



W.P.(MD).No.20081 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.01.2023

DELIVERED ON : 07.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.20081 of 2018

and

W.M.P(MD)Nos.17838 and 17839 of 2018

S.Kajamydeen

... Petitioner

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation (Madurai) Limited,
Byepass Road,
Madurai-16.

2.The General Manager,
Tamilnadu State Transport Corporation (Madurai) Limited,
Virudhunagar Region,
Virudhunagar District.

3.The Tamil Nadu Arasu Pokkuvarathu Oozhiyar,
Sammelanam Affiliated with CITU,
V.P.Chinthan Memorial Hall,
Represented by its,
General Secretary K.Arumuga Nainar,
52, Cooks Road,
Perambur,
Chennai.

... Respondents

(R-3 is impleaded vide Court Order dated 07.07.2023 in W.M.P.(MD).No. 21509 of 2018 in W.P.(MD).No.20081 of 2018)



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records connected with impugned order in Parvai:Virudu/Nir/A2/2018, dated 18.01.2018 passed by the second respondent and quash the same and consequently direct the second respondent to prepare the Revised Seniority List of Drivers for Graduates and Non-Graduates for promotion to the post of Driving Instructor and to place the petitioner in the appropriate place of seniority list of Graduate Drivers.

For Petitioner : Mr.S.Govindan

For R-1 and R-2 : Mr.J.Senthil Kumaraiah,
Standing Counsel.

For R-3 : Mr.B.Saravanan,
Senior Counsel.

Amicus Curiae : Mr.A.Rahul

ORDER

This Writ Petition is filed to quash the impugned order dated 18.01.2018 and consequently direct the second respondent to prepare the Revised Seniority List of Drivers for Graduates and Non-Graduates for promotion to the post of Driving Instructor and to place the petitioner in the appropriate place of seniority list of Graduate Drivers and pass orders.



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2. The petitioner joined the service as Driver on 26.09.2007 and was promoted as Senior Grade Driver on 01.08.2014. The petitioner is possessing M.A. Degree and his next avenue of promotion is Driving Instructor / Time Keeper as per the Common Service Rules and as per G.O.Ms.No.38 dated 13.02.1997. The first respondent is a Corporate Office and the second respondent's region is functioning under the control of the first respondent. There are 7 Transport Corporations functioning under the control of the Government of Tamil Nadu and a Common Service Rules is applicable to all the Transport Corporations, which came into force from 22.05.1987. Subsequently, G.O.Ms.No.38 Transport Department dated 13.02.1997 was passed extending the benefit of 25% quota for promotion of Senior Grade Drivers with Graduate Degree for promotion as Driving Instructor / Time Keeper. According to SI.No.4(a) of "Part C" of Appendix of the Common Service Rules, the promotion to the post of Checking Inspector shall be filled up from among the Selection Grade Conductors to the extent of 75% who are having prescribed qualification and remaining 25% shall be filled up from the among Senior Grade Conductors who possessed Degree qualification. Subsequently, G.O.Ms.No.38 Transport Department dated 13.02.1997 was issued extending the benefit of 25% quota for Graduate Conductors to the



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Drivers also who are having degree qualification. Hence, the contention of the petitioner is that he is entitled to be promoted as Driving Instructor. The Tamil Nadu State Transport Corporation, Villupuram is a sister concern has allotted 25% quota promotion to the Drivers who are having degree qualification. One such Senior Grade Driver namely S.Murugan who is having degree qualification was promoted under 25% quota by an order dated 03.02.2014. The petitioner is aggrieved since the said promotion was not granted to him. The contention of the petitioner is that the respondents ought to have prepared a separate seniority list of Drivers both under 75% category and under 25% category intended for Graduate Drivers. But the respondent had prepared only one seniority list which is violative of Rules. In the seniority list as on 01.10.2017, wherein, 7 Drivers were shown as eligible to be promoted as Driving Instructor. But only 2 Drivers had passed S.S.L.C and other 5 Drivers were having 8th standard qualification. Hence, the respondents have violated the Rules by showing the ineligible Drivers to be considered for promotion as Driving Instructor. Subsequently, the respondent had published the seniority list dated 18.01.2018 fixing the cutoff date as 01.01.2018 in which only names of 28 persons were shown as eligible Drivers for promotion as Driving Instructor, but most of the Drivers were having 8th standard qualification which is violative of Rules. In this list the petitioner's name was not in the seniority



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list exclusively prepared for Graduate Drivers. Moreover, the respondents have not circulated the list of seniority, thereby depriving the petitioner from submitting any objection. The petitioner had submitted several representations dated 22.01.2018, 05.04.2018, 07.07.2018, 12.07.2018 and 23.08.2018. Since the same was not considered, the petitioner has challenged the impugned seniority list.

