



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Pronounced on : 31.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.7011 of 2013

A.K.Thangavelu

...Petitioner

..VS..

1.The State of Tamil Nadu
rep. By its Principal Secretary to Government,
Transport Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division) Limited,
Bye Pass Road, Madurai - 625 010.

3.R. Subramaniyan,
Assistant Manager (Legal),
TNSTC Ltd., Madurai Region,
Bye Pass Road, Madurai - 625 010.

4.K.Muthupandi
Assistant Manager (Legal),
TNSTC Ltd., Madurai Region,
Bye Pass Road, Madurai - 625 010.

5. K. Thirugnanasambandam,
Assistant Manager (Legal),
TNSTC Ltd., Dindigul Region,
Dindigul.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceeding CL2/176/2012, dated 29.05.2012 and quash in so far as denial of promotion alone, and consequently, directing the respondents 1 and 2 to promote the petitioner to the cadre of Assistant Manager (Legal) from the post of Superintendent (Legal) on the date when his juniors in service were promoted as Superintendent in the 2nd respondent Corporation with all consequential benefits.



For Petitioner : Mr.Govindan
for Mr. A. Rahul
For R1 : Mrs.G. Farjana Ghoushia
Special Government Pleader
For R2 : Mr. J. Senthil Kumaraiah
For R3 to R5 : No appearance

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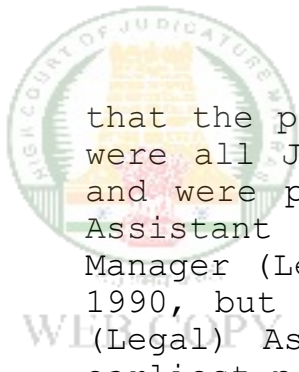
O R D E R

The present Writ Petition is filed to quash the impugned order dated 29.05.2012 and consequently, direct the respondents to promote the petitioner to the cadre of Assistant Manager (Legal) from the post of Superintendent (Legal) on the date when his juniors in service were promoted as Superintendent in the 2nd respondent Corporation with all consequential benefits. The impugned order denied the promotion of the petitioner.

2. The brief facts of the case are that the petitioner joined as Clerk in the second respondent Corporation on 30.01.1980 with the basic qualification of B.Sc., Then the petitioner has acquired a Law degree in the year 1990, then PG Degree in Political Science in the year 1992 through Distance Education of Madurai Kamaraj University after getting no objection from the 2nd respondent Corporation. Since the petitioner was not granted promotion, he has filed a Writ Petition in W.P.(MD).No.2855 of 2012 before this Court to promote the petitioner as Assistant Manager (Legal) from the post of Superintendent and to fix scale of pay under Fundamental Rules 22(B) from the date of promotion i.e. from 29.12.2010 onwards. This Court vide order dated 24.05.2012 directed the respondents to consider the petitioner's representation and pass orders on merits. The petitioner has attained superannuation and retired on 31.05.2012. The respondents have sent a reply dated 29.05.2012 stating the petitioner has not attained the cadre of Senior Superintendent which is the feeder category to the post of Assistant Manager and as per Common Service Rule, the petitioner is not eligible to be posted as Assistant Manager and after reviewing his service particulars, finally the petitioner attained the post of Superintendent with effect from 29.12.2010 and thereafter the petitioner has retired on 31.05.2012.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The contention of the petitioner is that the following the senior colleagues viz., A. Balakrishnan, P. Govindaraj, P. Thangamani, B. Chandramohan and P. Kannayeeram, has also acquired B.L., Degree and the seniors were conferred promotion as Superintendent (Legal) Assistant Manager (Legal), Deputy Manager (Legal). Because of the inspiration of the seniors the petitioner and some of his juniors have acquired B.L. Degree with the fond hope

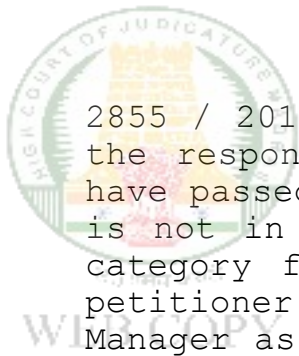


that the petitioner will be promoted. The respondents 3 to 5 herein were all Juniors to the petitioner who have acquired B.L., Degree and were promoted as Superintendent from the year 1992 to 1997 as Assistant / Senior and now they are functioning as Assistant Manager (Legal). The petitioner has completed Law degree in the year 1990, but he was denied promotion from the cadre of Superintendent (Legal) Assistant Manager (Legal), Deputy Manager (Legal) at the earliest point of time.

