

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.29955 of 2014
and M.P.Nos.1 & 2 of 2014
and WMP.9883 of 2019

V.Rajamohan

... Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Home Transport Department
Secretariat, Fort.St.George
Chennai-600 009.
- 2.The Principal Secretary/Transport Commissioner
Chepauk, Chennai-600 005.
- 3.The Secretary
Tamil Nadu Public Service Commission
VOC Nagar, Park Town
Chennai-600 003.
- 4.M.Senthilkumar
- 5.The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Ramakrishna Road
Salem-7
- 6.The General Manager
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region
Bharathipuram, Dharmapuri.

R5 and R6 are impleaded vide
order dated 27/03/2019 made in
WMP.No.9868 of 2019
in WP.29955/2014

... Respondents
in all the above WPs.

Prayer:- The Writ Petition is filed, under Article 226 of
Constitution of India, to issue a writ of Certiorarified
Mandamus to call for the records relating to the impugned
order, passed by the 2nd respondent in

Procds.R.No.62085/T1/2012 dated 28.06.2013 and to quash the same and consequently to direct the respondents 1 to 3 to conduct oral test for selection to the post of Motor Vehicle Inspector Grade-II with candidates secured the same marks in the earlier selection in BC category and to re-do the exercise by applying Clause 5(b) of Tamil Nadu Public Service Commission Notification dated 18.04.2007 or in the alternative to allow the Petitioner to continue in service in the post of Motor Vehicle Inspector Grade-II in the existing vacancies in the facts and circumstances of the case.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Shanmuga Sundar, Spl.G.P.
for R1 and R2.
Mr.M.Devendran for R3
Mr.V.Stalin for R4
No appearance for R5 and R6.

ORDER

This Writ Petition is filed challenging the impugned order passed by the 2nd respondent in Procds.R.No.62085/T1/2012 dated 28.06.2013 and seeking to quash the same and consequently to direct the respondents 1 to 3 to conduct oral test for selection to the post of Motor Vehicle Inspector Grade-II with candidates secured the same marks in the earlier selection in BC category and to re-do the exercise by applying Clause 5(b) of Tamil Nadu Public Service Commission Notification dated 18.04.2007 or in the alternative to allow the Petitioner to continue in service in the post of Motor Vehicle Inspector Grade-II in the existing vacancies in the facts and circumstances of the case.

2. The 2nd respondent, by the impugned order dated 28.06.2013, has cancelled the selection of the Petitioner [V.Rajamohan (Sl.No.46)] from the approved list of candidates selected to the Post of Motor Vehicles Inspector Grade-II and thereby, he was terminated from 06.11.2009 i.e., from the date of his initial appointment as Motor Vehicles Inspector Grade-II.

3. According to the learned counsel for the petitioner, the impugned proceedings issued by the 2nd respondent terminating the services of the Petitioner with retrospective effect from 06.11.2009 is arbitrary and against the law and has been passed in violation to the procedure established by law and without providing any opportunity to the Petitioner. It is further submitted that the said impugned order passed by the respondents, violates the directions issued by the orders of this Court passed in W.A.No.2175 of 2011 dated 12.06.2012.

4. According to the learned counsel for the Petitioner, a Division Bench of this court in W.A.No.2175 of 2011 by order

dated 12.06.2012, filed by M.Senthil Kumar, against the order passed in W.P.No.22647 of 2010 dated 12.11.2011, directed the Tamil Nadu Public Service Commission to re-do the exercise by giving preferential treatment to the appellant in view of his possession of Post Diploma in Automobile Engineering. However, without following the said procedure of exercise as observed by the Division Bench, the impugned order has been passed in violation of the said order of the Division Bench. Thus, the contention of the learned counsel for the Petitioner is that, pursuant to the order passed by the Division Bench of this court dated 12.06.2012 in W.A.No.2175 of 2011, the 3rd respondent herein TNPSC has to redo the exercise for selection for the post of Motor Vehicles Inspector Grade-II.

5. The Petitioner was selected and appointed to the post of Junior Engineer in Tamil Nadu State Transport Corporation in the year 1985. Thereafter, he was promoted to the post of Assistant Engineer, Senior Assistant Engineer, Selection Grade Assistant Engineer and had rendered 25 years of service in Tamil Nadu State Transport Corporation (Salem) Ltd., Dharmapuri Region. The facts of the case further revealed that the petitioner was permitted to participate in the process of selection to the post of Motor Vehicle Inspector Grade-II. Accordingly, the petitioner selected to the post of Motor Vehicle Inspector Grade-II and issued with an order of appointment dated 15.10.2009 by the 2nd respondent. Based on the selection to the post of Motor Vehicle Inspector Grade-II in Transport Department, the Petitioner resigned the post of Selection Grade, Assistant Engineer in the Transport Corporation.

6. According to the learned counsel for the petitioner, the petitioner as of now is not in service for more than 7 years, consequent to the Impugned order dated 28.06.2013. Therefore, the petitioner seeks relief against the Tamil Nadu State Transport Corporation for reinstatement and continuity of service.

