



W.P.Nos.7308 and 7309 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.06.2023

Delivered on: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.Nos.7308 and 7309 of 2016

&

W.M.P.Nos.6492 and 6493 of 2016

W.P.No.7308 of 2016

J.Roch

... Petitioner

Vs.

1. The Additional Chief Secretary to Government
Transport Department
Fort St. George Chennai-9.

2.The Managing Director
Tamil Nadu State Transport Corporation
Villupuram.

3.The General Manager
Tamil Nadu State Transport Corporation (VPM)
Vellore Region, Vellore.

4. Jaishankar

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5.P.Srinivasan

6.L.Srinivasan

7.J.Venkatasan

8.R.Gandhimathi

9.R.Murugesan

10.Sachidhanandham

11.S.Pangajam

12.R.Padma

13.P.Valarmathi

14.C.Saravankumar

15.D.Balaji

16.K.S.R.Giri

... Respondents

(R4 to 16 are impleaded
vide order dated 19.01.2017
made in W.M.P.No.37732/16
in W.P.No.7308/2016)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the tentative list of Admin work group dated 22.07.2015 circulated by the order passed by the 3rd respondent and quash the same and

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issue consequential direction directing the 2nd and 3rd to promote the petitioner as superintendent as on November 2014.

For Petitioner : Mr.M.Vijayan
for
M/s.Karan and Uday

For Respondents : Mrs.Meera Arumugam, AGP for R1

Mr.R.Neelakandan, AAG assisted by

Mr.Aswin, Standing Counsel for R2 and 3

Mr.P.Paramasivadosh for R4, 6 to 16

Mr.V.Govardhanan

for

M/s.Row and Reddy for R5

W.P.No.7309 of 2019

N.Balakrishnan

... Petitioner

Vs.

1. The Additional Chief Secretary to Government
Transport Department
Fort St. George Chennai-9.

2.The Managing Director
Tamil Nadu State Transport Corporation
Villupuram.

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3.The General Manager
Tamil Nadu State Transport Corporation (VPM)
Vellore Region, Vellore.

4. Jaishankar

5.P.Srinivasan

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7.J.Venkatasan

8.R.Gandhimathi

9.R.Murugesan

10.Sachidhanandham

11.S.Pangajam

12.R.Padma

13.P.Valarmathi

14.C.Saravankumar

15.D.Balaji

16.K.S.R.Giri
(R4 to 16 are impleaded
vide order dated 19.01.2017
made in W.M.P.No.37735/16
in W.P.No.7309/2016)

... Respondents



W.P.Nos.7308 and 7309 of 2016

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the tentative list of Admin work group dated 22.07.2015 circulated by the order passed by the 3rd respondent and quash the same and issue consequential direction directing the 2nd and 3rd to promote the petitioner as superintendent as on November 2014.

For Petitioner : Mr.M.Vijayan
for
M/s.Karan and Uday

For Respondents : Mrs.Meera Arumugam, AGP for R1

Mr.R.Neelakandan, AAG assisted by

Mr.Aswin, Standing Counsel for R2
and 3

Mr.P.Paramasivadosh for R4, 6 to 16

Mr.V.Govardhanan
for
M/s.Row and Reddy for R5

COMMON ORDER

These Writ Petitions have been filed by the respective petitioners seeking the same relief viz., to issue a Writ of Certiorarified Mandamus

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pertaining to the tentative list of Admin working group dated 22.07.2015.

2. The common issue in both these Writ Petitions is G.O.Ms.No.79 Transport (C1) Department dated 30.06.2015 seeking to accept “one time irrevocable option” provided therein and to consider the petitioners for promotion as Superintendent.

3. The case of the petitioners is that they have completed degree course and appointed by the respondent Corporation. The petitioners were also given recognition of their services by granting 3 review benefits. It is the case of the petitioners that the appointment of employees for the respondent Corporation is by following common service rules under two categories viz., Miscellaneous group and Working group.

