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W.P.(MD)No.19973 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.19973 of 2014

and

M.P.(MD)No.1 of 2014

R.Devaraju

... Petitioner

VS.

1.The Management of Tamil Nadu
State Transport Corporation
(Kumbakonam) Limited,
Trichy-Region,
represented by its Managing Director,
Trichy.

2.V.Nagaraj

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, to declare that the action of the 1st respondent in giving 2nd renew / designation of Selection Grade Driver and 3rd review/designation of Special Grade Driver to the 2nd respondent with effect from 01.05.1998 and 01.05.2003 respectively by condoning the periods of his absence



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from duty and LLPS and counting the same as his duty/service period for increments and review and also in giving him promotion to the post of Driving Instructor with effect from 22.03.2013 as illegal and consequently, to set aside the same and to direct the 1st respondent to give promotion to him and others to the post of Driving Instructor based on seniority of Special Grade Drivers-Level-6/Special Grade Drivers-Level 5/Special Grade Drivers-Level 4 in accordance with the rules in force.

For Petitioner : No appearance
For R1 : Mr.D.Sivaraman

ORDER

This writ petition is filed for issuance of a writ of Declaration, to declare that the action of the 1st respondent in giving 2nd review / designation of Selection Grade Driver and 3rd review/designation of Special Grade Driver to the 2nd respondent with effect from 01.05.1998 and 01.05.2003 respectively by condoning the periods of his absence from duty and LLPS and counting the same as his duty/service period for increments and review and also in giving him promotion to the post of Driving Instructor with effect from 22.03.2013 as illegal



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and consequently, to set aside the same and to direct the 1st respondent to give promotion to him and others to the post of Driving Instructor based on seniority of Special Grade Drivers-Level 6/Special Grade Drivers-Level 5/Special Grade Drivers-Level 4 in accordance with the rules in force.

2. The petitioner joined the first respondent corporation on 13.07.1989. The first respondent follows a scheme called “Longevity Pay Scheme or Time Bound Promotion Scheme”. Under the scheme, 5 reviews along with grades/designations would be given at the interval of 6 + 7 + 8 + 8 + 3 years from the date of appointment of the employee. The time bound promotion would be decided by a committee consisting of 3 Officers and the committee will sit at the end of every 3 months and review the records of the employees. The contention of the petitioner is that the respondents have given 3 reviews designated special grade with effect from 01.05.2012. In spite of “three time bound promotions”, the petitioner was still continuing as Driver. The second respondent herein was appointed on 10.10.1981 and belongs to a trade union called Anna Thozhirsanga Peravai. The



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contention of the petitioner is that the vacancy in the post of Driving Instructor arose and the same were to be filled up. The petitioner and some other persons were eagerly awaiting to be promoted as Driving Instructor, but the first respondent neither issued seniority list nor issued a panel for promotion. Surprisingly, the first respondent promoted 4 Drivers, with respect of Driving Instructor from 22.03.2013. The second respondent was one among them and his promotion created bitter discontent among the workers and Trade Unions except the Union, the second respondent belongs to.

3. The further contention of the petitioner is that the second respondent was not at all qualified, since he was continuously absenting from duty for years together and he had not earned any review benefits. The minimum qualification to be considered to the post of Driving Instructor is the person should have at least 3 review benefits. For the second respondent, the second review was postponed and the was not given to him until 31.01.2013. The second respondent joined the service on 10.10.1981 and he could have earned the first review at the end of



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1987 but he received the first review only on 01.05.1989 due to his absence from duty. He was on loss of pay for 140 days, therefore, the first review was postponed by one year. The second review ought to have been granted only in 1996 but the second review was also postponed because of loss of pay, thereby, the second respondent had not worked the required number of days within the review period of 7 years from 1989. The second respondent was continuously absenting from duty for years together from January 1998 onwards, hence the second respondent is not eligible. However, the first respondent has granted the said promotion and the first respondent has not considered the petitioners candidature and granted promotion. Aggrieved over the same, the present writ petition is filed.

4. The first respondent has filed a counter affidavit stating that the writ petition is not maintainable. On facts the respondents submitted that the petitioner joined the service from 13.07.1989 and the second respondent joined the service on 10.10.1981. The respondent had submitted a comparative chart and the same is



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extracted hereunder:

Date of appointment / review	Petitioner	2 nd respondent	Designation
Appointment	13.07.1989	10.01.1981	Driver
1 st review	01.08.1995	01.05.1989	Senior driver
2 nd review	01.02.2005	01.05.1998	Selection Grade Driver
3 rd review	01.05.2012	01.05.2006	Special Grade Driver

The first respondent issued a seniority list of Special Grade Driver during the month of March 2013 containing the names of 28 drivers for the post of Driving Instructor for 4 vacancies in which the petitioner's name was in Serial No. 29 in the seniority list. The 1st respondent has extracted the first seven persons service details and the same is extracted hereunder:



