



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.23910 of 2006

1.K.RajaRajan
2.N.Kalaivanam
3.T.Mohan Kumar
4.S.A.Selvakumar
5.P.Tamilarasan

..Petitioners

Vs

1.Tamil Nadu State Transport Corporation
(Salem Division-1) Ltd., rep. By its
Managing Director
12, Ramakrishna Road
Salem-636 007

2.G.K.Siramani
3.K.Matheswaran
4.S.Jeevarathinam
5.M.S.Loganathan

..Respondents

R2 to R5 impleaded as per order dated
19.10.2009 by RSJ in M.P.4/2009 in W.P.23910/06.

Prayer : Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of Certioraified Mandamus calling for the records relating to the issue of the impugned seniority list of Assistant Engineers published by the 1st respondent in his proceedings in No.E2/40455/TSTC(Salem)/2006 dated 27.11.2006 and quash the same in so far as including the names of the petitioners in the said list as Assistant Engineers and further direct the 1st respondent to prepare and approve panels of Assistant Engineers fit for promotion as Assistant Managers twice a year i.e., in April and October from the year 2002, to fill up the vacancies in the category of Assistant Manager, in the dissolved company that were accrued and existed prior to 30.12.2003 and to consider the petitioners for inclusion in the said panels and promote the eligible petitioners notionally as Assistant Managers in the respective half year retrospectively and to treat the petitioners as Assistant Managers for all purposes from 30.12.2003 in the resulting company will all service and monetary benefits including the arrears of pay.

[Prayer amended as per order dated 14.03.2018 by SPIJ

<https://hcservices.ecourts.gov.in/hcservices/>
IN M.P.1/2009 in W.P.No.23910/2006.]



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For Petitioners : Mr.N.Subramaniyan

For Respondents : Mr.D.Raghu, Standing counsel for R1
Mr.R.Prem Narayan for R2 to R5.

ORDER

The petitioners are working as Assistant Engineers in TNSCTC (Salem Division-II). The employees of the said Salem Division after amalgamation become the employees of the resulting company and their seniority as per the Notification is as follows:-

" The seniority of all employees other than officers as it existed in the dissolved company immediately before the appointed date would be maintained, implying the seniority, promotional opportunities and transfer among employees up to supervisory level shall remain protected ever after amalgamation in the resulting company in respect of employees on roll at the time of issue of orders. The employees recruited thereafter would be transferred within the jurisdiction of the resulting company. The promotion from supervisory cadre to managerial cadre will, however, be as per seniority within the resulting company. The seniority among the managerial cadre shall be recast within the resulting company on merger."

2. The category of Assistant Engineer is supervisory level. The next promotional level post is Assistant Manager which is a managerial cadre. The petitioners claim that the Assistant Manager cadre promotion shall have to be based on the seniority of Assistant Engineers in the resulting company. The service conditions of the employees of the State Transport Undertakings are governed by the rules known as Common Service Rules. It is stated that as per the Service Rules, a panel of promotion shall be prepared twice a year in the months of April and October.

3. It is averred in the writ petition that during the year 2003, when the category of Assistant Manager and Deputy Manager post vacancies arose, the Management failed to prepare panels for promotion to the post of Assistant Managers for years and they picked and chosen persons of their choice. It is further stated that the respondent management failed to prepare the panels and make appointments to the post of Assistant Engineers for the past 5 years and large number of vacancies remain vacant and lower grade persons are given additional charge. As such, the petitioners given representations from the year 2001 to the Managing Director seeking to prepare the seniority list of Assistant Engineers



and consider them for promotion. The petitioners also given another representation to the respondent to prepare panels twice a year for promotion as Assistant Managers and consider them for notional promotions retrospectively from the year 2001. Since there was no action on the part of respondent, this writ petition is filed before this court.

4. According to the learned counsel for the petitioners, the petitioners are denied of their fundamental and vested rights for consideration for promotion every half year on accrual of vacancy, for no fault of them and due to the negligence of the respondent, the petitioners are entitled to notional promotion with all monetary benefits.

5. The 1st respondent filed a counter affidavit and submitted that the seniority list as stated by the petitioners in the dissolved company and their position as stated by them is not correct. The vacancy position of Assistant Manager in the technical category as per the approved organization chart of May 2001 is only one. Even if the ban order is not taken into account for filling up the posts by promotion in the dissolved company, the petitioners would not get any promotions to the Assistant Managers cadre in the dissolved company as they were far below in the seniority. It is stated that no promotion was made both in the dissolved and resulting companies from May 2001 in the vacancies due to Government ban orders. Further even if the dissolved company not considered ban order and promoted the Assistant Engineers to Assistant Manager cadre from May 2001 in the vacancies, the petitioners would not have got any promotion as alleged since they were far below in the seniority.

6. The 1st respondent further reiterated that only due to ban order issued by the Government, the respondent Corporation has not taken any action for preparing promotional panel and not otherwise as stated by the petitioners.

7. It is also submitted by the respondent Corporation that the Government assigned number of posts that a Corporation should have in the amalgamated set up by drawing an organization chart to each Corporation in the State of Tamil Nadu and the chart relating to this Corporation has been placed in the Board and got approval for implementation. Based on this, all the vacancies in the Assistant Managers post in the amalgamated set up have already been filled up by promotion from among the existing Assistant Engineers in the combined seniority according to prevailing rules and regulations. At this stage, the prayer sought for by the petitioner ie., retrospective promotion from among the seniority list is not possible and also it will create further litigations and labour unrest. Therefore, the writ petition has no merit and it is liable to be dismissed.



of his submission relied upon the decision of Honourable Supreme Court reported in (2008) 8 SCC 648 [Union of India and others Vs. Tarsem Singh], wherein, it is held that if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. The learned counsel also relied on the reported decision in (2012) 7 SCC 610 [Vijay Kumar Kaul and others Vs. Union of India and others], wherein, it is held that it is necessary to keep in mind that a claim for seniority is to be put forth within a reasonable period of time.

9. Heard both sides and perused the records.

10. It is the case of the petitioners that as per the Service Rules, a panel of promotion shall be prepared twice a year in the months of April and October. However, the respondent Management has not prepared the panels and so, large number of vacancies remained vacant. The petitioners further raised the contention that the respondent picked and chosen persons of their choice to the promotional post instead of preparing panels and thereby the petitioners are denied of their fundamental rights for consideration of promotion every half year.

11. On going through the entire records and taking into consideration the submission made by the first respondent in their counter affidavit, it is seen that only due to ban order issued by the Government, the respondent Corporation has not taken any action for preparing promotional panel. Further as per the seniority chart, petitioners are far below in the seniority level for consideration for the promotional post of Assistant Manager. As per the approved organization chart, only in May 2001, the vacancy position of Assistant Manager arose and the name of the petitioners cannot be included in the May 2001 vacancies, as they were far below in the seniority. Further, for the vacancies that existed during 2003, the petitioner filed the Writ Petition in the year 2006, which is a stale claim and if the request made by the petitioner is considered, it will create further litigations and confusion in seniority position. Therefore, finding no merits in the claim of the petitioners, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar



To

1. The Managing Director
Tamil Nadu State Transport Corporation
(Salem Division-1) Ltd.,
12, Ramakrishna Road
Salem-636 007

+1cc to M/s.D.Raghu, TNSTC (Salem) Advocate, S.R.No.53071
+1cc to M/s.R.Prem Narayan, Advocate, S.R.No.52726
+1cc to M/s.N.Subramaniyan, Advocate, S.R.No.52604

W.P.No.23910 of 2006

JP-II (CO)
SB(26/11/2021)