5. The petitioner was transferred from Establishment Department to Legal Department in the year 1991 but was posted as Assistant (Legal). From 1992 onwards, the petitioner has repeatedly submitted the representations to promote him on par with his juniors who were promoted as Superintendent. The petitioner is comparing with K.P. Sekar, Junior Assistant of M/s. Anna Transport Corporation, Salem was promoted as Superintendent by direct recruitment from Junior Assistant; S. Jeyaseelan, M/s. Annai Sathya Transport Corporation, Dharmapuri was promoted as Superintendent by direct recruitment from Junior Assistant in the year 1989 and now he is functioning as Assistant Manager (Legal) at Virudhunagar Region. One S. Krishnamoorthy, Assistant and S. Thiruvengadam, Assistant were promoted in Pallavan Transport Corporation, Chennai were promoted as Superintendent in the year 1992. One P. Mahalakshmi, who was recently transferred from Virudhunagar to Madurai region and again transferred to Kumbakonam was promoted as Senior Superintendent for acquiring ICWA. Likewise one A. Ravichandran Section Officer was transferred from State Express Corporation to State Transport Corporation, Virudhunagar and was promoted as Assistant Manager at Virudhunagar Region, who has basic qualification as B.Sc. and has acquired M.B.A., degree. But the petitioner has completed 30 years of service and he was promoted as Superintendent from Selection Grade Senior Assistant on 29.12.2010 and the petitioner has acquired Law Degree in the year 1990 and has not promoted from 1990 to 2010 but all the persons stated above were granted promotion after they acquired higher qualification.

6. The contention of the petitioner is even the persons who are not having Law Degree, but was having Mechanical Engineer Degree, ICWA Degree, MBA Degree were given promotion as Superintendent (Legal). The person with Law Degree alone ought to be promoted and posted as Superintendent (Legal). The Transport Corporation is having Common Service Rules which is uniformly applicable to all its employees and the three Branches in all Transport Corporation viz., 1) Technical Branch 2) Traffic Department 3) Administration Department. In the Technical Department, Non-Technical Personnel should not be posted, but, the respondents have deliberately posted the non-technical persons in the post of Superintendent (Legal).

7. The respondents have filed a detailed counter stating
<https://hdsrtps.ecourt.gov.in/eservices/> petitioner had filed a writ petition in W.P. (MD) No.



2855 / 2012 and this Court vide order dated 24.05.2012 has directed the respondents to consider and pass orders. Then the respondents have passed an order, wherein it has been stated that the petitioner is not in the cadre of Senior Superintendent, which is the feeder category for the promotion post of the Assistant Manager and the petitioner is not eligible to get promotion to the post of Assistant Manager as per Common Service Rules. The petitioner was not granted any assurance to grant promotion if the petitioner qualifies law degree. The Rule 23(a) of the Common Service Rules states that promotion would be granted based on availability of vacancies. The petitioner has no experience on the original side of City Civil Court or Mofussil Court for a period of not less than five years. No appointment has been made in the 2nd respondent corporation during the time of claim by the petitioner. For the averment in paragraph 9 of the affidavit the respondents have stated that the said A. Balakrishnan, P. Govindaraj and P. Thangamani were appointed as Superintendent (Legal) and then promoted as Assistant Manager Legal in Rani Mangammal Transport Corporation, which was renamed as Tamil Nadu State Transport Corporation (Madurai-Division IV) Limited, Dindigul. For the said R. Chandramohan and P. Kannayeram promotion was granted in 1986 itself when there were vacancies at the 2nd respondent corporation. The 4th and 5th respondents were appointed as Superintendents in Veeran Sundralingam Transport Corporation Ltd., Virudhunagar and renamed as Tamil Nadu State Transport Corporation (Madurai-Division V) Limited, Virudhunagar and they got promotion in their respective transport corporation set up before merger and the two corporations were merged with the 2nd respondent corporation during the year 2004. The 3rd respondent was promoted as Superintendent in the year 1993 based on the ACS (Inter) qualification and not on Law Degree, when there were vacancies. The above persons were promoted as Senior Superintendents and after fulfillment of required numbers of years of service a few of them were promoted as Assistant Managers (Legal) and Deputy Managers (Legal) and some of them retired even before their due for promotion as Assistant Manager (Legal). The said Mahalakshmi was appointed in Tamil Nadu State Transport Corporation (Madurai-Division V) Limited, Virudhunagar as Junior Assistant, due to vacancy in Accounts wing at Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., and she has ICWA (Inter) qualification she was appointed as Senior Superintendent and subsequently she got permanent transfer to the 2nd respondent corporation. The said Ravichandran, Section Officer had the qualification of B.Sc., and PGDCA at the time of appointment at State Express Transport and then had acquired M.B.A. and M.C.A. and got inter corporation transfer to the 2nd respondent corporation and then he got promotion in the 2nd respondent corporation as per seniority and as per provisions of Common Service Rules. The petitioner should not place reliance on the promotion / appointment made in the other independent state owned transport corporations. The Senior Assistant is the feeder cadre post for the post of Superintendent and Senior Superintendent is the feeder cadre post for the post of Assistant Manager as per Common Service Rules. All



the persons referred by the petitioner were appointed as fresh entrant in the Superintendent Cadre and they got further promotions in newly amalgamated 2nd respondent corporation after completing required number of service in the feeder cadre post as per the provisions of the common service rules.