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Sl. No	Name and St.No	Date of Birth	Date of Joining	Date of Probation	Date of Confirm Porbation	Date of Rev-I	Date of Rev-II	Date of Rev-III	Date of Rev-IV	Date of Retirement
1	Anbalagan.M St.No.3334 and PBR 79DR2034	05.06.1955	20.12.1979	01.01.1981	01.07.1981	01.02.1986	01.02.1994	01.02.2001	01.02.2009	30.06.2013
2	Rajendran.K. St.No.3251 and MNP 79 DR 2001	10.05.1955	01.06.1979	01.06.1980	01.12.1980	01.02.1986	01.08.1995	01.02.2004		31.05.2013
3	Palanikumar. P. St.No.3606 and HO 83DR2001	05.04.1955	19.01.1983	01.02.1984	01.02.1985	01.05.1989	01.05.1997	01.05.2004	01.05.2012	30.04.2013
4	Radhakrishna n.K. St.No.3633 and DCN (T) 83 DR2015	20.09.1958	18.06.1983	01.07.1984	01.01.1985	01.08.1989	01.11.1997	01.02.2005		30.09.2016
5	Selvaraj.R St.No.4288 and HO84 DR 2020	21.06.1961	12.07.1984	04.05.1985	04.05.1985	01.11.1990	01 02.1999	01.02.2006		30.06.2019
6	Nagaraju.V St.No.3527 and TYR 81 DR 2062	05.01.1959	10.10.1981	01.02.1983	01.08.1983	01.05.1989	01.05.1998	01.05.2006		31.01.2017
7	Kandasamy.P S.No.3683 and KR-1 84 DR 2021	29.05.1961	14.07.1984	14.07.1986	14.01.1987	01.11.1990	01.11.1998	01.08.2006		31.05.2019



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Further, the first respondent submitted that there are eligible persons above the petitioner. The petitioner is in serial number 29, there were eligible 28 persons in the seniority list and hence the petitioner is not even in the zone of consideration. Even if it is taken that the 2nd respondent is not entitled to, then there are other 27 persons who are in the zone of consideration and there were only 4 vacancies, in such circumstances the petitioner is not at all entitled to the promotion at all. Moreover, the Serial Nos. 1 and 4 were not willing to the said promotion. As far as the person in Serial No. 2, the disciplinary proceedings were initiated against him and so he was disqualified. Hence, the selection committee recommended the remaining 4 employees whose names were in Serial Nos. 3, 5, 6 and 7 including the second respondent (who is in the Serial No. 6) were granted promotion. The respondents further submitted that at the time of preparing the seniority list and the panel list for the Diving Instructor, there were only 2 Drivers who had received fourth review, of which the 1st person has expressed not willing. The third person received 4th review, remaining drivers received only 3rd review including the second respondent. Even though the 5, 6 and 7 had received only 3rd



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review, they were considered since there are no available persons who had received fourth review. But the petitioner was not even in the seniority list as he received 3rd review only in the year 2012. Therefore, the petitioner has no right to file this writ petition itself. As far as the allegation of long absence of the 2nd respondent is concerned, the 2nd respondent submitted an appeal to the appellate authority and the authority had condoned the absence and the period was regularized as duty period. The petitioner has alternative remedy to raise an industrial dispute before the appropriate forum. For all these reasons, the respondents prayed to dismiss the writ petition.

5. The petitioner had filed rejoinder to the Counter and has stated that the 2nd has not received any 2nd and 3rd review as on the date of 01.05.2006 and his name cannot be recommended. Moreover, the respondents admit that the petitioner was given 3rd review on 01.05.2012, but the petitioner's name was not found place in the seniority list for the month of 2013 is illegal and hence prayed



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to allow the writ petition.

6. Heard Mr.D.Sivaraman, appearing for the first respondent and perused the records placed before this Court.

7. The 1st issue that was raised by the 1st respondent is that the petitioner is having an alternative remedy and he ought to raise an industrial dispute under Section 2(k) before the Industrial Tribunal. On perusing the records, it is seen that the writ petition is filed in the year 2014 and was kept pending all these years. Therefore, this Court is inclined to entertain this writ petition in the interest of justice.

8. The next plea that was raised by the 1st respondent is that the petitioner has no locus standi to file this writ petition. Since the petitioner is not an aggrieved party, he is absolutely stranger to the issue. For which the respondent relied on the seniority list containing 28 persons and in the said list, the



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petitioner's name is in Serial No. 29. Even if the plea of the petitioner that the 2nd respondent is not eligible is accepted, then also the petitioner would not be eligible at all, because there are 27 other persons who are waiting in the seniority list and the petitioner is not in the zone of consideration. In such circumstances, the petitioner is a stranger to the issue raised in the writ petition and he is not an aggrieved person. For this the learned Counsel appearing for the 1st respondent relied on **(1976) 1 Supreme Court Cases 671**, wherein the Honourable Supreme Court has held as under:

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) person aggrieved'; (ii) 'stranger'; (iii) busybody or meddling interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

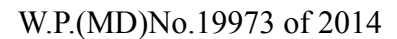


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38. *The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".*

39. *To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him title something or wrongfully refused him something, or wrongfully affected his to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?*



11. The next plea that was raised by the 1st respondent is on merits. The petitioner is not in the seniority list consisting of 28 persons. Even for argument



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both the petitioner and the 2nd respondent retired from service in the year 2017. Therefore, this Court is of the considered opinion that the petitioner will not be entitled to any promotion notionally, since the petitioner has retired from service and he was not eligible at all at the time of his retirement as well. Therefore, this Court is of the considered opinion that no legal grounds were raised to consider the petitioner's plea.

14. For the above reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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