4. Miscellaneous group is pertaining to employees who have completed SSLC and the mode of hierarchy is Junior Clerk, Clerk, Senior Clerk and Selection Grade Clerk with no promotion under Miscellaneous



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group. In so far as Working group the employees who have a degree will be falling in this group and hierarchy would be Junior Assistant, Assistant, Senior Assistant, Selection Grade Assistant, Superintendent and Assistant Manager.

5. Reliance is placed on by the petitioners to the order in W.P.No. 23821 of 2009, wherein this Court has held that the workmen who fall under the Miscellaneous Group and have acquired a degree should be encouraged by bringing them to the Working Group and fitting them at appropriate places so that they would have the opportunity for being promoted to the post of Superintendent. Subsequently, following the said order of this Court the respondent Corporation entered into a 12(3) settlement with the Transport Union on 22.01.2011 and gave consent under Clause 10(4) of settlement in and by which employees in the Miscellaneous Group with new educational qualification and having got three reviews should be considered for promotion to the post of Superintendent on par with employees in the Working Group. In this regard G.O.Ms.No.79 of 2015 dated 30.06.2015 was



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also brought about for migration of employees working in Miscellaneous Group to Working Group.

6. According to the petitioners, the conditions laid down in G.O.Ms.No.79 of 2015 are that the employees should have received three review benefits and should possess a degree qualification for exercising a one time irrevocable option for migrating to the Working Group, subject to being placed at the lowest level of the existing seniority maintained for the categories of employee in the Working Group. However, according to the petitioner's the said condition would not apply to the petitioners as even at the time of entry, the petitioners possessed a degree qualification and it was not as if they acquired the degree after entry into service. Therefore, according to the petitioners, the petitioners ought not to be placed at the bottom of the existing seniority list of Senior Assistants in terms of G.O.Ms.No.79 of 2015 and on the other hand, they should be placed at the top in the Working Group as the candidates shown upto Sl.No.16 in the tentative seniority list in the Working Group were all juniors to the



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petitioners, with regard to the date of entry into service. The petitioners have given a representation on 27.07.2015 seeking the respondents to place the petitioners at the top of the seniority list in the Working Group for promotion to the post of Superintendent by accepting the one time irrevocable option.

7. The respondents 2 and 3 have filed a counter, wherein it is stated that it is only a temporary list and the respondents have not finalized the list of incumbents by drawing a revised seniority of incumbents in Working Group and therefore contended that the position of the petitioners was yet to be finalized. The respondents further contended that the petitioners cannot dictate the manner of placing the incumbents in the seniority list as the respondents have to factor the interest of the incumbents working in the Working Group as well. Infact, in respect of petitioner in W.P.No.7308 of 2016, it is contended that he was appointed as Junior Clerk only accommodating him under the sports quota considering his sporting talents and he was neither interviewed or sponsored based on seniority or merit.



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8. In so far as the other Writ Petitioner in W.P.No.7309 of 2016, it is stated that he already filed W.P.No.29503 of 2010 seeking re-designation of his post from Junior Clerk to Junior Assistant with effect from the stage of his initial appointment. The said Writ Petition was dismissed on 23.06.2014 and the Writ Appeal No.1123 of 2014 filed by the said petitioner was also dismissed on 25.08.2014. Thus, it is the case of the respondents that the petitioners' plea cannot be accepted. The respondents have also further contended in the counter that the petitioners having opted for irrevocable option, their seniority would be fixed as per G.O.Ms.No.79 by following the provisions relating to irrevocable options and sought for dismissal of the Writ Petitions.

9. A rejoinder has been filed by the petitioner in W.P.No.7309 of 2016 that the persons who have been placed in the tentative list dated 22.07.2015 are all juniors to the petitioner and their appointment and promotion was by backdoor methods and specific instances in respect of several of the persons placed above the petitioners have been elaborated as to how they were given



preferential treatment.

