



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.21403 of 2008

1.V.Selvaraj
2.M.Nagarajan
3.V.Kumarasmay
4.P.Selvam
5.T.Tamilselvam

...Petitioners

Vs

1. The Tamil Nadu Civil Supplies Corporation Limited,
represented by its Chairman and Managing Director,
12, Thambusamy Road, Kilpauk,
Chennai 600 010.
2. The General Manager (Administration),
The Tamil Nadu Civil Supplies Corporation Limited,
12, Thambusamy Road, Kilpauk,
Chennai 600 010.
3. The Senior Regional Manager,
The Tamil Nadu Civil Supplies Corporation Limited,
Sachidananda Moopanar Road,
Thanjavur 613 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned order passed by the second respondent, in Proc.No.AE5/161495/2003 dated 29.04.2008 cancelling the orders of the Chairman and Managing Director in Rc.No.E2/120791/2001 dated 05.12.2002 and stating that the appeal of the petitioners dated 29.12.2003 is rejected as devoid of merits and quash the same and consequently direct the respondents to implement the orders of the first respondent in Rc.No.E2/120791/2001 dated 05.12.2002.

For Petitioners : Mr.M.Ramamoorthi

For Respondents : Mr.C.Munusamy
Standing Counsel



O R D E R

The five petitioners in this writ petition had joined the services of the Tamil Nadu Civil Supplies Corporation (TNCSC) in the year 1982, in the post of Typist. There was a provision in the Service Regulations at the relevant point of time for conversion to Clause-III Category-I of employees i.e. Assistant, and the relevant entry reads as follows:

'CLASS III

11. Category 1 Assistant Regional Master's degree of (i) 3 years of service
Manager/ any recognised as Junior Asst. and
General University. an approved
(Admn.) probationer as
(Direct Junior Asst.
Recruitment by
Managing
Director)

(or)

(ii) 4 years of service
of which one year as
Junior Asst. and three
years as Typist or
Steno-typist or as both
and a pass in D.O.M.
And Commercial Book
keeping test.

(or)

(iii) in respect of those
who had put in not less
than 2 years of service
as Typist/ Steno-typist
as on 31.1.86, 6 years
of service as Typist/
steno Typist and a pass
in D.O.M. and
Commercial Book Keeping.'

2. Thus, the petitioners, who joined service as Typist prior to 31.05.2006, would have to complete six years of service in order to be entitled for the post of Junior Assistant. They were thus entitled to the post of Junior Assistant in the year 1988 and this is an admitted position as flowing from the applicable service regulations.

3. While this is so, a seniority list came to be prepared by R3, who was the Senior Regional Manager/SRO, in the cadre of temporary Assistants and Junior Assistants, in the year 1986, wherein the names of the petitioners did not figure and rightly so.



4. The petitioners filed a writ petition in WP.No.8456 of 1994 seeking a mandamus directing the authorities of the TNCSC to consider their position as senior to, and promote them as Assistants with effect from the date of their immediate juniors, who had completed one year of service as Junior Assistant and three years of service as Typist, with all consequential benefits. This Court by order dated 10.07.2001, issued a direction to the respondents to consider their representations within a period of three months of receipt of a copy of the that order.

5. Vide representations filed on 20.09.2001 and 16.11.2001, the petitioners demanded conversion from the post of Typist to the cadre of Junior Assistant in the year 1986. This came to be rejected on 29.10.2001 and an appeal came to be filed by way of a representation before the Chairman and Managing Director/R1.

6. While the representation was pending before R1, a report was called for by him from in regard to the correct position of fixation of seniority. It is here that things take a murky turn. The 2nd petitioner, one Mr.M.Nagarajan, was working in the office of R3, the SRM, as an Assistant and thus had access to the employment records and all files, as well as some amount of influence in the preparation of the note itself.

7. R3, for his part, had prepared a note which shall henceforth be referred to as 'original note'. This note sets out the history of appointments of the petitioners in detail and on the basis of the facts set out therein, R3 concluded that the petitioners have not completed the mandatory period of three years of service as Junior Assistant to justify their promotion as Assistant. He thus recommended that the request of the petitioners was liable to be rejected.

8. As regards the claim of the petitioners that the panel of Assistants drawn on 01.04.1996 was a temporary panel, this claim has been negatived reiterating that the panel was a regular panel drawn and published under proceedings of the SRM dated 27.12.1986.

9. The seniority of R.Paramasivam over and above that of the petitioners was reiterated pointing out that the said R.Paramasivam as well as others who were placed in seniority above the petitioners, had joined duty prior to the petitioners and had also completed the mandatory period of three years of service as per the applicable service regulations.

