IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.40339 of 2006 &
M.P.No.2 of 2006 & M.P.No.1 of 2010

1.D.Arun
2.R.Palanivel Rajan .. Petitioners

Vs.

1.The State of Tamil Nadu
Rep by its Secretary
Transport Department /
Chairman, Tamil Nadu Transport Corporation
Fort St.George
Chennai - 600 009.

2.The Metropolitan Transport Corporation Ltd.,
Pallavan Salai
Chennai - 600 002.

3.The Tamil Nadu State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

4.The Tamil Nadu Transport Corporation
(Villupuram Division I) Ltd.,
Valudhareddy Post, Salamedu
Villupuram.

5.The Tamil Nadu Transport Corporation
(Madurai Division I) Ltd.,
Bye-pass Road
Madurai - 625 016.

6.The Tamil Nadu Transport Corporation
(Kumbakonam Division I) Ltd.,
Railway Station New Road
Kumbakonam.

7.The Tamil Nadu State Transport Corporation
(Salem Division I) Ltd.,
Rep by its Managing Director
12, Ramakrishna Road
Salem - 636 007.

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8.Tamil Nadu Transport Corporation
(Coimbatore Division I) Ltd.,
37, Mettupalayam Road
Coimbatore - 641 043.

9.K.Sadasivam
10.N.Bala Subramaniyan
11.S.Jayakumar

12.Tamil Nadu Pokkuvarathu Kazhaga
Poriyaalargal Federation
Rep by its President
Vaigai Salai, Dheeran Maanagar
Manikandan
Trichy - 12. .. Respondents

[R9 to R11 impleaded as per order dated 31.03.2010
in MP.No.1/2009 in WP.No.40339/2006]
[R12 impleaded as per order dated 23.04.2010
in MP.No.2/2009 in WP.No.40339/2006]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to make appointments to the post of Assistant Engineers by direct recruitment replacing the illegally appointed Junior Engineers in excess of their quota as Assistant Engineers by promotion at an early date.

For Petitioners : Mr.N.Subramaniyan

For Respondents : Mr.K.Magesh
Special Government Pleader [R1]
RR2 to 12 (No Appearance)

O R D E R

The Writ Petition is filed seeking a mandamus to direct the respondents to make appointment to the petitioners for the post of Assistant Engineers in the respondent-Corporation.

2. The crux of the petition is that the petitioners are the engineering graduates in B.E. (Mechanical), who had also completed the Apprenticeship Training as per the Apprenticeship Act, 1961 in the second respondent Corporation during the period October '2004 to October '2005; and they also got themselves registered in the Employment Exchange in the year 2003 and 2002 respectively and their registration numbers are 2003M21677 and 2002M12945.

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3.1 The grievance of the petitioners is that as per the Common Service Rules approved by the respondent-Board, the appointment of Assistant Engineers in the respondent-Corporation/Board are by direct recruitment and promotion; and the ratio is 1:1. However, the respondent-Corporation have not followed the rules while recruiting to the post of Assistant Engineers. According to the above Rules, there are three groups of employees. They are (1) Managerial Group (2) Supervisory Group (3) Working Group / Miscellaneous Group and their method of appointments are as per the below table :

Categories	Method of appointment
I. Managerial Group :	
1. General Manager	By promotion from Deputy General Manager.
2. Deputy Manager	By promotion from Assistant Manger with 10 years service.
3. Assistant Manager	By promotion from Assistant Engineer with 5 years service.
II. Supervisory Group :	
Assistant Engineer	By direct recruitment and by recruitment by promotion junior engineer with 5 years service. The ratio between recruitment and promotion is 1:1.

3.2. The petitioners have drawn the attention of the Court to the seniority list of Assistant Engineers and Senior Assistant Engineers in the Transport Corporations of various divisions viz., at Chennai, Villupuram, Salem, Coimbatore, Trichy and Madurai, wherein it shows that the number of junior engineers who were promoted to the post of Assistant Engineers by way of promotion is 50% in excess than by direct recruitment, though the Rule provides the ratio of appointment is 1:1. Thus, favoritism was done to the diploma holders affecting the fundamental rights of the unemployed engineering graduates, unlike the petitioners. Aggrieved by the act of the respondents, the petitioners made representations to the first respondent to conduct recruitment for the post of Assistant Engineers, but no action was taken so far. Hence, the petitioners are before this Court in this writ petition.

