



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal No.2295 of 2021

- 1.The Tamilnadu State Transport Corporation (Villllupuram) Ltd.,
Rep. by the Managing Director,
No.3/137, Salamedu,
Valudha Reddy Post,
Villupuram - 605 602.
 2. Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Rep. by the General Manager,
Kancheepuram Regional Office,
Chennai - Bangaluru Highways,
Karapettai, Kancheepuram - 631 552. ... Appellants
- vs.
1. M.Vasuthevan
 2. J.Kalaiselvi
 - 3.The Principal Secretary to Government,
Transport Department,
Government of Tamil Nadu,
Fort.St George,
Chennai 9. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.01.2020 passed by this Court in W.P.No.24929 of 2019.

Prayer in W.P.No.24929 of 2019:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed in Office order No.021/32550/N1/TNSTC(V)/2014 dated 05.08.2019 on the file of the second respondent herein and quash the same in so far as it relates to "no provision to promote the petitioners to the Assistant Manager Post for the present" and direct the



WEB COURT

respondents herein to strictly adhere to the seniority list communicated in letter No.021/32550/N1/TNSTC(V)/2017 dated 15.07.2017 and subsequently finalized on 15.09.2018 for the purpose of promoting the feeder category staff to the cadre of Assistant Manager and consider the choice of the petitioners on merits.

For Appellants : Mr.C.S.K.Sathish

For Respondent : Mr.N.Ishak.K.Syed Meeran
(for R1 and R2)

Mr.K.Tippu Sultan,
Government Advocate (for R3)

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

This Writ Appeal is directed against the order dated 08.01.2020 passed by this Court in W.P.No.24929 of 2019.

2. The sum and substance of the issue involved in the case on hand, is that the respondents who have been initially appointed as Programmers in the year 1998 in the Tamil Nadu State Transport Corporation, have been re-designated as Senior Programmers in the year 2005 on the pay scale applicable to that of the Senior Superintendents and thereafter they were given an enhanced pay on par with the said Senior Superintendent. In this circumstance, the 2nd Appellant, by proceedings dated 03.08.2018, has re-designated the respondents as Senior Superintendents with effect from 01.11.2005. Hence, according to the respondents, they would be entitled to be retained in the panel, treating them as holding a feeder category in the post of Senior Superintendent for promotion to the post of Assistant Manager.

3. According to the Appellant Corporation, there are three different wings, namely, the Accounts, Administrative and Technical. In the Administrative side, the post of Superintendent is a feeder category to be considered for promotion to the post for Senior Superintendent and thereafter, from the post of Senior Superintendent, they will be selected and posted as Assistant Manager. Similarly, in the Technical side from the post of Assistant Engineer, which is the feeder category, the person will be considered to be promoted to the post of Assistant Manager. There are no promotional avenues available to the Programmers, and they have been treated on par



with the pay scale alone and hence, the posts have been re-designated. At no stretch of imagination, they can be treated to be holding the feeder category post equivalent to that of the Senior Superintendent or Assistant Engineer, even though the pay scales are one and the same. According to the Appellant Corporation, mere re-designation will not entitle the respondents for promotion. The posts have only been re-designated and that the salary / pay scales have been upgraded.

4. The learned counsel for the respondents would contend that they have been appointed in the Administrative side and all along they have been treated in the Administrative wing and hence, given the pay scale that is applicable to that of the Superintendent and Senior Superintendent. Pursuant to the communication dated 30.09.2005 and 31.12.2005, the benefits have been extended to the respondents from 01.11.2005. Once the post of Senior Programmer is equated to that of the Senior Superintendent and they are extended the same scale of pay, the empanelment is perfectly correct and the learned Judge has rightly observed that in view of the proceedings, dated 03.08.2018, granting the benefits retrospectively to the respondents herein, would entitle them to get the benefit of promotional post also and the Corporation cannot deprive the promotion to them.

5. It has been brought to the attention of this Court by the respondents that two similarly placed persons, namely K.T.Govindarajan, Kumbakonam Transport Corporation and Mr.Prabhu, Erode Transport Corporation who were initially appointed as Programmers and Junior Programmers respectively, were given promotion in the Managerial Cadre. Hence, taking note of those two events, the contention of the Appellant Corporation that there is no avenue of promotion and that the post cannot be equated may not be correct.

6. At this juncture, the learned counsel for the appellant Corporation also drew the attention of this Court to the Order, dated 05.08.2019 passed by the Appellant Corporation wherein it has been stated that with reference to the Communication of the Government dated 27.05.2019, there are no provision for considering the case of the respondents/writ petitioners for promotion to the post of Assistant Manager.

7. Heard the learned counsel appearing on both side and perused the materials available on record.

8. The Respondents herein / Writ Petitioners were appointed in the Administrative side and this can be seen from the letter addressed to one of the petitioners dated 30.09.2005. For all purposes except promotion, the post of Programmer is treated on



par with other posts and the pay has also been equated. Even assuming for the sake of arguments, that they have not been included in the avenue for promotion and that the posts have been upgraded, the management has not spelt out the said factum in any one of the communication. The Writ petitioners filed a counter affidavit in this Writ Appeal, contending that two persons namely K.T.Govindarajan and Prabu, have been given promotion.

9. In reply, the learned counsel for the Appellant contended that those two persons are in different Transport Departments. Originally, all the Transport Corporations were under one roof in the State and till such time, there was no post of Programmers. But, after bifurcation and coming into creation of various Transport Corporation and introduction of these posts, the employees are being treated on par with the employees in Administrative side and as stated supra, the pay scale has also been extended to them. That being the case, we find no error in the order passed by the learned Single Judge. The details of similarly placed persons have been produced to strengthen the case of the Writ Petitioners.

10. Mr.C.S.K.Sathish, learned counsel appearing for the Corporation drew the attention of this Court to the decision of the Hon'ble Supreme Court reported in 2014 (16) SCC 593 wherein it has been categorically held that the process of up-gradation and re-designation has no correlation to the posts, as there was no selection process involved in such course of action and therefore, it cannot be treated as a recruitment at all. Up-gradation / Re-designation cannot give right to the one to claim promotion. Though we have no quarrel with the said proposition, in the present case on hand, the Writ Petitioners have been treated on par with the Administrative side wing and granted the relief. That being the case, this Court is not inclined to accept the case of the Corporation that the pay scale given to the respondents is wholly on account of up gradation/re-designation. That apart, the similarly placed persons, namely, K.T.Govindarajan and Prabhu have been granted promotion in the post of Senior Deputy Manager (HRD) and Deputy Manager respectively in the two Transport Corporations. Hence, we find no reason to interfere with the order of the learned Single Judge. Hence, the Writ Appeal stands dismissed, and the order dated 08.01.2020 passed by the learned Single Judge in W.P.No.24929 of 2019 is hereby upheld. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



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To,

WEB COPY

1.The Principal Secretary to Government,
Transport Department,
Government of Tamil Nadu,
Fort.St George,
Chennai 9.

2.The Managing Director,
Tamilnadu State Transport
Corporation (Villllupuram) Ltd.,
No.3/137, Salamedu,
Valudha Reddy Post,
Villupuram - 605 602.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Regional Office,
Chennai - Bangaluru Highways,
Karapettai, Kancheepuram - 631 552. 3.

+1 cc to Mr.C.S.K.Sathish, Advocate Sr.NO. 47580

+2 ccs to Mr.N.Ishak.K.Syed Meeran , Advocate Sr.NO. 47338

WRIT APPEAL No.2295 of 2021

SMI(CO)

A.SK(08.12.2021) .