



W.P.(MD) No.3172 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.3172 of 2020

A.Sivaram

... Petitioner

-VS-

1.The State of Tamil Nadu
Represented by its Secretary
Department of Transport,
Fort St. George,
Chennai. 600 002.

2.The Director
Professional and Executive Employment Office,
District Employment Office Building,
Thiruvika Industrial Estate,
Guindy, Chennai 600 032.

3.The Assistant Director,
Professional and Executive Employment Office,
District Employment Office Building,
Thiruvika Industrial Estate,
Guindy, Chennai 600 032.

4.The Managing Director,
State Express Transport Corporation
Thiruvalluvar House
Pallavan Salai, Chennai



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5.The General Manager (Admn)
State Express Transport Corporation
Thiruvalluvar House
Pallavan Salai, Chennai

6.Chandrasekar
Assistant Manager (DA Section)
State Express Transport Corporation
Thiruvalluvar House
Pallavan Salai
Chennai

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in letter No. 73/057399/HR2/SETCTN/2011 dated 31.12.2016 on the file of the respondent No.4 and the consequential impugned seniority list published by the respondent No.5 and quash the same as illegal and consequently for a direction, directing the respondents to refix the seniority of the petitioner by placing the petitioner above the respondent No.6 in the seniority list of degree holders dated 27.11.2006 on the file of the respondent No.5 within the time stipulated by this Court.



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For Petitioner : Mr.T.Aswin Rajasimman

For Respondents : Ms.Christy Theboral
Additional Government Pleader for R1 to R3

Mr.K.Senthilkumar for R4 to R6

ORDER

The petitioner challenges the impugned order of the respondent No.4 dated 03.12.2016 and for a direction to the respondents to refix the seniority of the petitioner by placing him above the respondent no.6.

2.The case of the petitioner in nutshell is as follows:

The case of the Petitioner is that he was appointed as an Assistant Engineer on 07.04.1999 in the 4th Respondent Corporation and later promoted in the post of Senior Assistant Engineer and thereafter as Assistant Manager. As per the direction of the corporation, he has attended one year apprenticeship training. However, leaving the petitioner herein, six co-trainees, who were juniors to him, was granted job vide office list No.95G0836 dated 03.01.1996. Therefore, he made a representation to the 3rd Respondent on 22.01.1997. The 3rd Respondent had sent a letter dated 30.01.1997 stating that though the Petitioner is the



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seniormost registrant of the said employment exchange, due to clerical error, his name was not sponsored. Upon the petitioner filing a writ petition in W.P.No.13182 of 1998 to appoint him in the vacant post by considering his representation dated 22.01.1997 and as per the letter of the 3rd Respondent dated 30.01.1997, this Court passed an order to consider his representation and the same was considered and he was appointed as company trainee on 26.03.1999 and he was posted as Assistant Engineer on 01.05.2000. Since the Petitioner was placed below his juniors, he made another representation dated 23.06.2011 to the respondents to refix his seniority list and the same was not considered and therefore, he filed another writ petition in W.P.(MD).No.10879 of 2011. This Court, by order dated 04.10.2016, directed the respondent to consider his representation. In compliance to the said order, the respondents passed the present impugned order on 31.12.2016 and consequential impugned seniority list, challenging which, the petitioner is before this Court.

2.1. The learned counsel for the petitioner would submit that though the petitioner is entitled to be in the seniority list above the 6th



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respondent and others, who are juniors to him, non inclusion of his name is in violation of Article 14 of the Constitution of India and also violative of principles of natural justice and the omission of the petitioner's name by the third respondent and the consequential seniority list published by the respondents is not sustainable and hence, interference is warranted to the impugned order and the seniority list.

3. In support of his contention, the learned counsel relied upon the order of this Court in W.P.No.22866/2019 dated 23.03.2020 to contend that as per Section 40(1)&(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the petitioner is entitled to be considered.

4. The learned standing counsel appearing for the respondents Corporation would submit that the 6th respondent was appointed prior to the petitioner and the petitioner was appointed only in the year 1999. The learned counsel would further contend that the clerical mistake committed by the employment exchange cannot be put against the corporation, since the 6th respondent was sponsored by the employment



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exchange at the relevant point of appointment as company trainee and further the petitioner, after entering the service he was absorbed as Assistant Manager and thereafter, he was promoted to various levels. However, after lapse of a decade, the petitioner now made a representation in the year 2016, to refix the seniority, prior to that there were several promotions granted to the petitioner as well as the 6th respondent and without challenging the initial anomaly, filing the present writ petition, after a decade, is not sustainable.

5. He would further submit that even a bare perusal of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 (hereinafter referred to as 'the Act'), makes it clear that the fixation of seniority in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in schedule V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.



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6. Heard the learned counsel for the petitioner, learned Additional Government Pleader for the respondents 1 to 3, the learned standing counsel for the respondents 4 and 5 and also perused the materials available on record.

7. The facts with regard to the appointment of the petitioner as trainee on 07.04.1999 and his subsequent absorption as Assistant Engineer on 01.05.2000 and the appointment of the 6th respondent as company trainee on 24.01.1996 and his subsequent promotion as Assistant Engineer on 01.03.1997 are not in dispute. While so, after lapse of a decade, the petitioner made a representation for refixation of seniority in terms of Section 40 of the Act. However, Section 40 makes it very clear that the fixation of seniority in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule V, where it applies and the date of commencement of his probation shall be the date on which he joins duty irrespective of his



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seniority. In the present case, the employment exchange, based on the training undergone by the petitioner and the 6th respondent, sponsored the name of the 6th respondent for the post of company trainee. Accordingly, the 6th respondent was sponsored by the employment exchange at the relevant point of time and he was appointed as a company trainee on 24.01.1996 and subsequently regularised as Assistant Engineer on 01.03.1997, whereas the petitioner was sponsored by the employment exchange in the year 1999. Though it is true that the employment exchange inadvertently has not sponsored the name of the petitioner along with the 6th respondent, however, after a lapse of a decade, it cannot be held either against the respondent corporation.

8. Time and again, this Court has held that settled things cannot be unsettled, after a decade. Further the decision relied upon by the petitioner relates to a person, who has completed the probation and she has also cleared the examination within a period of three years and therefore, this Court allowed the said writ petition in terms of Section 40 of the Act. Therefore, the decision cannot be applicable to the present case and the relief sought for by the petitioner is liable to be rejected on



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the ground of delay and laches. Accordingly, the writ petition fails and

the same is dismissed on the ground of delay and laches. No costs.

Consequently connected Miscellaneous Petitions are closed.

08.12.2022

NCC : Yes/No
Index : Yes/No
Internet : Yes

RR



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To

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Department of Transport,
Fort St. George,
Chennai. 600 002.

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Professional and Executive Employment Office,
District Employment Office Building,
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Guindy, Chennai 600 032.

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M.DHANDAPANI, J.

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