3.3 It is also contended by the petitioners that excess promotion to Junior Engineers as Assistant Engineers, warrants interference of the Court. It is also brought before the Court that in a similar issue, a set of petitioners have approached this Court seeking injunction of this Court to restrain the respondent-Highways Department to make any appointments for the post of Assistant Engineer by promotion from the cadre of Junior Engineers. Since this Court has refused to grant interim

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injunction, the petitioners preferred an appeal in WA.Nos.492 and 493 of 2006 before the Hon'ble First Bench of this Court and the Hon'ble Bench has granted interim injunction. Hence, a similar relief may be granted in the case of the present petitioners also.

4.1 The second respondent has filed its counter, in which it denied that neither the petitioners are the employees of the Corporation nor they have undergone any Apprenticeship Training at any point of time in the respondent-Corporation. The petitioners are not the employees of the Transport Corporation and they are like other engineering graduates who have completed their course, registered their names in the Employment Exchange and awaiting for appointment. Since there is no cause of action in the petitioners' case, no remedy can be sought for by the petitioners in the present writ petition. According to the respondents, since the claim of the petitioners seeking appointment for the post of Assistant Engineer by direct recruitment is untenable and it lack cause of action, the writ petition is not maintainable as per the law laid down by the Hon'ble Supreme Court in Kusum INGOT and Alloys Ltd., Vs. Union of India and Another reported in 2004(6) SCC 254. The petitioners have no locus standi to file the present writ petition. The petitioners have no right to seek a remedy under Public Interest Litigation, as it involves disputed question of fact. Moreover, the petitioners have no inherent right to insist the respondent to recruit them for the post of Assistant Engineer, without considering the vacancy position and without sponsorship of Employment Exchange. Further it is contended that the ratio 1:1 fixed in the Rules i.e.,1:1 (ppointment by direct recruitment : appointment by promotion) is not a statutory rule and this can be superseded by Rule 59(b) of Common Service Rule of STUs.

4.2 It is also contended in the counter that the general provisions relating to appointment as per Section 8(a) of the Common Service Rules contemplates that appointments to various posts shall be made by the Managing Director or by the authority specified in Rule 58 or by such authority whom the Board may declare as the Appointing Authority from time to time for making appointments to a particular category or grade of post subject to availability of vacancies against posts sanctioned by the competent authority or as my be decided by the Government or by the Board from time to time. However, due to imposing of ban order of Government, no notification is called for from the Employment Exchange. Therefore, the petitioners cannot claim any appointment from the second respondent Corporation or from the Government.

4.3 The petitioners have not undergone Apprenticeship Training in the second-respondent Corporation as per their records. In the affidavit, the petitioners have failed to provide the details where they have undergone Apprenticeship

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Training, and more so, any trained person under Apprenticeship Act cannot be guaranteed either for appointment or for absorption in the respondent Corporations and they cannot claim any recruitment as a matter of right.

4.4. The second-respondent Corporation strongly denied the allegations made by the petitioners, in its counter alleging that the respondent-Corporations have not followed the rules, while appointing the Assistant Engineers. Admittedly, all the personnel in the respondent-Corporations are governed by a Common Service Rules approved by the respective Boards of the Corporation, and it is relevant to extract Rule 1(d), Rule 97 and Rule 59(b) of the Common Service Rules :

> Rule 1(d) expressed any instruction or any order issued by the Government have to be placed before the Board.
>
> Ruled 97 expresses that the Board shall have the right to amend, modify, vary, alter, delete or add any provisions of the rules.
>
> Rule 59(b) expressed that anything contained in this Rule, the Board may, for special reasons decide to fill up any of the posts in the Corporation in any manner it may choose.

The second respondent disputed that the details furnished by the petitioners regarding the method of appointment to various categories starting from Assistant Engineer to General Manager, in the table above are not factually correct and it is irrelevant to the point in issue in the present writ petition. However, it admits that as per Clause 59(b) of Common Service Rules, the post of Assistant Engineers can be filled up the direct recruitment and by promotion from among the Junior Engineers and ratio between recruitment and promotion is 1:1 as stated in the petition, but then, only depending on contingency and expediency, the Board may for special reasons decide to fill up any post in the Corporation, in any manner as it choose. The fact remains that the respondent Corporation for very many years had not made direct recruitment to any category much less to the category of the Assistant Engineer in pursuance to G.O.Ms.No.27 Finance (BPE) Department dated 08.11.2002 and the Government Transport Department Letter No.416/Cho/98 dated 28.08.1998.