3. The Tamil Nadu Arasu Pokkuvarathu Oozhiyar Sammelanam Affiliated with CITU, V.P.Chinthan Memorial Hall has filed the impleading petition in this Writ Petition in W.M.P.(MD).No.21509 of 2018. The petitioner has filed his objection to the impleading petition stating that the impleading respondent who is the third party has filed a Writ Petition in W.P.(MD).No. 14444 of 2012 on the very same issue and the same was dismissed by this Court vide order dated 26.08.2014. Moreover, the impleading petition is not maintainable as per the judgment of this Court in W.P.No.8870 of 2008 and other batches vide order dated 08.09.2009, since the Association cannot maintain Writ Petitions. However, this contention of the writ petitioner was refuted by the impleading respondent by stating that Sammelanam is not Association, but is affiliated to the recognized Union, hence, the impleading petitioner has every right to contest the case. On perusal of the citations



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referred by the petitioner it is seen that this Court has held that Association cannot maintain, since the impleading petition is affiliated to CITU union, this Court is inclined to entertain the impleading petition and the same is allowed.

4. The respondents have filed a counter stating that the petitioner was appointed as a Daily Wage Driver on 01.03.2008 and thereafter, his service was regularized. Then he was redesignated as Senior Driver with effect from 01.08.2014. The writ petitioner has challenged the impugned seniority list of Selection Grade Drivers as on 01.01.2018 dated 18.01.2018. As per the Common Service Rules applicable to the respondent Corporation, Selection Grade Drivers are entitled to get promotion to the post of Driving Instructor on seniority basis. Since the petitioner is in the post of Senior Driver and not in the post of Selection Grade Driver, hence, the petitioner is not eligible to get promotion to the post of Driving Instructor and the writ petition is not maintainable. As far as the allegations regarding G.O.Ms.No.38 Transport Department dated 03.02.1997 as stated in paragraph no.7 of the affidavit is concerned, the respondents deny the same. The said G.O. states that “Drivers now recruited with S.S.L.C qualification may be treated on par with Conductors while considering for promotion to posts like Time Keeper, Accident Inspector etc. A ratio of 3:1 between Conductors and Drivers may be adopted for



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promotion". As per G.O.Ms.No.64, Transport C1 Department on 23.02.1999, 10th Standard or SSLC pass is the educational qualification for the candidates for appointment in the post of Drivers. Prior to this Government Order, 8th Standard pass is the educational qualification for appointment to the post of Driver. Subsequently, as per G.O.Ms.No.263, Transport C1 Department, dated 08.10.2010, the educational qualification has been refixed as 8th Standard pass instead of 10th Standard or SSLC pass. Hence, the 8th Standard pass Drivers are also eligible to get promotion to the post of Driving Instructor. Moreover, in 12(3) Settlement arrived between the Management and Unions there is no mention with regard to promotion to the Drivers who acquired degree in educational qualification. Even according to the Common Service Rules, there is no provision to grant promotion to the Drivers who acquired degree qualification. Therefore, the respondents have not violated the Common Service Rules and Government Orders, 12(3) settlements under Industrial Dispute Act, 1947 in awarding promotion to the Selection Grade Drivers to the post of Driving Instructor. Since the petitioner has not attained the post of Selection Grade Drivers, he is not eligible to get promotion to the post of Driving Instructor. The impugned seniority list was prepared for the Selection Grade Drivers for their promotion to the post of Driving Instructor. When the petitioner attains the post of Selection Grade Driver, his name would be



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included in the seniority list of Selection Grade Drivers. If any vacancies arise in the post of Driving Instructor, the Transport Corporation shall follow the seniority list prepared as per the Common Service Rules and senior most Selection Grade Drivers shall be promoted as Driving Instructors. Hence, the Writ Petition is devoid of merits. Therefore, the respondents prayed to dismiss this Writ Petition.

