

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26547, 26554, 26559, 26560, 26563, 26575, 26578, 26583,
26584 of 2018

W.M.P.Nos.30886, 30895, 30897, 30900, 30903, 30906, 30925,
30929, 30937, 30940 of 2018

K.Karthikeyan ..Petitioner in WP No.26547 of 2018

S.Balasubramanian ..Petitioner in WP No.26554 of 2018

R.Narayanan ..Petitioner in WP No.26560 of 2018

E.Purushothaman ..Petitioner in WP No.26563 of 2018

A.Kumar ..Petitioner in WP No.26575 of 2018

P.Devaraj ..Petitioner in WP No.26578 of 2018

S.Anandan ..Petitioner in WP No.26583 of 2018

MA.Deenagharan ..Petitioner in WP No.26584 of 2018

vs

1. The State of Tamil Nadu
Rep. By its Secretary
Transport Department
Fort St.George
Chennai 600 009.

2. The Managing Director
Metropolitan Transport Corporation
(Chennai) Limited, 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 W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Memo No.522/PS(E)2/MTC/2017 dated 14.08.2018, quash the same and consequently, direct the respondents to restore the re-

designation of the petitioner to the post of Assistant Engineer as was done in Memo No.522/PS(E)2/MTC/2017 dated 17.02.2017.

For Petitioner
in all W.Ps : Mr.Dakshayani Reddy

For Respondents
in all W.Ps : Mr.D.Suriya Narayanan
Additional Government Pleader for R1.

Mr.S.Sai Prasad for R2 & R3.

C O M M O N O R D E R

The order of cancellation issued in respect of re designation of the petitioners as Assistant Engineers in proceedings dated 14.08.2018 is under challenge in the present writ petition. A consequential direction is sought for to direct the respondents to restore the re-designation of the petitioners to the post of Assistant Engineer with all service benefits.

2. The learned counsel for the writ petitioners states that the writ petitioners were initially appointed as a Junior Tradesman and they were subsequently promoted as Assistant Tradesman. All the writ petitioners are fully eligible for further promotion to the post of Junior Engineer as well as Assistant Engineer, as the writ petitioners have completed Diploma Course and thereafter B.E Degree Course in Engineering.

3. Thus the writ petitioners are fully qualified to hold the post of Junior Engineer as per the common service rules which is in force. It is contended that the writ petitioners ought to have been re-designated as General Foreman on par with one Mr.Senthil Kumar, and granted the benefit of General Trademen and thereafter to the post of Assistant Engineer. Since Mr.Ponnambalam was granted the benefit of re designation to the post of Assistant Engineer, the same benefit should be extended to the writ petitioners also.

4. The learned counsel for the writ petitioners urged this Court by stating that the writ petitioners are entitled for re designation to the post of Assistant Engineer in the year 2015 itself. However, the benefit was not extended for the reasons not known to the writ petitioners. When the benefit of re designation was extended to some other candidates namely Balasubramanian and nine others, the said benefit has not been extended to the writ petitioners. Representation in this regard was considered by the respondents and based on the qualifications of B.E.Degree and considering the length of

service rendered by the writ petitioners in the post of trademan, the writ petitioners were granted the benefit of re-designation to the post of Assistant Engineer by invoking the guidelines issued in G.O.Ms.No.20, Transport(C1) Department, dated 29.02.2016. As per the Government Order, the technical employees who were Foremen, and who passed Diploma in Engineering from a recognized University, will be re-designated as Assistant Engineer with prospective effect and pay protection.

5. In view of the fact that the writ petitioners have already served for number of years, the benefit of re-designation of General Foreman was granted vide the G.O.Ms.No.20 Transport(C1) Department, dated 29.02.2016. The case of the writ petitioners were considered and they were re-designated as Assistant Engineers. Thus, there is no infirmity as such in respect of the order of re-designation granted to the writ petitioners in earlier proceedings.

6. The learned counsel appearing on behalf of the respondents disputed the contentions of the writ petitioners in entirety. The impugned order of cancellation is rectification of error and therefore, the same would not confer any right on the writ petitioners for their continuing in the post of Assistant Engineer. The writ petitioners are not eligible to continue as Assistant Engineer even as per G.O.Ms.No.20 dated 29.02.2016.

7. The learned counsel for the respondents further states that the order of cancellation was passed considering the mistake that occurred in the matter of re-designation of the writ petitioners as Assistant Engineers. It is relevant to consider the reasons set out in the impugned order.

8. The promotion from the cadre of Junior Engineer to the cadre of Assistant Engineer can be given only on completion of five years of service as Junior Engineer and this is done in accordance with CSR Rule No.3, Appendix II, Branch I, Technical Department, Part-B, Supervisory Group. There is no provision/rule in the CSR to re-designate from the post of Junior Engineer to Assistant Engineer, based on mere completion of Degree in Engineering. Further, there is no provision in CSR to promote Technical staff with Degree in Engineering as General Foreman. But re-designation orders were given in the Corporation in violation of the above CSR.

9. It is further contended that for the individual referred by the writ petitioner's in namely Ponnambalam, Senthil Kumar, promotion to the cadre of General foreman (Diploma) to the said employees had been considered as per the decision taken during the course of 12(3) settlement negotiation in the year of 2015. Since they were in 12(3) category, promotions were given as

General Foreman(Diploma) from Foreman(Diploma) as one Time Benefit and the concession was not extended further. At the time of issuance of G.O(Ms).No.20, Transport(C1)Department, dated 29.02.2016, they were in General Foreman(Diploma) category and they were re-designated as Assistant Engineer, as done in the other cases.