4.5 It is also reiterated in the counter affidavit that as alleged in the petition, the 1:1 ratio between the recruitment and promotion for appointment of Assistant Engineers cannot withstand, in view of the provisions laid down in Common Service Rules of the respondent-Corporation under Rule 1(d), 97 and 59(b). However, as concerning the contention of the petitioners as to the appointment of diploma holder, it is submitted that based on the representations of the Engineers'

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Association to provide relief and to retrieve stagnation of promotion, the Government issued G.O.No.13 Transport (C1) Department dated 14.01.2000, which came to be approved by the Boards of all Transport Corporations. The Board is empowered to decide as to the filling up of posts in the Corporation in any manner as it choose, on special reasons. Hence, due to time bound promotion, both diploma holders and degree holders were promoted, therefore, the question of excess appointment for the post of Assistant Engineer, through promotion does not arise. It is also stated that based on the Service Rules of the respondent-Corporation, they can promote their employees and even if any vacancies arise in the respondent-Corporation, the same can be filled through Employment Exchange, depending on the decision of the Board. The respondent also denied the statement of the petitioners that 236 Junior Engineers were appointed in excess of the their 50% quota, and contends that the said statement is frivolous and baseless.

4.6 According to the respondent, since the petitioners have admitted in their petition that they have registered themselves in the Employment Exchange, their only remedy is to approach the Employment Exchange for recruitment and they cannot seek a remedy either before the first respondent or from the Transport Corporations. The second respondent strongly refuted the contentions of the petitioners regarding non-adherence of 1:1 quota for direct recruitment and promotion; violation of Common Service Rules of the respondent-Corporation and other constitutional rights and that no favoritism was shown to the existing Junior Engineers.

4.7 As to the petitioners contention regarding W.A.N.492 and 493 of 2006 against the Highways Department, the respondent would submit that the case filed against the Highways Department and the case on hand are not similar cases. A certain Writ Petition in W.P.No.7452/2006 and W.A.No.492 and 493/2006 were filed by one T.Kannan and others against the Highways Department, disputing the adjustments made by the Highways Department in appointing the Diploma Holders / Junior Engineers in the vacancies reserved for the post of Assistant Engineers, whereas in the respondent-Corporation, there were no appointment of Diploma Holders / Junior Engineers in the vacancies of the Assistant Engineers as G.O.Ms.No.13 dated 14.01.2000 provides only time bound promotion. Therefore, the injunction granted in W.A.No.492 and 493/2006 on 18.04.2006 will not apply to the case on hand, as the present case is not a similar one filed against the Highways Department. Hence, the writ petition filed is liable to be dismissed.

5. The respondents 4 to 8, Tamil Nadu State Transport Corporations, (other divisions) have also filed their counters adopting the same line of the counter filed by the second respondent-Corporation.

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6. The learned counsel for the petitioners would submit that the petitioners are the unemployed Engineering Graduates and they have also undergone the Apprenticeship Training in the year 2005 and that the first petitioner had enrolled in the Employment Exchange in the year 2003 and the second petitioner got enrolled in the year 2002 and awaiting for appointment. The learned counsel would contend that the respondent Corporation instead of appointing the petitioners as per the Rules, they have violated the Rules and they have promoted the Junior Engineers those who are in service in the respondent-Corporation. As per the Rules, the appointments to the post of Assistant Engineers will be in the ratio of 1:1, and the method of appointment for the Assistant Engineers are by direct recruitment and recruitment by promotion to Junior Engineers with 5 years service in the respondent-Corporation. The ratio between the direct recruitment and promotion is 1:1. According to the petitioners, the respondents have violated the rules and at that relevant time, the respondent-Corporations have appointed 236 Junior Engineers to the post of Assistant Engineers, in excess of the quota of 50% by violating the Rules and no opportunity was given to the petitioners who had completed the graduation in B.E., Mechanical. Even the first petitioner appeared to have undergone the Apprenticeship Training in the second respondent-Corporation from 06.10.2004 to 05.10.2005 and the second respondent have undergone the Apprenticeship Training in the second respondent-Corporation from 08.10.2004 to 07.10.2005. In the seniority list published by the second respondent, the existed vacancy for the post of Assistant Engineers is 195, of which the total number of persons promoted from Junior Engineers are 173 and the number of persons by direct recruitment is only 22. Likewise, the other respondent-Corporations have also published their seniority list, which also shows that majority of the persons were promoted from the Junior Engineers, and the appointment through direct recruitment is very meager .