10. This Court also takes note of the fact that at the time of admission considering prima facie merit in the case of the petitioners, two seats were directed to be reserved, subject to the result of the Writ Petitions. The respondents 4 and 6 to 16 have filed a counter affidavit, wherein they have stated that the earlier Writ Petition filed by the petitioner in W.P.No.7309 of 2015 (Balakrishnan) was for the same relief and infact he filed yet another Writ Petition in W.P.No. 23754 of 2015 for including his name in the panel for promotion to the post of Superintendent. According to the respondents, merely because the petitioners possess a degree on the date of appointment, it would not entitle them to steal a march over the private respondents. It is not the intention of the Government Order in G.O.Ms.No.79. According to these respondents, the statutory respondents have acted well within their limits in preparation of the tentative seniority list for promotion to the post of Superintendent and the same does not warrant interference.



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11. The candidate wise allegation set out by the petitioners in the rejoinder have also been met point wise to show that all the incumbents/private respondents were sponsored only by the employment exchange and the reasons given by the petitioner are imaginary and false. The allegations that they were appointed by backdoor means is also stoutly denied.

12. The 3rd respondent has filed a reply to the rejoinder filed by the petitioner stating that the allegations in the rejoinder are all false and there has been no irregular consideration made and further stated that the petitioner filed yet another Writ Petition in W.P.No.23754 of 2015 challenging the promotion list which is pending. It is also reiterated in the said reply that there is no sports quota and all appointments were made only through the Employment Exchange.

13. Heard Mr.M.Vijayan for M/s.Karan and Uday, learned counsel for appearing for the petitioners and Mrs.Meera Arumugam, AGP for the 1st



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respondent Mr.R.Neelakandan, AAG assisted by Mr.Aswin, Standing Counsel appearing for the respondents 2 and 3, Mr.P.Paramasivadoss, learned counsel appearing for the respondents 4, 6 to 16 and Mr.V.Govardhanan for M/s.Row and Reddy, learned counsel appearing for the 5th respondent in both the cases.

14. This Court has also perused the various documents filed by contesting parties by way of typedsets. The private respondents have relied on several judgments in support of their contentions. G.O.Ms.No.79 dated 30.06.2015 was passed to comply with the judgment in W.P.No.23821 of 2009. The Sub-committee suggested recommendations to the Government for consideration. The Government accepted the recommendations and decided that the procedure for promotion to the post of Superintendent in Miscellaneous Group of State Transport undertakings would be to allow employees who have received three review benefits and possessing a degree qualification coming under Miscellaneous Group, for exercising a one time irrevocable option for migration to the Working Group. However, it is clearly



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mentioned that the same would be subject to placing their name at the lowest level of the existing seniority maintained for that category of employees for that Working Group. The G.O did not make any distinction between cases where persons in the Miscellaneous Group who were already possessing a degree or they acquired a degree while being in service. Therefore, the contention of the petitioners that the mandate of G.O.Ms.No.79 to place them at the lowest level in the seniority list because they were already degree holders cannot be accepted. Eventhough one of the petitioners herein has filed a Writ Petition in W.P.No.29503 of 2010, the said Writ Petition was for existence of Writ of Mandamus to direct the respondents to change the post of Junior Clerk to Junior Assistant in the Working Group, from the date of his initial appointment. The said Writ Petition was dismissed by this Court, where this Court considered the fact that at the time of appointment the petitioner was possessing Under Graduate degree and his case cannot be compared with a candidate who is appointed as a Special Grade Clerk and the Writ Appeal filed by the said Balakrishnan was also dismissed holding that the petitioner accepted the post of Junior Clerk at the time of appointment



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without objection and consequently after 14 years he could not seek re-designation of his post.

