



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.21661 of 2015

WEB COPY

- 1.T. Hillaldeen
- 2.V. Senthilkumar
- 3.V. Arunachalam
- 4.K.P. Selvaganesan
- 5.B. Antony James
- 6.S. Sankaran
- 7.P. Murugesan
- 8.T. Ramakrishnan

... Petitioners

vs.

1.Secretary to Government,
Transport Department,
Secretariat, Fort St.George,
Chennai.

2.The Managing Director,
Tamilnadu State Transport Corporation,
Tirunelveli.

3.The General Manager,
Tamilnadu State Transport Corporation,
Tirunelveli. Tirunelveli District.

4.The Assistant Manager,
Tamilnadu State Transport Corporation,
Tirunelveli, Tirunelveli District.

5.The Deputy Manager (H.R)
Tamilnadu State Transport Corporation,
Tirunelveli. Tirunelveli District.

6. Ponsekar Solomon
- 7.S.Suseel Kumar
- 8.R.Bal Singh
- 9.R.Pani Sundar
- 10.E.Jeyaseel Thiyagaraj
- 11.T.Jeyagopal
- 12.D.Samraj Basker
- 13.M.Jeyanthi
- 14.C.Shivaji
- 15.P.Appasamy
- 16.T.Sivasankara Narayanan
- 17.K.Mohan
- 18.V.Ramalingam
- 19.P.Renganathan



20.M.Thangam Ponnammal
21.K.P.Thangam
22.V.Sivabaghyavathi
23.A.Anthoni Xavier Shay Rani
24.G.Kothandaraman
25.S.Ramakrishnan
26.C.Hariharan
27.S.Arivalagan
28.P.V.Janci Rani

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the 4th respondent pertaining to the seniority list, dated 10.07.2012 and to quash the same and consequently to direct the respondents to rearrange the seniority list as per Common Service Rules and promote the petitioners as superintendent from the date on which they are qualified and provide service and monetary benefits inconsonance to the same within a time frame that may be stipulated by this Court.

For Petitioners : Mr.Aaiyiram K.Selvakumar
for Mr.T.Jeen Joseph

For R1 : M/s.D.Farjana Ghoushia
Special Government Pleader

For R2 to R5 : Mr.K.Sathya Singh

For R5 to R28 : No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order of the 4th respondent pertaining to the seniority list, dated 10.07.2012 and consequently to direct the respondents to rearrange the seniority list as per Common Service Rules and promote the petitioners as superintendent from the date on which they are qualified and provide service and monetary benefits inconsonance to the same within a time frame that may be stipulated by this Court.

2.The contention of the petitioners are that the first petitioner was appointed on 28.06.1990 as Junior Assistant and on completion of training, the petitioners were regularized as Junior Assistant. The petitioners were granted more than 3 reviews. On completion of 6 years from the date of appointment, first review will be granted and promotion would be given as Assistant. On completion of 8 years from the first review, the second review will be granted and promotion will be given as Senior Assistant. On



completion of 7 years from the 2nd review, 3rd review will be granted and promotion will be granted to the post of Special Grade Assistant. The next promotion avenue would be to the Superintendent post and all the petitioners completed all the 3 reviews and are eligible for the post of Superintendent. When the petitioners were awarded promotion, the impugned seniority list was prepared by including the groups from "miscellaneous group". For the migration from miscellaneous group to working group one time chance was granted on 01.07.2015. However, the impugned seniority list has promoted respondents 6 to 24 vide seniority list, dated 10.07.2012. In the respondent corporation, for entering the working group, a candidate must possess any degree with one year apprenticeship training as per Apprenticeship Act, 1961. This method was followed until 1984, subsequently the Government order was passed in G.O.Ms.No.63, dated 13.01.1984, wherein it states all the Managing Directors of the respondent Transport Corporation were directed to amend the service rules prescribing National Apprenticeship certificate (NAC) / Institute of Road Transport Test as a qualification for appointment after 13.01.1984 and the persons with such certificate alone were considered for appointment in the working group.

3.The first respondent Government, based on the recommendation of the Director Institute of Road Transport letter, dated 04.08.2010, issued an order in G.O.Ms.No.79, dated 30.06.2015, fixing the ratio between the working group and miscellaneous group for promotion to the post of Superintendent and the qualification prescribed is 3 review benefits and possessing a degree qualification. Persons coming under the miscellaneous group shall exercise one time irrevocable option for migration to the working group subject to placing their names at the lowest level of existing seniority maintained for that category of employee of the working group for which the scale of pay / grade pay shall be taken as the yardstick. One of the conditions is that they should forgo their original seniority in the miscellaneous group. In the said order, 2:1 ratio has been fixed while considering for promotion to the post of superintendent, i.e., 2 persons from working group and one person from the miscellaneous group. A clarification was issued, vide letter, 10237/C1/2015-1, dated 10.08.2015, wherein, it has been stated as under:

"3.In this regard, I am to clarify that "one time irrevocable option" for migration to working group has been ordered only in G.O.Ms.No.79, Transport (C.1) Department, dated 30.06.2015 with prospective effect and hence the earlier orders issued in respect of migration from these group to working group is not valid."

