



W.P.(MD) No.13750 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2023

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THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD) No.13750 of 2016

1.S.Amir Ibrahim

2.R.Rajendran

3.M.N.Ravindran

... Petitioners

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government
Transport Department and
Chairman of Board of Director of
State Transport Undertaking,
Fort St.George, Chennai – 600 009.

2.Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Rep. by its Managing Director,
Bye Pass Road,
Madurai – 625 010.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region,
Madurai – 625 010.

4.The Administrator,
The Tamil Nadu State Transport



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Corporation Pension Fund Trust,
Thiruvallur House,
Pallavan Salai, Chennai – 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to implement the G.O.(Ms) No.146 dated 30.11.2015, by re-designating the petitioners as Selection Grade Superintendents with effect from 01.01.2008, so as to enable them to the pay scale of Rs.7500-250-12500 as per 5th Pay Commission recommendations and to get the revised scale of pay (as per 6th Pay Commission) of Rs.9300-34800 + Grade pay Rs. 4900 with effect from 17.06.2009 and to pay arrears and other attendant benefits to the petitioners with effect from 01.04.2015.

For Petitioners : Mr.A.K.Thangavelu
for Mr.A.Rahul

For R1 : Mr.T.Amjadkhan
Government Advocate

For R2 & R3 : Mr.S.Raja
Standing Counsel

For R4 : Mr.S.C.Herold Singh

ORDER

Heard Mr.A.K.Thangavelu for Mr.A.Rahul, the learned counsel for the petitioners, Mr.T.Amjadkhan, the learned Government Advocate for first respondent, Mr.S.Raja, the learned Standing Counsel for the second



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and third respondents and Mr.S.C.Herold Singh, the learned counsel for the fourth respondent.

2. The petitioners are three in number. They were originally appointed as Junior Assistants [Trainee] on various dates between the years 1980 and 1982. At the time of their appointment, they were all graduates. Subsequently, the petitioners were re-designated as Junior Assistants. After putting 3 decades of service, the petitioners were made Superintendents on the following dates as is seen from the Tabular Column in the counter affidavit filed by the second and third respondents:-

<i>Sl. No.</i>	<i>Name of the petitioner</i>	<i>Date of Promotion</i>
1	S.Amir Ibrahim (1 st petitioner)	30.06.2010
2	R.Rajendran (2 nd petitioner)	30.06.2011
3	M.N.Ravindran (3 rd petitioner)	30.09.2014

3. The first respondent took a policy of bifurcation of Transport Corporation in three. As per policy taken, the junior most in the Administrative Cadre was transferred to the newly formed Corporation



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retaining the Senior Administrative Staff in the Transport Corporation at Madurai, namely the second respondent.

4. The pay scale was revised as per G.O.(Ms) No.146, Transport (C) Department, dated 30.11.2015. As per the said G.O., the persons who were working in the cadre of Superintendent were treated on par with the Government Servants as per the 5th Pay Commission's recommendations.

5. It is admitted case on both sides that the Administrative Supervisory cadre, namely posts held by the petitioners who had been promoted to the post of Superintendent and rendered not less than 14 years of service up-to Senior Assistant cadre and further period of 10 years of service in the Senior Assistant cadre before getting themselves promoted as Superintendents by virtue of G.O. will be re-designated as Selection Grade Superintendent. Such re-designation was done so as to enable the persons who had been rendered 24 years of service totally before the promotion to the post of Superintendent to receive the Selection Grade Superintendent time scale of pay of Rs.7500-250-12500 w.e.f. 01.01.2008 as per 5th Pay Commissioner and the pay scale revised as per 6th Pay Commission w.e.f. 17.06.2009. The revision was though



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given from 01.01.2008, the effect was to be fixed notionally with the petitioner being entitled to the monetary benefits only from 01.04.2015.

Since it was not implemented, the present Writ Petition came to be filed.