15. Coming to the decision relied on by the private respondents

i) *Madhya Pradesh Public Service Commission Vs. Om Prakash Gupta and Another*, reported in (1997) 6 SCC 645, for the proposition that principle of resjudicata will apply to Writ Petitions also and successive Writ Petitions for same relief cannot be permitted.

ii) *Panchraj Tiwari Vs. Madhya Pradesh State Electricity Board and Ors*, reported in (2014) 5 SCC 101 for the proposition that when there is a merger of cadres and absorption into service, absorbed cadre employees would have to be treated on par with compeers in the parent service. Hon'ble Supreme Court has held that once a service gets merged with another service, the employee concerned has a right to get a position appropriately in the merged service and that no employee has a right to have a particular position in the seniority list and all employees have an equal right since the same forms the basis of promotion. 17. In *Dhole Govind Sahebrao and Ors Vs.*



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iii) *Union of India and Ors*, reported in (2015) 6 SCC 727, for the proposition that judicial interference was not warranted unless chances of promotion/ and or interse seniority were altered arbitrarily and considerations are shown to be perverse or malafide or arbitrary or discriminatory.

iv) A recent judgment *Central Bank of India and Ors Vs. Dragendra Singh Jadon*, reported in (2022) 8 SCC 378 pertaining to issue of resjudicata and its applicability in Writ jurisdiction.

16. The main contention of the petitioners is that petitioners possessed a degree even at the time of entry and therefore it was improper and inequitable to place them at the bottom of the seniority list. Even though in the order in W.P.No.23821 of 2009, this Court referred to workmen in Miscellaneous Group who had acquired degree course and in that context stated that workmen should be encouraged by placing them in Working Group so that they would have an opportunity for promotion. The ratio laid down by this Court was that a chance should be opened up for the workmen in the Miscellaneous Group to move into the Working Group. The High



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Court also only said that they will be fitted in appropriate places. Pursuant to the said order of this Court in W.P.No.23821 of 2009, the Government brought about G.O.Ms.No.79 of 2015 for migration of employees working in the Miscellaneous Group to Working Group. In the said G.O, conditions were very clear that there was no differentiation between workmen already holding a degree or acquiring a degree as attempted to be contended by the counsel for the petitioners. The G.O is very clear that such migrated employees would be placed at the lowest level of existing seniority maintained for that category of employees for the working group. The petitioners cannot in one breath want the benefit of G.O.Ms.No.79 to apply to them or accrue to them and on the other hand contend that one part of the G.O would not apply to them. Moreover, the statutory respondents have categorically come on record and stated that the list is only a temporary list and it would be finalized in terms of the G.O.Ms.No.79 dated 30.06.2015.

17. Curiously, the petitioners do not challenge G.O.Ms.No.79 of 2015, because it is clear that they want to take benefit under the said one time



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migration offer given to them. However, citing that they already possess a degree, they want to steal a march over other incumbents trying to put forth an argument that there should be a difference in treatment with regard to persons who already possessed a degree and others who acquired a degree during their service. Unfortunately, the purport of order of this Court in W.P.No.23821 of 2009 does not appear to be so and it was only mentioned in the context of providing an opportunity for employees in the Miscellaneous Group who possess a degree. G.O.Ms.No.79 also does not differentiate between employees who already possessed a degree and those who have acquired a degree. In so far as the allegations with regard to the several respondents placed above the petitioners in the seniority list, it is clarified and stated by the statutory respondents that all of them have been sponsored only by the Employment Exchange and there is no irregularity in considering them for promotion.

18. The learned Additional Advocate General would also state that since two posts have already been kept vacant in pursuance of interim order



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passed by this Court and also in the light of the assertive statement in their counter, the final selection list would be made strictly in accordance with G.O.Ms.No.79 of 2015 dated 30.06.2015.

19. Considering all these factors, there are no merits in these Writ Petitions and accordingly both the Writ Petitions are dismissed. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

14.07.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

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Transport Department
Fort St. George Chennai-9.

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Villupuram.

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Tamil Nadu State Transport Corporation (VPM)
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Pre-delivery order in
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