10. It was this report that was to be forwarded to the Chairman and Managing Director to facilitate his consideration of the petitioners' representation for conversion. However,



under a covering letter dated 12.10.2002 what was forwarded by P2 is an entirely different report altogether. This report shall henceforth be referred to as 'duplicate report'.

11. In summary, the duplicate report prepared by P2 states erroneously that the petitioners, after completion of two years of service were entitled to conversion to the post of Assistant during the year 1984, but were erroneously converted by way of promotion only in the year 1986.

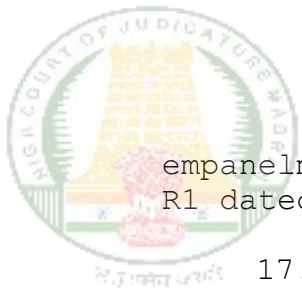
12. The fault is mischievously placed entirely at the doorstep of the management of TNCSC and the duplicate report states that it was only on account of the delay caused by the management that the petitioners been deprived of their promotion. Hence, the fault of the management, the report would state, should be taken into consideration and atoned for, and the five individuals ought to be promoted on par with Thiru.R.Paramasivam.

13. Clearly the duplicate report is a fraudulent one that has been prepared by P2 solely to advance the case of the petitioners before the management. It appears that P2 was issued a charge sheet once the aforesaid fraudulent act was discovered. An enquiry was conducted that culminated in an order dated 13.06.2007 bearing number Na.Ka.No.15269 of 2004 exonerating him of all charges.

14. This order inspires absolutely no confidence whatsoever, insofar as it is a one liner, solely reliant on the enquiry report, containing no reasoning and is wholly non-speaking, exonerating the individual in full. With this, the disciplinary action initiated as against P2 came to a standstill. I am thus not persuaded to attribute any credibility or weightage to the aforesaid report/order and eschew the same. To be fair to learned counsel for the petitioners, he too really not dispute the fraudulent act committed by P2 or the mischievous role played by him in this saga.

15. The order of R1 dated 05.12.2002 relies upon the duplicate report and hence concludes that the claim of the petitioners be accepted. The petitioners were retrospectively and notionally promoted in the cadre of Assistant on par with Mr.R.Paramasivam along with all monitory benefits and arrears of pay as per the prevalent instructions.

16. This matter would never have seen the light of day had it not been the avaricious claim by the petitioners for a subsequent avenue of promotion in 2008, for the post of Superintendent. The petitioners put forth their claim for



empanelment for the aforesaid post based upon the proceedings of R1 dated 14.01.2008.

17. The impugned order dated 29.04.2008 has thereafter come to be passed by the General Manager (Administration) arrayed as R2, who, on a perusal of the files, took note of the original as well as the duplicate reports as well as the position that the order of R1 was wholly based upon a set of manipulated facts that presented an erroneous picture to the management.

18. No doubt impugned order dated 29.04.2008 does not appear to have been preceded by a notice calling upon the petitioners to respond to the charge of manipulation of documents. However, the Managing Director has filed a counter wherein the aforesaid narration of facts have been set out and admitted in full.

19. I had, in order to satisfy myself also called for the records and the original records produced by learned counsel for the respondents would also very clearly and apparently, show the existence of the original as well as duplicate reports. The sequence of events that have transpired in this matter is categorically established and as noted by me earlier, no defence is put forth by the learned counsel for the petitioners in this regard, and rightly so.

20. In such circumstances, the non-issuance of prior notice is not relevant as it was incumbent upon the management to correct the error that had transpired and that was permitted to be committed at the original instance and not perpetrate the same.

21. At the time of filing of the writ petition, the petitioners have obtained an order of interim stay of the impugned order and as such have reaped the benefits of the promotion along with salary and all emoluments during the tenure of their service. There is absolutely no justification for any interference in the impugned order, as in my view, the petitioners have already benefited unjustifiably pending this writ petition.

22. In fact, in a case involving admitted facts as noticed in the preceding paragraphs, I am inclined to, and could well direct recovery of the salaries erroneously paid to them. However, I restrain myself, bearing in mind the guidelines and directions of the Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer) and others (2015 4 SCC 334) and seeing as the petitioners have superannuated in the year 2014.



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23. The impugned order is confirmed and this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Chairman and Managing Director,
The Tamil Nadu Civil Supplies Corporation Limited,
12, Thambusamy Road, Kilpauk,
Chennai 600 010.
- 2.The General Manager (Administration),
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AD (CO)
PR (22/11/2021)