4.The grievance of the petitioners is that the seniority list, dated 10.07.2012, the G.O. has been implemented and has given retrospective effect for G.O.Ms.No.79. Therefore, the petitioners



prayed for quashing the seniority list.

5.The respondents have filed a counter affidavit stating as under:

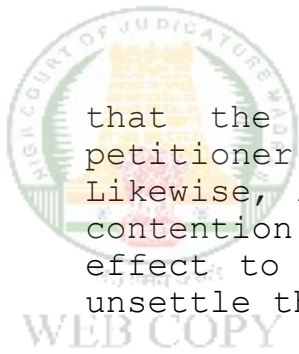
"20.I submit that as per the G.O.Ms.No.79, Transport Department, dated 30.06.2015. The employees who have received 3 Review Benefits and placing in the Miscellaneous Group will be given Superintendent Promotion in the ratio working Group-2 Miscellaneous Group-1 subject to the availability of vacancy and other eligibility factors in future. As per G.O.79, action is being taken to prepare fresh Seniority list after getting one time irrevocable option for Migration to working groups from the employees who are having Degree qualification and place in Miscellaneous Group."

6.The respondents have specifically stated that as per G.O.Ms.No.79, a fresh seniority panel was issued, after getting one time irrevocable consent letter for the migration to the working groups from the employees. However, the respondents stated that the petitioners are bound to forgo the seniority and they ought to be placed below the persons, who are working in Tirunelveli division. The respondents also stated that the petitioners are juniors and have transferred from other union and they have to forgo again their seniority for transfer.

7.Heard Mr.Aaiyiram K.Selvakumar, learned Counsel appearing for the petitioners, M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for first respondent and Mr.K.Sathya Singh, learned Counsel appearing for respondents 2 to 5.

8.The specific contention of the petitioners are that the impugned seniority list, dated 10.07.2012, was prepared for the year 2012. If that is so, the G.O.Ms.No.79, which came into existence on 30.06.2015, cannot be applied at all. The subsequent letter issued by Additional Chief Secretary to the Government also clarifies that the G.O.Ms.No.79, has come into existence with prospective effect. If that is so, cut off date of G.O.Ms.No.79 is 30.06.2015. The counter of the respondents stated that the fresh seniority list was prepared after giving one time irrevocable option to the petitioners in the impugned seniority list. The contention of the respondents is that the petitioners are transferred from other corporation and therefore, they are placed junior most in the present Corporation and therefore, they cannot be granted. But in the counter the respondents have not taken such a plea. Therefore, that plea is rejected.

9. Therefore, this Court is of the considered opinion that the retrospective effect is given to the impugned seniority list. However, the learned Counsel appearing for the petitioners stated



that the 3rd and 6th petitioner retired from service, the 5th petitioner died and the petitioners 1, 2, 4, 7 and 8 are in service. Likewise, in the respondents 6 to 28 some of them are retired. The contention of the respondents is that the seniority list was given effect to and if the seniority list is interfered with, it would unsettle the seniority among the employees.

10. Therefore, to meet the ends of justice this Court is directing the respondents 1 to 5 to grant notional seniority to the petitioners and consequential monetary benefits shall be granted. As far as the retired / died persons are concerned, the effect shall be carried out in the pension benefits / family pension and arrears shall be granted. Hence, this Court is passing the following orders:

i. The impugned seniority list is modified only to give notional seniority cum promotion.

ii. The respondents are directed to give notional effect to petitioners 3, 5 and 6 and grant arrears and grant consequential pension benefits.

iii. As far as the petitioners 1, 2, 4, 7 and 8 are concerned, the petitioners shall be granted notional promotion and consequential arrears of monetary benefits / salaries.

11. With the above directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

Tmg

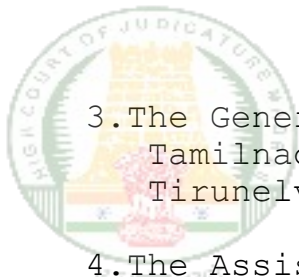
Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. Secretary to Government,
Transport Department,
Secretariat, Fort St. George, Chennai.

2. The Managing Director,
Tamilnadu State Transport Corporation,
Tirunelveli.



3.The General Manager,
Tamilnadu State Transport Corporation,
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Tamilnadu State Transport Corporation,
Tirunelveli. Tirunelveli District.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-7018[F] dated 18/02/2022)

+1 CC to M/s.SPL GP (SR-7093[F] dated 18/02/2022)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-7595[F] dated 21/02/2022)

W.P. (MD) No.21661 of 2015

17.02.2022

RD(24.03.2022) 6P 9C