5. Heard Mr.S.Govindan, the Learned Counsel appearing for the petitioner, Mr.J.Senthil Kumaraiah, the Learned Standing Counsel for the respondents, Mr.B.Saravanan, the Learned Senior Counsel for the impleaded respondent and Mr.A.Rahul, the Amicus Curiae and perused the records.

6. The first contention of the petitioner is that as per G.O.Ms.No.38 dated 13.02.1997, the Graduate Drivers are entitled to be considered for promotion. The relevant portion of the said Government Order is extracted hereunder:

“Drivers now recruited with S.S.L.C Qualification may be treated on par with Conductors while considering for promotion to posts like time-keeper, accident Inspector etc. A ratio of 3:1 between Conductors and Drivers may be adopted for promotion.

3. After careful consideration, the Government accept the recommendation extracted in para 2 above for implementation after



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*considering the service rule governing the **Time-keeper / Accident Inspector** in State Transport undertakings”.*

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The said Government Order only states the persons can be considered to the post like Time-Keeper, Accident Inspector and it has never ever stated that they can be considered for Driving Instructor. Therefore, the very basis of claim of the petitioner is on the wrong presumption. Moreover, the said G.O.Ms.No.38 states that “Drivers now recruited with SSLC qualification” since the said G.O.Ms.No.38 was issued on 13.02.1997 it will be applicable from 13.02.1997 onwards and applicable to the Drivers who were recruited thereafter. It is pertinent to note that the respondents have filed a counter stating that the SSLC pass was fixed in G.O.Ms.No.64, Transport C1 Department dated 23.02.1999. Subsequently, G.O.Ms.No.263 dated 08.10.2010 was passed again reducing the basic qualification from 10th Standard to 8th Standard. The said G.O.Ms.No.38 dated 13.02.1997 and G.O.Ms.No.64 dated 23.02.1999 was passed in the year 1997 and 1999 only, but the subsequent G.O.Ms.No.263 again reducing from 10th standard to 8th standard was passed on 08.10.2010. Hence the G.O.Ms.No.263 ought to be applied be applied for fixing the educational qualification of Drivers. Hence the G.O.Ms.No.38 dated 13.02.1997 ought to be read as, pass in 8th Standard and not SSLC qualification.



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7. The next contention that was raised by the petitioner is that the Common Service Rule is applicable to all the Transport Department. On perusing the Common Service Rules, for the post of Driving Instructor, the qualification that is prescribed is, by promotion from among the holders of Selection Grade Drivers who have passed 10th or SSLC and who have been regular in attendance during the last 3 years. The relevant portion is extracted hereunder:

S. No	Name of the post	Qualifications
5	Driving Instructor	By promotion from among the holders of the post of Selection Grade Drivers (HTV) who have passed standard X or SSLC and who have been regular in attendance during the last three years

The said Common Service Rules specifically states that the candidates who are holding the Selection Grade Drivers are eligible for the said post. As rightly pointed out by the respondents in the counter that the petitioner has not reached the Selection Grade Driver category and he is only Senior Driver. Therefore, the petitioner cannot be considered for the promotion of Driving Instructor.



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8. But the real issue that was raised by the petitioner is that the Graduate Drivers should be considered ahead of other Drivers who is not having Graduate degree. When the basic qualification prescribed for Driver is only SSLC as per G.O.Ms.No.64 dated 23.02.1999, which was subsequently reduced to 8th Standard in G.O.263 dated 08.10.2010. And when the Common Service Rules had not distinguished the Graduates and Non-Graduates, the claim of the petitioner to grant promotion to Graduate Drivers ahead of Non-Graduate Drivers is erroneous. The only Government Order that is giving a preference to the Graduate Drivers is G.O.Ms.No.38. But the said Government Order is not granting the benefit to consider for the post of Driving Instructor at all. It only states to consider for the post of Time-Keeper, Accident Inspector etc. As per the Common Service Rules, for Time-Keeper, the qualification prescribed under Rule 4 is extracted hereunder:

