the High Court of Madras, in the case of K.Nehru Vs. State of Tamil Nadu, represented by its Secretary to Government, Labour and Employment Department, Chennai and others reported in (2008) 7 MLJ 417 held as follows:

"8. At the very outset we reject the contention of the learned standing counsel for the second respondent. It is well settled that once the process of selection commenced, whatever rules and regulations that prevailed as on the date of such commencement would alone rule the filed and it is wholly impermissible in law to introduce any change in the rules or apply a different prescription to the selection for which initiation has already been made by the Department.

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11. As held earlier, we are not in a position to accept such a contention made on behalf of the second respondent. Even going by the dictum of the Division Bench, as consideration of one name against one vacancy will amount to 'no selection' in the eye of law sine the very G.O.Ms.No.65, dated 30.03.2007, violates Article 14 and 16 of the Constitution of India, it will have to be held that any selection made based on the said G.O. should automatically fall to the ground. In other words, when the Division Bench has declared in no uncertain terms that the prescription of 1:1 ratio was constitutionally invalid, there is no question of validating any appointment made applying the said ratio after its withdrawal even if the selection came to be made prior to its withdrawal. To put it differently, when a provision had been held to be constitutionally invalid, it will be travesty of justice to approve of any action based on such invalid provision. We therefore, reject the said contention made on behalf of the second respondent.

12 to 17...

18. The submissions of the learned counsel for the respondents 3 to 12 based on equity cannot also be accepted when the very selection of respondents 3 to 12 came to be made arbitrarily against all the principles of valid selection. In the matter of appointment to public posts when flagrant violation of the rules is noted, they are not entitled for any equitable treatment. The contention of the learned counsel that they were senior most registrants in the employment exchange cannot be a ground to sustain their appointment when such appointment was based on an invalid G.O., which was held to be violative of Article 14 and 16 of the Constitution of India. The question of equity will arise if at all there was any semblance of legality in their appointment. When their appointments were on the face of it illegal and contray to the prescribed rules and regulations, they cannot be heard to say that irrespective of the said



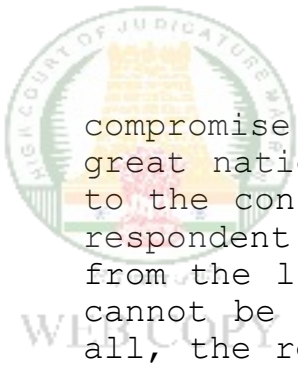
illegality their appointment should be allowed to stand. We are not therefore persuaded to accede to the said submission of the learned counsel based on equitable principles.

19. Having regard to our above conclusion, the order of the learned single Judge in having accepted the stand of the second respondent to sustain the appointment of respondents 3 to 12 cannot therefore be allowed to stand. For the very same reason, communication of the second respondent dated 12.10.2007, rejecting the representation of the petitioner in that writ petition cannot also be sustained."

40. The Hon'ble Division Bench categorically ruled that once the selection process commenced by applying the set of rules, those prevailing rules as on date cannot be permitted to be modified.

41. In the present writ petition, the notification stipulates the vacancy position. As per the notification, 10 vacancies had been notified for Trichy, 3 vacancies had been notified for Perambalur and 2 vacancies had been notified for Karur. However, the vacancies notified for Trichy and Perambalur were filled from amongst the candidates, whose names were sponsored from the District Employment Exchange Karur alone. Thus, the respondents had violated the very terms of the notification itself. The vacancies are notified to provide equal opportunity to all the candidates, who have registered their names in their respective jurisdictional employment exchanges. Thus, the eligible candidates registered their names in Trichy, Perambalur were absolutely denied of their right to participate in the selection process so as to secure employment in respect of the notified vacancies for Trichy and Perambalur.

