

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

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THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No. 26116 of 2004
and WPMP.No.31733 of 2004

1.S.Sengottaiyan
2.M.Gnanavel
3.T.S.Venugopal

..Petitioner

Vs
Managing Director,
Tamilnadu State Transport Corporation
(Coimbatore Divn.I)Ltd.,
Coimbatore-43.

...Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of mandamus, directing the Respondent to recover the Gratuity amount already paid, from the Petitioners which were settled getting resignation in the cadre of Assistant and to credit to the Gratuity account in the cadre of Junior Superintendent/Welfare Inspector, and to confer all the consequential benefits of settlement under Section 12(3) of the Industrial Disputes Act entered in 1989 and 1998 by giving weightage to the service.

For Petitioner : Mr.P.Ganeshan
For M/s. S.Mani

For Respondents: No Appearance

सत्यमेव जयते
O R D E R

Brief facts of the case is that the 1st Petitioner had joined as Conductor in Cheran Transport Corporation, redesignated as Clerk, further redesignated as Junior Assistant. The 2nd & 3rd Petitioners joined as Senior Clerk, redesignated as Junior Assistant while the petitioners were working as Junior Assistant in the erstwhile undivided Cheran Transport Corporation, they were promoted as Assistant. Cheran Transport Corporation underwent bifurcation and Jeeva Transport Corporation was formed due to expansion of growth. When the Cheran Transport Corporation was divided due to administrative exigencies, a number of new posts were created. Options were asked for from

the employees as to whether they want to remain in Cheran Transport or to go to Jeeva Transport. According to the options exercised, the personal division also took place. As a result of the same, a number of posts particularly in the cadre of Junior Superintendent became vacant. The Feeder Category for the post of Junior Superintendent is Senior Assistant whereas all the petitioners herein were only working as Assistant. As there were a number of vacancies, the management did not want to go to open market as there may not be sufficient hands with experience, particularly when the corporation was in the infant state. Considering maintenance, administration, development and growth, the management promoted the Junior Superintendent, who were working as Assistant bypassing intermediary post.

2. The Petitioners were asked to give resignation in the post of Junior Superintendent/Welfare Inspector. The Petitioners resigned on the Afternoon and joined in the new post of Junior Superintendent/Welfare Inspector in the Forenoon, the very next day, details of which are as follows:

	Date of resignation in the post Assistant	Date of joining in the post of Junior Superintendent/Welfare Inspector
1st Petitioner	15.9.1981 AN	16.9.1981 FN
2nd Petitioner	30.6.1981 AN	01.7.1981 FN
3rd Petitioner	15.9.1981 AN	16.9.1981 FN

3. Thus, there were no break. In fact, in the order of promotion itself, the management made it clear that if no resignation is submitted, it will be presumed that the petitioners did not accept and the promotion given will be cancelled. So, there is no break in service and they have been continuously working. Therefore, seeking to give effect to the Government Order in Letter No. 31910/C1/91-2 Transport Department, dated 23.09.1991 and consequential benefits under Section 12(3) of Industrial Disputes Act, the present writ petition is filed.

4. The learned counsel for the petitioners would submit that only due to bifurcation, the petitioner was placed to the Jeeva Transport Corporation, therefore, the service rendered by the petitioner in Cheran Transport Corporation has to be considered, but the respondent had failed to do the same. The learned counsel for the petitioners placed reliance on the order of this Court made in W.P. Nos. 7324 of 2000 & 16122 of 1999 dated 21.02.2001 filed against the respondent corporation for the same relief. The relevant paragraphs is extracted below;

This court rejects the contentions advanced and objections raised by Mr.Chandrasekaran since if such an objection is sustained, it will result in discrimination and also offend Article 14 as well. Taking into consideration of the admitted facts, the fact that identical reliefs have been granted and implemented by the Transport Undertakings both the Writ petitioners are allowed as prayed for. The respondents are granted three months time to implement this order from the date of receipt of a copy of this order either from this court or on the production of certified orders by the petitioners. No costs.

5. As against the said order of this Court, the respondent Corporation had preferred a writ appeal before the Hon'ble Division Bench of this Court in W.A.No1059 of 2001, the said writ appeal was disposed of by judgment dated 27.01.2004, confirming the order passed in the writ petition.

6. Since the relief sought for by the petitioners in the present writ petition is also similar in nature, the orders cited supra passed in the Writ Petition and Writ Appeal are squarely applicable to the present case and the petitioners are entitled to get relief sought for in the present writ petition. The respondent/Transport Corporation is directed to implement the judgment passed by the Hon'ble Division Bench of this Court in W.A.No.1059 of 2001, dated 27.01.2004.

7. With the above directions, the present writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Managing Director,
Tamilnadu State Transport Corporation
(Coimbatore Divn.I)Ltd.,
Coimbatore-43.

W.P.No. 26116 of 2004
and WPMP.No.31733 of 2004

RP(CO)
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