4. a) Checking Inspector/ Time Keeper. And b) Junior Checking Inspector/ Timekeeper.	i) By promotion from among the Selection Grade Conductors (third level) and Senior Conductors (second level) in the Working Group, in the following manner:- a) 75% of the promotion, from among the Selection Grade Conductors (third level) in the Working Group to the post of Checking Inspector / Timekeeper (Second level) in the Miscellaneous Group, as follows--
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10. This Court appointed Mr.A.Rahul, as Amicus Curiae. The Learned Amicus Curiae has submitted that as per the various settlements, the guidelines for promotion to the higher post will be on the basis of merit cum seniority and not on any other basis. Therefore, the claim of the petitioner to grant on the basis of Graduate Degree is without any basis. Moreover, the Learned Amicus Curiae also submitted that the seniority is the only criteria for certain posts in the Transport Department for which he relied on the 12(3) Settlement entered between the parties on 04.01.2018, where it is stated as under:

மேலும் காலிப்பணியிடம் ஏற்படும்பொழுது முதநிலை வரிசைப்படி பணி மூப்பு பட்டியல் (Panel) தயாரித்து மற்றும் இதர தகுதிகளின் அடிப்படையில் (தகுதிகாண் பருவம் உட்பட) பரிசீலித்து உடனுக்குடன் பதவி உயர்வு வழங்கப்படும்.

11. The Driver of TNSTC are entitled to Review benefits with scale of pay. As per first settlement dated 01.09.1997, the review benefits are stated as under:

TNSTC – Driver – Three Review – Pay Scale – Details.
1st Settlement 01.09.1997

As per 10th Settlement 01.09.2007 Driver Scale as detailed below:

- i. *First entry level Driver Scale 5335-90-6055-100-8255.*
- ii. *First Review – 6 years – Senior Driver Scales 5455-115-8905.*



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iii. *Second Review – 8 years (14) Selection Driver Scale 5525-115-6675-120-9075.*

iv. *Third Review – 10 years (24) Special Grade Driver Scale 5525-135-6520-145-9855.*

As per settlement condition – After getting 24 years Third Review Senior D.I.

Promotion given up to 2007 - 10th Settlement.

Pay Scale – 5645-135-6590-145-9925.

12. Subsequently, as per settlement from 01.09.2010, 01.09.2013, 01.09.2016, the review benefits are as follows:

**TNSTC – Driver – Five Review – Pay Band – Details.
As per Settlement from 01.09.2010, 01.09.2013, 01.09.2016**

First entry Driver Pay band 5200-20200-G.P. 1700-Level I

First six years Review – Senior Driver Pay band 5200 – 20200 – G.P. 1900 – Level II

*Second Seven Years (13) Review – Selection Grade Driver
Pay band 5200-20200-G.P.2100 - Level III*

*Third Seven Years (20) Review – Special Grade Driver
Pay band 5200-20200-G.P.2100 - Level IV*

*Fourth Seven Years (27) Review – Special Grade Driver
Pay band 5200-20200-G.P.2300 - Level V*



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*Fifth Five Years (32) Review – Special Grade Driver
Pay band 9300-34800-G.P.4200 - Level VI*

Current Promotion method

After passing fourth review Driving Instructor promotion pay band goes to 9300-34800-G.P.4300.

As per Common Service Rule If Driving Instructor promotion given in the Third Review (Selection Grade Driver) Pay band goes to 9300-34800- G.P.4300.

13. The Selection Grade can be awarded from the senior Driver after 7 years. Therefore, the petitioner ought to wait until he attains the Selection Grade Driver, which he can achieve after working as Senior Grade Driver for 7 years or more. In other words, the petitioner after entering into the basic Driver post has to wait for 6 years to get into Senior Driver Grade, thereafter he has to put in service for 7 years to reach the Selection Grade Service, altogether he has to serve 13 years to reach the Selection Grade. Even if the petitioner has reached the Selection Grade, he has to wait for his seniority. Therefore, the petitioner has not made out any case. Hence, this Court is inclined to dismiss this Writ Petition and hence the writ petition is dismissed.



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14. The services rendered by Mr.A.Rahul, the learned Amicus Curiae are appreciated and this Court records the valuable assistance provided by him and his fee is fixed as Rs.3,500/- (Rupees Three Thousand Five Hundred only) and the same shall be paid by the High Court Legal Service Authority attached to the High Court of Madras, Madurai Bench.

15. With the above observations, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.07.2023

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



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To

- 1.The Managing Director,
Tamilnadu State Transport Corporation (Madurai) Limited,
Byepass Road,
Madurai-16.
- 2.The General Manager,
Tamilnadu State Transport Corporation (Madurai) Limited,
Virudhunagar Region,
Virudhunagar District.



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S.SRIMATHY, J.

Nsr

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