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W.P.No.8866 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8866 of 2016

R.Rajasekar

... Petitioner

Vs.

The General Manager,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai – 600 002.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to re-designate the petitioner as Junior Assistant in terms of the orders of this Court in W.P.(MD) No.11076 and 11476 of 2014 and 4479 of 2015, dated 12.10.2015 effective from the date of appointment on 01.07.1988 since the petitioner possessed degree qualification as per rule 59(b) and (c) of the Common Service Rule and other benefits applicable to the petitioner by taking into account of the petitioners representation dated 30.06.2015.

For Petitioner : Mr.D.Soundarraaj

For Respondent : Mr.L.S.M.Hasan Fizal



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ORDER

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The relief sought for in the present writ petition is to direct the respondents to re-designate the petitioner as Junior Assistant in terms of the orders of the High Court in W.P.(MD) No.11076 and 11476 of 2014 and 4479 of 2015, dated 12.10.2015 effective from the date of appointment on 01.07.1988 since the petitioner possessed degree qualification as per rule 59(b) and (c) of the Common Service Rule and other benefits applicable to the petitioner by taking into account of the petitioners representation dated 30.06.2015.

2. The petitioner states that he was appointed as Record Clerk through direct recruitment in the year 1988 under the sports quota.

3. The grievance of the writ petitioner is that he was fully qualified for appointment to the post of Junior Assistant and in this regard, he made a claim to re-designate him as Junior Assistant.

4. The learned counsel for the petitioner made a submission that the similar issue was considered by the Madurai Bench of Madras High Court



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in W.P.MD.Nos.11076 and 11476 of 2014 dated 12.10.2015, wherein the Court directed respondents to re-designate the petitioners therein as Junior Assistant. However, the said order was passed with reference to the facts and circumstance established in respect of that petition.

5. The principles to be adopted that no employee can seek re-designation as a matter of right. Re-designation is an administrative decision to be taken and only in the event of violation of service conditions or infringement of right, then alone the employee can approach the Court of Law. Furthermore, post of Record Clerk cannot be equated with the post of Junior Assistant. Record Clerk is the feeder category of Junior Assistant and therefore, the petitioner cannot seek higher post under the guise of re-designation.

6. A person holding the post of Record Clerk either to be appointed to the post of Junior Assistant by way of transfer or to be promoted based on any rules in force. Contrarily, by way of re-designation, no employee can be posted in higher posts, which carry more scale of pay than that of the post held by such employee. This being the basic principles to be followed in the



present case, the relief as such sought for to re-designate the writ petitioner from the post of Record Clerk to the post of Junior Assistant cannot be granted. If at all any such relief was granted on earlier circumstances, such relief cannot be considered as precedent for the purpose of repeating the same.

7. The Hon'ble Supreme Court of India in the case of ***Basawaraj and Others Vs. Special Land Acquisition Officer*** reported in ***[(2013) 14 SCC 81]*** in unequivocal terms held that "It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief / benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong



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order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order / decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would made functioning of administration impossible.”

8. Whenever the facts are placed before the Court in writ proceedings it is to be considered with reference to the principles settled and the rules applicable to the case. Contrarily, based on some orders earlier passed, mechanically, it cannot be repeated so as to commit mistakes in perpetuity. The basic principles as established are that the post of Record Clerk is not equal to the post of Junior Assistant. In fact, the post of Junior Assistant is higher post and therefore, by way of re-designation an employee working in the cadre of Record Clerk cannot be posted as Junior Assistant and the rule would not permit such re-designation. This being the factum, the relief as such sought for in the present writ petition is untenable.



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9. Accordingly, the Writ Petition stands dismissed. No costs.

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Jeni
Index : Yes
Speaking order

To

The General Manager,
State Express Transport Corporation Ltd.,
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S.M.SUBRAMANIAM, J.

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