42. This Court is of an undoubted opinion that the process of selection conducted by the second respondent was a mockery and a fraud on the Constitution of India. The process of selection was in violation of the very recruitment notification itself. Thus, the appointment of the respondents 4 to 11 cannot be saved at all. The respondents 4 to 11 were also parties to such fraudulent selection process and therefore, this Court cannot set a wrong precedent by saving the fraudulent selection or misplaced sympathy or by showing any leniency. Such misplaced sympathy if shown will affect the fundamental principles of the Constitution of India. Equal opportunity enshrined in Article 14 is a fundamental right of the citizens of our great nation. Thus, this Court cannot show any such leniency only on the ground that the respondents 5 to 8 are serving for a considerable length of period. Mere continuance, more specifically, based on the illegal selection process cannot be allowed. The writ petitioner right from the beginning of the process of selection is adjudicating the issues before this Court. The mere pendency of the present writ petition, before the Court for a long period cannot be a ground to take a lenient view. The legal principles settled are to be upheld and there cannot be any



compromise in respect of the rights ensured to the citizens of our great nation under the Constitution of India. When the Court came to the conclusion that there was no selection at all and the second respondent had committed an act of fraud by selecting 9 candidates from the list sent by one employment exchange, Karur, then the same cannot be validated nor allowed to be continued. However, if at all, the respondents 4 to 11 are also aggrieved from and out of the illegal action of the second respondent, it is left open to them to redress their grievances or claim for any exemplary damages from the officials, who had committed such fraudulent activities. However, this Court has to adhere to the Constitutional principles strictly and scrupulously.

43.If the Courts compromise these Constitutional principles by allowing these illegal appointments to go on, then, there would be a great injustice to the teeming millions of people of our great nation, who all are aspiring to secure public employment by participating in the open competitive process under the Constitutional schemes.

44.Thus, this Court is of a firm opinion that the authorities, who had conducted such fraudulent selection are liable to prosecuted, if necessary, complaint is to be registered before the Vigilance and Anti Corruption Department for initiation of appropriate action against the officials, who had conducted such illegal selection.

45.However, in respect of the appointment of the writ petitioner, the same cannot be granted in view of the fact that the writ petitioner had not participated in the selection process. Now after this length of time, without undergoing the process of selection, the writ petitioner cannot be appointed. It is brought to the notice of this Court that the respondents 4, 9 and 10 were already dismissed from service and the 11th respondent had already left the job. In this view of the matter, the following orders are passed.,

(i) The selection and appointment of the respondents 5 to 8, to the post of Junior Engineer (Mechanical) are declared as null and void and accordingly, the second respondent is directed to issue appropriate relieving orders and relieve them from service forthwith.

(ii) The Principal Secretary to Government, Transport Department, Fort St.George, Chennai - 9, is directed to conduct an enquiry into the illegalities committed in the process of selection conducted for appointment to the post of Junior Engineer (Mechanical) in the Tamil Nadu State Transport Corporation Ltd., Trichy Division and initiate appropriate actions against all the officials concerned, including the retired employees.

46.Accordingly, the writ petition stands allowed. However,



there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

47. The Registry, Madurai Bench of Madras High Court, Madurai, is directed to communicate the copy of this order to the Secretary to Government, Transport Department, Fort St. George, Chennai - 9.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Employment Officer,
District Employment Exchange (Technical),
Trichy.
2. The Managing Director,
Regional Office,
Tamil Nadu State Transport Corporation Ltd., (Kumbakonam)
Trichy Division, Periya Milaguparai, Trichy.
3. The District Employment Officer,
District Employment Office, Karur.
4. The Secretary to Government,
Transport Department, Fort St. George,
Chennai - 9.
5. The District Employment Officer,
Perambalur.

+1CC to Mr.K.Sathiya Singh, Advocate, SR.No. 53487
+1CC to Mr.J.Anandha Valli, Advocate, SR.No. 53373
+1CC to Mr.D.Saravanan, Advocate, SR.No. 53540
+1CC to the Special Government Pleader SR.No.54310

W.P.(MD) No.14365 of 2011

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AM/SV/SAR 1/19.03.2018/19P/10C