6. The stand of the first to third respondents is that they did not extend the benefits of G.O. to the petitioners on account of the fact that the Principal Secretary to the Transport (C1) Department had informed the Managing Director of Metropolitan Transport Corporation (Chennai) Ltd., Chennai and the Managing Director of State Express Transport Corporation Tamil Nadu Ltd., Chennai that the benefit of G.O. will be applicable to the persons who had been promoted as Superintendents on or before 17.06.2009. Drawing my attention to the aforesaid Tabular Column and to the Letter of the Principal Secretary, the first to fourth respondents would urge that the petitioners are not entitled to the benefits.

7. It is pertinent to point out that G.O.(Ms) No.146, Transport (C) Department, dated 30.11.2015 had been issued in the exercise of powers vested in the Government under Article 166 of the Constitution of India and in the name of His Excellency Governor of Tamil Nadu. As rightly pointed out by the learned counsel for the petitioners, the Government



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Letter cannot override the effect of an order passed by the Government.

This issue is no longer *res integra* and has been settled atleast 4 decades ago in W.P.No.1713 of 1988. The view taken in the said case was followed by another learned Single Judge [**N.Paul Vasanthakumar, J.**, as he then was] in ***K.Sampath Vs. State of Tamil Nadu, rep. by the Secretary to Government, Rural Development Department, Chennai and others***, reported in (2006) 4 MLJ 1027. The learned Single Judge in paragraph No.10 has held as follows:-

10.(a) In the decision reported in *R.P.Bhardwaj v. Union of India and others* 2005 (10) SCC 244 the issue dealt with was as to whether a letter of the Central Ministry issued by the Secretary will over ride the Office Memorandum and the Honourable Supreme Court held that the Government letter cannot be acted upon unless a new Office Memorandum is issued. The relevant portion of para 8 is extracted hereunder:

"..... We have already noticed that the O.M. dated 19.7.1989 contained instructions to be noted and followed by all concerned. That position was prevailing when the proposal by means of letter dated 23.11.1989 was mooted. It was not yet issued as O.M. for compliance by all concerned as was done in respect of the O.M. dated 19.7.1989. In our view, it was still at a premature stage and before being final so as to be circulated by the Government of India for being followed by the authorities and the departments and all concerned, it seems to



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have been acted upon by the Service Commission against the O.M. which was in operation. Even if any implied approval is inferred by the Public Service Commission, it would be of no consequence since then too it would not be anything more than an approval of a proposal. An approved proposal would not replace an O.M. issued by the Government of India. Even after approval the Government may not issue any O.M. The Commission wrongly acted upon the mere proposal."

(b) In an unreported decision in W.P.No.1713 of 1988, etc., batch by common order dated 7.11.1990, this Court considered similar issue as to whether the Government letter will prevail over the Government Order or not and held that the Government Order having been authenticated and expressed to be taken in the name of the Governor, has the sanctity of an order issued under Article 166 of the Constitution of India and the Government letter issued subsequently cannot supersede the earlier Government Order.

(c) This Court in the decision reported in P.Jeya v. Union of India & Others 2004 WLR 805 considered a similar issue as to whether the Government letter will prevail over the Government Order. The relevant portion of para 34 reads as follows:

"In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by another executive order, not being issued in the name of the Governor.....



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WEB COPY 8. In view of the above, the only objection that was raised before me namely, the letter issued by the Principal Secretary prevents the Department from implementing the G.O. with respect to the persons like the petitioners has to fail. Consequently, this Writ Petition deserves to be allowed. There shall be a Mandamus as prayed for. The petitioners will be entitled to the notional benefits from 01.01.2008 and financial benefits commencing from 01.04.2015.

9. This Writ Petition stands allowed. No costs.

16.11.2023

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

- 1.The Secretary, Transport Department and
Chairman of Board of Director of State Transport Undertaking,
Government of Tamil Nadu,
Fort St.George, Chennai – 600 009.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road, Madurai – 625 010.



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3.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region, Madurai – 625 010.

4.The Administrator,
The Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvallur House, Pallavan Salai,
Chennai – 600 002.



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V.LAKSHMINARAYANAN, J.

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