7. The Petitioner placed reliance in the order passed in W.P.No.12524 of 2014 dated 27.09.2018, wherein, this court has held as follows:-

"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 must 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 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. "

8. The learned counsel for the Petitioner submits that in the light of the aforesaid order passed by this court in W.P.No.12524 of 2014, wherein, the Petitioner was put in unfortunate circumstance that he resigned his service rendered in the Government and neither had the benefit of service as Selection Grade Senior Assistant Engineer nor as Motor Vehicle

Inspector Grade II, in the case on hand also, a similar direction could be given to the Respondents to treat the petitioner's resignation as of voluntary retirement from service and grant him all retirement and other pensionary benefits.

9. The learned counsel appearing for the Petitioner filed application in WMP.No.9883 of 2019 seeking to amend the prayer in the Writ Petition. A perusal of the entire records shows that the Petitioner has lost the legal battles before this court and also before the Supreme court. Since no alternative prayer is sought for by the Petitioner initially, now after nearly 5 1/2 years of passing impugned order, the petitioner's application seeking such amendment of prayer and alternative relief cannot be entertained by this court, at this stage.

10. The learned Special Government Pleader appearing for Respondents 1 and 2 also submitted that the Petitioner can approach the Tamil Nadu State Transport Corporation, for his redressal of grievance, as per law.

11. This court find no reason to set aside the impugned order dated 28.06.2013 passed by the 2nd respondent-Principal Secretary/Transport Commissioner, as it has been passed in the light of the order passed in W.A.No.2175/2011 dated 12.06.2012 and further more subsequently, the Special Leave Petition is dismissed by the Supreme Court, filed by S.Chellamuthu and V.Rajamohan, viz., the Petitioner herein.

12. In the result, the Writ Petition is dismissed with liberty to the petitioner to approach the Tamil Nadu State Transport Corporation to seek his remedy in the light of the order passed WP.12524 of 2014. No costs. Consequently, connected MPs are closed.

Sd/-
Asst. Registrar
//True Copy//

Sub Asst. Registrar

To

1.The Principal Secretary to Government
Home Transport Department,
Secretariat, Fort.St.George
Chennai-600 009

2.The Principal Secretary/Transport Commissioner
Chepauk, Chennai-600 005

3.The Secretary, Tamil Nadu Public Service Commission
VOC Nagar, Park Town, Chennai-600 003

4.The Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd., Ramakrishna Road, Salem-7

5.The General Manager, Tamil Nadu State Transport Corporation (Salem) Ltd., Dharmapuri Region Bharathipuram, Dharmapuri.

+1 CC to Mr. G.SANKARAN, Advocate SR.NO.29542

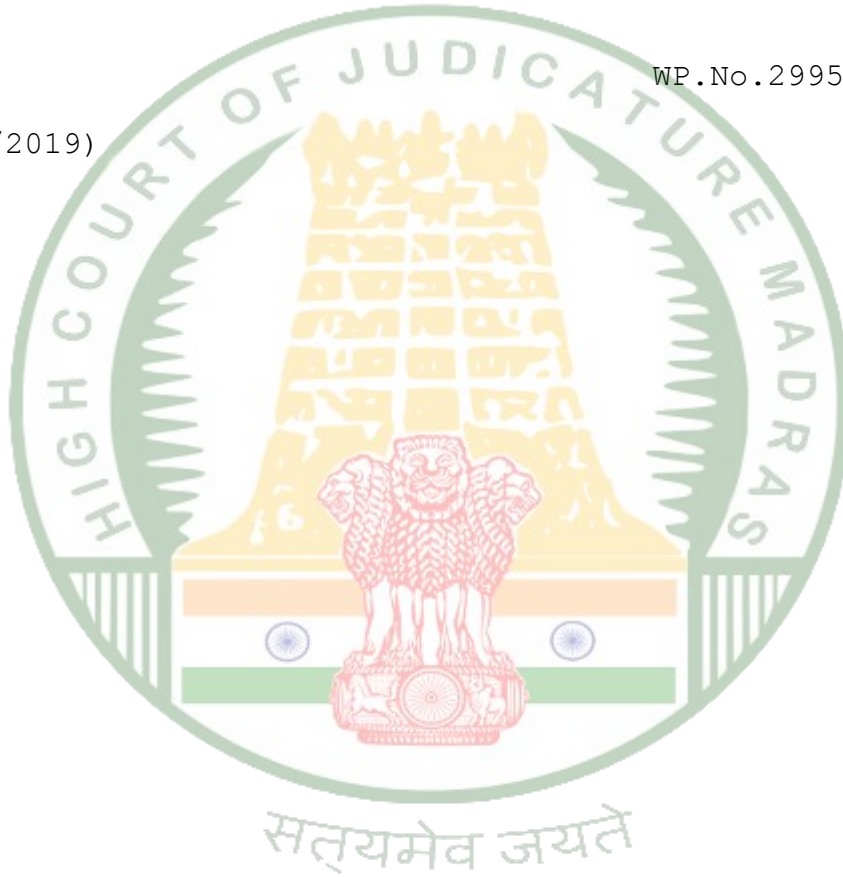
+1 CC to Mr. V.STALIN, Advocate SR.NO.29597

+1 CC to the Government Pleader SR.NO.30462

WP.No.29955 of 2014

CO (EU)

VC (03/06/2019)



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