



W.P.(MD)No.4112 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4112 of 2020

T.Nagasundaram

... Petitioner

Vs.

1. The Principal Secretary to Government and
the Chairman of the State Transport Undertakings,
Government of Tamil Nadu,
Transport Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

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

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the second respondent dated 20.07.2019 and quash the same and direct the respondents to promote the



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petitioner notionally from 04.07.2016 as Deputy Manager in the post of Company Secretary in the respondent's Corporation as per Section 203 of the Companies Act, 2013 and as per the present Service Rule of the respondent Corporation enunciated by the Government vide Letter No. 16957/D2/2014 dated 04.07.2016 and consequently, to pay all attendant benefits.

For Petitioner : Mr.R.Saravanan
For Respondent : Mrs.K.Christy Theboral
Additional Govt. Pleader for R1
Mr.T.Senthil Kumaraiah
Standing Counsel for R2

O R D E R

This Writ Petition has been filed to call for the records of the impugned order passed by the second respondent, dated 20.07.2019, quash the same and direct the respondents to promote the petitioner notionally from 04.07.2016 as Deputy Manager in the post of Company Secretary in the respondent Corporation as per Section 203 of the Companies Act, 2013 and as per the present Service Rule of the respondent Corporation enunciated by the Government vide Letter No.16957/D2/2014, dated 04.07.2016 and consequently, to pay all attendant benefits.



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2. The case of the petitioner is that the petitioner was appointed as Junior Assistant (Cash) Trainee on 14.07.1987 in M/s.Pandiyar Roadways Corporation Limited, Madurai Unit II and thereafter, he was transferred to the Marudhu Pandiyar Transport Corporation Limited, Karaikudi on bifurcation. He joined in the second respondent Corporation as Superintendent with effect from 09.04.2012 and thereafter, he was promoted as Senior Superintendent with effect from 02.02.2013 and Assistant Manager on 31.12.2015. He retired from service on 30.04.2018. During the tenure of his services, the petitioner acquired the educational qualifications of M.Com., B.L., M.B.A., PGDCA, Diploma in Journalism and Company Secretaryship Course and thereafter, he became the Associate and then Fellow Member of the Institute of Company Secretaries of India (A.C.S). Based on the educational qualifications and experience, he made representations for the post of Company Secretary and for promotion for Deputy Manager cadre. However, the said representations were rejected through the impugned order, dated 20.07.2019. Challenging the same, the present Writ Petition.



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3. The learned counsel appearing for the petitioner would submit that admittedly, the petitioner was appointed as Junior Assistant (Cash) Trainee and after subsequent promotions, he was promoted as Assistant Manager in the year 2015. The petitioner is eligible to be appointed to the post of Company Secretary and the said post is created as per Section 203 of the Companies Act, 2013 which mandates all Companies to appoint the Company Secretary, the Managing Director and the Chief Financial Officer. The Assistant Manager post is a feeder category of the Deputy Manager-cum-Company Secretary. Since the petitioner is in the feeder category, prior to his retirement, he made a representation to appoint him as Company Secretary which was rejected on the ground that Rule 23(b) of the Common Service Rules prohibits for appointment who is in probation period which is not sustainable one and Section 203 of the Companies Act, did not prescribe any qualification for appointing the post of Company Secretary. Further, as per Rule 1(d) of the Common Service Rules, the directions or orders or instructions that has to be issued by the Government shall have the effect of superseding the relevant provisions of these Rules and the same has to be implemented by the Transport Corporation in letter and spirit . Further in the



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present case, Rule 1(d) of the Common Service Rules was not followed and relying 23(b) of the Common Service Rules is not sustainable and accordingly, he prayed for allowing the Writ Petition.

4. Per contra, the learned Standing Counsel appearing for the second respondent would submit that Rule 23(b) of Common Service Rules restricts to give promotion for probationer that *"no person shall be eligible for promotion to a category of post unless he has satisfactorily completed the probation, if any, in the category of post held by him at the time of such promotion."* He further submitted that at the time of joining in the respondent Transport Corporation on 18.12.2015 the petitioner's designation was Senior Superintendent only. Subsequently, on 31.12.2015, he was promoted as Assistant Manager in the Administration Wing but not on Secretary Wing. Therefore, he was not at all eligible for the post of Company Secretary in Deputy Manager cadre as per the Common Service Rules and the service conditions of the respondent Corporation. Therefore, on 20.07.2019, the respondent Corporation passed rejection order. Hence, he prayed for dismissal of this Writ Petition.



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5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service as Junior Assistant (Trainee) on 14.07.1987 and after subsequent promotions, he was promoted as Assistant Manager in the year 2015. It is also undisputed fact that the petitioner is in feeder category in the post of Company Secretary, i.e., Deputy Manager cadre. Hence, he made a representation to the respondents and the same was rejected on the ground that the petitioner had not possessed qualifications in terms of Rule 23(b) of the Common Service Rules. It is relevant to extract hereunder Rule 23(b) of the Common Service Rules:

"No person shall be eligible for promotion to a category of post unless he has satisfactorily completed the probation, if any, in the category of post held by him at the time of such promotion."

7. In the present case, the petitioner possessed the feeder category in the year 2015. However, the post of Assistant Manager has to be affirmed



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by declaring the probation period. Normally, the probation period is two years and the probation period came to be end on 30.12.2017. Relying on the said probation, the petitioner's candidature was rejected which cannot be interfered with. Hence, the prayer sought for in this Writ Petition cannot be granted.

8. Accordingly, this Writ Petition is dismissed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

vji

To

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the Chairman of the State Transport Undertakings,
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2. The Managing Director,
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