7. Per contra, the learned Standing Counsel for the respondents-Corporations would submit that the respondent-Corporations have not violated the Rules. Though the note provides 1:1 ratio, but the Rules 1(d) and 97 of the Common Service Rules of the respondent Corporation empowers the Managing Director or the Competent Authority of the Transport Corporation to choose the method of appointment. Hence, it is not the violative of statutory rules or constitutional provisions. Further, the writ petition in W.P.7452 of 2006 and the writ appeal in W.A.Nos.492/2006 and 493/2006 relied on by the petitioner would not apply to the present case as the Rules of the Highways Department is different from the Rules of the Transport Corporation. Hence, the only remedy to the petitioners is that the petitioners have to approach the Employment Exchange and that they are not entitled to seek a remedy either before the first respondent or from the

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respondents – Transport Corporations.

8. In reply, the learned counsel for the petitioners would submit that the Rules of the Highways Department and Transport Corporation are similar. He also placed reliance on the judgments of the Hon'ble Supreme Court in Maharashtra Vikrikar Karamchari Sangathan Vs. State of Maharashtra and Another reported in [(2002) 2 SCC 552] and Prem Singh and Others Vs. Haryana State Electricity Board and Others reported in [(1996) 4 SCC 319]. The learned counsel for the petitioner also seeks a direction of this Court to direct the respondent to give appointment to the petitioners, by relaxing their ages.

9. The second respondent himself has admitted in paragraph No.6 of its counter affidavit that due to imposing of ban order of Government, no notification was called for from the Employment Exchange, and the writ petitioners cannot directly claim appointment in the second respondent-Corporation or from the first respondent. Unless the respondent-Corporations calls for the list of candidates from the Employment Exchange, the Employment Exchange cannot sponsor the details of those registered graduates to the Corporations, and as admittedly, the second-respondent have not called for the candidates list. And, even in case of appointment to the post the Assistant Engineers, as per the Rules, only 50% of the quota can be filled by the service candidates and 50% has to be filled only through direct recruitment. If there is a ban order of the Government and no notification is called for employment by the respondent-Corporation, it is the mistake of the first and second respondent, and it is not the fault of the petitioners. Though the petitioners have completed their graduation in B.E. (Mechanical) and have undergone the Apprentice Training and got themselves registered in the Employment Exchange and awaiting for appointment, the respondents-Corporations without following the procedures and without adhering to the Rules, have arbitrarily promoted the service candidates and thereby, violated the Service Rules of the Transport Corporation, by not recruiting through direct recruitment. Therefore, the petitioners have to be appointed in any one of the respondent Corporation, by relaxing their age, even in case, they have crossed the age limit specified for appointment.

10. This Court in W.P.(MD) No.14365 of 2011, found that the selection process of the Tamil Nadu State Transport Corporation Ltd., (Kumbakonam) is illegal and fraud on the Constitution of India and hence, mere continuance of the illegal selection process cannot be allowed. Therefore, this Court directed the Vigilance and Anti Corruption Department to investigate the matter and to initiate appropriate action against the officials, who had conducted such illegal selection, even though they had retired from their services.

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11. Heard the learned counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondents-Corporations and perused the records.