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8. The petitioner has filed additional affidavit and rejoinder affidavit and has denied the allegations of the respondents. The petitioner has stated that the technical persons were granted promotion in legal department and has declined promotion to the legally qualified persons. Especially one M. Rahamathullah was appointed in Legal Department, who is qualified as DME. The said Mahalakshmi was transferred to other corporations, brief period she was stopped from the service and even then the said Mahalakshmi was granted promotion in the corporation.

9. After considering the affidavit, additional affidavit, counter affidavit and rejoinder and on perusal of the materials placed on record, it is seen that the petitioner has qualified in the year 1990 itself. The petitioner was posted as Assistant in Legal Department and was assigned the job of follow up of MACOP cases, miscellaneous cases like civil suits, follow up in MACT / Suits, land acquisition, issuance of cheques in MACT and any other work assigned by D.M. (Legal). The respondents contention that the petitioner has no experience on the original side of City Civil Court of Mofussil Court for a period of not less than five years which is not acceptable since from 1991 onwards the petitioner is attending to Mofussil Cases.

10. The contention of the respondents that the petitioner was not entitled to be appointed in the post of Assistant Manager (Legal) since the method of recruitment is by transfer from among the holders of the posts of Senior Superintendent (Admin and Accounts) and Assistant Welfare Officer who possess Degree in Law (BL) awarded by a recognized University or by promotion from among the holders of the post of Superintendent (Admin and Accounts) and Superintendent (Legal) who possess a degree in law (BL) awarded by a recognized university and who have completed not less than five years in the grade of Superintendent or by direct recruitment. The contention of the petitioner is he was not granted the post of Superintendent (legal) inspite of his B.L. degree as early as 1990 itself. Therefore the reasoning stated by the respondents is erroneous, when the petitioner completed B.L., degree in 1980 and after five years of experience, he comes under zone of consideration.

11. The contention of the respondents is that the petitioner has no such experience as prescribed by the Common Service Rules, but from the records it is seen that the petitioner was appointed as Assistant in the year 1991 and from then onwards

<https://hdsresportal.gov.in/services>



12. The contention of the respondents that any appointment in the post of Superintendent (Legal) and Assistant Manager (Legal) would depend upon the vacancy available. The second respondent Corporation has not made any appointment during the time of claim made by the petitioner. The further contention of the respondents is the senior colleagues where the petitioner referring got promotion in the Transport Corporation which are having the independent entity. After the promotion only they were taken into service to the of the 2nd respondent Corporation and the petitioner cannot compare with seniors. As far as the Seniors are concerned the said B. Chandramohan and P. Kannayeram were promoted as Superintendent (Legal) during the year 1986 itself and got regular promotion and retired in the 2nd Corporation itself. It is seen that the 2nd respondent has entertained the candidates who were transferred from other corporations and has granted promotion and therefore the said contention is rejected. The third respondent was promoted as Superintendent based on his ICWA qualification and not law degree. The respondents admitted that the third respondent was elevated as Superintendent in the year 1983 based on the ACS inter qualification. It is the contention of the petitioner that the Superintendent (Legal) ought to be appointed by the Law graduate and not by non- Law graduate. Since the third respondent is having only ACS qualification, the petitioner is entitled to be placed as Superintendent (Legal) in the place of third respondent. As rightly pointed out the said Mahalakshmi was granted transfer from another corporation and was granted promotion based on her qualification. When the in house candidate is available then the respondents ought to have granted promotion to the candidate then only ought to have entertained the subsequently transferred persons. On perusal of the promotions of the other persons it is seen that the candidates were granted, even though they were transferred from other corporations, as rightly pointed out the respondents have not followed any Common Service Rules when the said candidates were granted promotion. As rightly pointed out the legal department were promoted by technical persons and the legal graduates were not granted the promotion. Therefore this Court is of the considered opinion the petitioner is entitled to the promotion. However the petitioner would be entitled after five years from the date of completion of the B.L. degree, since after five years only the petitioner shall be considered as having experience of five years in the legal department.

13. Since the petitioner has attained superannuation, this Court is of the considered view that the petitioner is entitled to be promoted notionally in the year 1995. Therefore, the respondents are directed to place the petitioner notionally as Superintendent (Legal) from the year 1995 onwards and disburse the monetary benefits to the petitioner. The respondents shall grant the subsequent promotion notionally and also grant monetary benefits. The said exercise shall be completed within a period of six weeks

<https://hcscs.courts.gov.in/tosevice/> receipt of a copy of this order.



14. Accordingly, the Writ Petition is disposed of with the above direction. No costs.

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Sd/-

Assistant Registrar (P&A)

/ /2022

Sub Assistant Registrar(CS)

trp

To

1. Principal Secretary to Government,
Transport Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division) Limited,
Bye Pass Road,
Maudrai - 625 010.

+1 CC to M/s.A.RAHUL, Advocate (SR-3091[F] dated 31/01/2022)

Order made in
W.P(MD) No.7011 of 2013
31.01.2022

nsn(CO)

GC(25.02.2022) 7P 4C