10. In the case of Thiru.S.Ponnambalam, (Diploma Holder) retired Assistant Engineer, it is informed that he was appointed as Foreman on 18.02.2011. He has completed 5 years of service as Foreman on 18.02.2016. Before considering his case for promotion as General Foreman, vide the G.O.(Ms).No.20, Transport(C1) Department dated 29.02.2016, permission has been received from Government and action was taken as per Government guidelines. Thiru.S.Ponnambalam has been designated as Junior Engineer as per G.O.(Ms).No.20, Transport(C1) Department dated 29.02.2016. In the mean time, he has represented that he has completed 5 years of service in Foreman Category(which is coming under 12(3) settlement), before the date of issue of G.O.(Ms).No.20, Transport(C1) Department, dated 29.02.2016, and requested for promotion as General Foreman on due date. Thus, his case was considered by following the rules in force and 12(3) settlement terms, and subsequently re-designated from the General Foreman (Diploma) to the post of Assistant Engineer as per G.O.(Ms).No.20. In both the cases, due procedure and rules in force were followed.

11. The learned counsel for the respondents states that the facts and circumstances in the case of Ponnambalam and nine others, is not applicable to the case of the writ petitioners. The case of the writ petitioners and service details are entirely different and therefore, comparison with that of Mr.Ponnambalam is of no avail to the benefit of the writ petitioners in respect of relief as such sought for, in the present writ petition.

12. In the last paragraph of the impugned order, it is stated that the explanation of the writ petitioners were considered and it was found that the writ petitioners have been promoted as Foreman, based on Diploma qualification, which category comes under 12(3) settlement. As per 12(3) terms, the one time benefit of promotion from Foreman to General Foreman was considered in the case of individuals who are seniors and had completed probation, in the post of Foreman, which is Supervisory cadre even under 12(3) settlement. The writ petitioners have not completed the probation period at the relevant point of time and the writ petitioners continued as Foreman till the issuance of G.O.(Ms).No.20, Transport(C1) Department dated 29.02.2016. As per G.O.(Ms).No.20 dated 29.02.2016, the writ petitioners were re-designated as Junior

Engineer and they have automatically moved to the Government pattern scale of pay, covered under other rules of Common Service Rules. As per Common Service Rule, persons in the feeder post would become eligible to be considered for promotion to higher posts subject to availability of vacancy in that cadre. As per the Government Order, certain employees were re-designated as Junior Engineers as one time benefit. However inadvertently, the writ petitioners have been re-designated as Assistant Engineers and therefore, the respondents are bound to cancel the re-designation to the post of Assistant Engineer.

13. The Government order issued in G.O.(Ms).No.20, categorically states as follows:

"2. Accordingly, the Committee has made several rounds of talks on the demands of Tamil Nadu State Transport Corporation Diploma Technical employee's Federation on various dates. After detailed deliberation, the chairman of the Committee (Director, IRT) has suggested to re-designate the existing Diploma Foreman as Junior Engineer and General Foreman (Diploma) as Assistant Engineer in all the State Transport Undertakings subject to the following conditions with the approval of the Government.

(i) Technical Employees those who were Foreman and who possess Diploma in Engineering in a recognized University will be re-designated as Junior Engineer with prospective effect and pay protection.

(ii) Technical Employees who were acquired General Foreman and who possess Diploma in Engineering in a recognized University will be re-designated as Assistant Engineer with prospective effect and pay protection."

14. As per the Government order, the technical employees who have served as General Foreman and who possess Diploma in Engineering from a recognized University will be re-designated as Assistant Engineer with prospective effect with pay protection.

15. It is established that writ petitioners have not served as General Foreman and therefore they are not entitled to be re-designated as Assistant Engineer. Only the technical employees who served as General Foreman for five years alone are eligible for the post of Assistant Engineer. The current mistake can never be construed as in violation of the right. Even certain administrative error, if any, committed in the matter of re-designation of the employees to the higher post, such misconducts are bound to be corrected.

16. This Court is of the considered opinion that though the respondents have made an attempt to establish the re-designation granted to Mr.Ponnambalam to the post of Assistant Engineer, this Court cannot accept that cases of granting one time measure in an erroneous manner, can be continued as a precedent, so as to further re-designate all others, who are all working in the cadre of General Foreman. Re-designation ought to be granted strictly in accordance with the Government Orders. If at all any mistake committed by the authorities, such errors are bound to be rectified by way of an order of cancellation.

17. In the present case on hand, the writ petitioners have not served in the post of General Foreman for five years as contemplated in the Government order issued in G.O.Ms.No.20. However, they have served as Foreman for more than five years. They have already been granted with the benefit of re-designation to the post of Junior Engineer. Thus, seeking further re-designation to the post of Assistant Engineer is not in accordance with the Government order issued in G.O.Ms.No.20 dated 29.02.2016 and consequently, the order of cancellation issued is not illegal and certainly in consonance with the rules in force. Therefore, the writ petitioners are not entitled for the relief as such sought for in the present writ petitions.

18. Accordingly these writ petitions stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Secretary State of Tamil Nadu
Transport Department
Fort St.George
Chennai 600 009.
2. The Managing Director
Metropolitan Transport Corporation
(Chennai) Limited, Pallavan Salai
Chennai 600 002.

3. The Director(Human Resources),
Metropolitan Transport Corporation
(Chennai) Limited, Pallavan Salai
Chennai 600 002.

+1 cc to Mr.S.Sai Prasad, Advocate, Sr.No. 33810
+1 cc to The Government Pleader, Sr.No. 34723

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CSL/18.06.2019



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