12. According to the petitioners, they are the Engineering Graduates and they have undergone Apprenticeship Training in the second respondent-Corporation. Though, the second respondent had denied that the petitioners have not undergone any training under it, whereas in the typedset of papers produced by the petitioners along with the writ petition, both the petitioners have enclosed the Certificates issued by the Director of Training, Regional Central Apprenticeship Adviser, Board of Apprenticeship Training (South Region. This documents would go to show that the first petitioner have undergone Apprenticeship Training under the Apprenticeship Act, 1961 in the second respondent-Corporation from 06.10.2004 to 05.10.2005 and that the second petitioner also had undergone Apprenticeship Training from 08.10.2004 to 07.10.2005. Therefore, the contention of the second respondent is not acceptable insofar as the qualifications of the petitioners is concerned. Insofar as violating the rules and the mode of appointment for the post of Assistant Engineers is concerned, the ratio determined is 1:1, i.e., by direct recruitment and recruitment by promotion from the cadre of Junior Engineers who have put in 5 years of service in the respondent-Corporation. Even in the counter affidavit filed by the second respondent, it is clearly stated that the Managing Director of the Transport Corporation and the Board can decide the mode of selection and since for a long time, the service candidates of the respondent-Corporation were not given promotion and that based on the representations of such service candidates, and to retrieve the stagnation, the Board had decided to promote the service candidates, who were the degree holders and diploma holders in qualification, and has given a time scale of pay. Therefore, the respondent-Corporations have not violated the rules. Even if this contention of the respondent is taken into account, the petitioners cannot be faulted for the stagnation of promotion to the Junior Engineers and the ban order of the Government and that they cannot be penalized or deprived of their rights for the act of the Government and the decision of the Board. Further, if the Board or the respondent-Corporation once adopts a method in appointment of the candidates, then they have to follow the Rules laid down and they cannot simply ignore the direct recruitment system and adopt only the promotion of the service candidates for their recruitments. They have to balance in such a way that the general public is not effected by implementation / modification of their rules. On this score, the Hon'ble Supreme Court in B.Thirumal Vs. Ananda Sivakumar & Others reported in CDJ 2013 SC 1015, clearly emphasise that the promotion of the Junior Engineers would only be based on the quota fixed. Therefore, the service candidates can be considered only against 50% quota reserved for them and not

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against the 50% quota reserved for the direct recruitment. The Hon'ble Supreme Court in the case cited supra has also held that the settled proposition need not be unsettled at this stage, and that what has been done in the past need not be interfered with, especially when there was no challenge before it as to the appointment of the re-designated Assistant Engineers as Assistant Engineers against the vacancies falling in 75% quota.

13. In the present case, the petitioners have challenged the recruitment and though the petition is pending from 2006 onwards, and initially an interim order was given by this Court and the respondent has not followed it and that the Transport Corporation has passed the rules and regulations, and in such case, the Transport Corporation can be summoned. However, in this case, the Transport Corporation have not passed any such Rules and even assuming that they have passed the Rules, which is a violation of Article 16 of the Constitution, the respondent admitted that they have not called for sponsorship of the Employment Exchange and they have not followed 1:1 ratio, only on the ground to retrieve the stagnation of time bound promotion to the service candidates of the Transport Corporation, upon approval from the Board. Since the petitioners have proved that they have undergone Apprenticeship Training and the petitioners though cannot claim as a matter of right, but at the same time, with so much expectations, the petitioners have studied and obtained graduation and subsequently, they have also undergone Apprentice Training, but the second respondent without verifying the records have simply stated that they have not undergone Apprenticeship Training, warrants interference. However, as held by the Hon'ble Supreme Court, this Court is not inclined to interfere with what has been done in the past and however, since the petitioners are completely qualified and have also got the Apprenticeship Certificate, and also the respondent-Corporation have not obtained sponsorship from the Employment Exchange, and also considering the age of the petitioners, who are 32 years and 25 years at the time of filing the present writ petition, and now have attained the age of 46 years and 39 years respectively, the respondents-Corporations are directed to consider their appointments in the respondent-Corporations, by relaxing their age and after getting an undertaking from the petitioners that they have not employed anywhere and if they are still unemployed and willing to serve in the respondent-Corporations, the first respondent is directed to give opportunity to the petitioners to serve in anyone of the Corporations namely respondents 2 to 8 in any suitable posts and the said exercise shall be completed within eight weeks from the date of receipt of a copy of this order.

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With the above directions, this writ petition is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

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Assistant Registrar(CS)

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Sub Assistant Registrar

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To:

1.The Secretary
State of Tamil Nadu
Transport Department /
Chairman, Tamil Nadu Transport Corporation
Fort St.George Chennai - 600 009.

2.The Metropolitan Transport Corporation Ltd.,
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9 The President,
Tamil Nadu Pokkuvarathu Kazhaga
Poriyaalargal Federation,
Vaigai Salai, Dheeran Maanagar,
Manikandan, Trichy -12.

+1 C.C. to The Government Pleader SR.NO. 38264/20

+3 C.C. to Mr.D.Raghu Advocate SR.NO. 37998/20

W.P.No.40339 of 2006

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