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W.P.Nos.3265 of 2018 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition Nos.3265 of 2018, 15141 of 2020 and 1769 of 2021
and W.M.P.No.18896 of 2020

W.P.No.3265/2018

1. P.Vinod Kumar
2. P.S.Sivakumar
3. R.Balaji
4. C.Sathishkumar
5. V.Saravanan
6. B.Saravanan
7. C.Jayakar Raja
8. R.Govindarajan
9. K.Baskar
10. K.Khadiresan

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Petitioners

-Vs-

1. State of Tamilnadu,
Rep. by its Secretary,
Transport Department,
St. George Fort,
Secretariat,
Chennai – 600 009.
2. Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 1.
3. Human Resources Department,



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Rep. by its Manager
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 1.

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4. S.Sambasivam
5. A.M.Sahul Hameed
6. A.Raghupathy
7. R.Venkatesan
8. D.Kumar
9. J.Justin Kumar
10. B.Senthilkumar
11. C.Thirumalai
12. P.Sathyyanathsingh
13. T.Sathyanarayanan
14. M.Vijayakumar
15. R.Sanjaikumar

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the panel seniority list of year 2017-2018 prepared by the second respondent for promotion of Assistant Manager from Assistant Engineer Post with ratio of 3:1 Degree & Diploma and to quash the same and consequently to direct the second respondent to revise seniority promotion list 2017-2018 and include the petitioners name among those who possess in an eligible criteria of a seniority in degree holders.



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For Petitioner

: Ms.D.Malarvizhi

For Respondents

: Mr.K.H.Ravikumar

Government Advocate for R1

Mr.R.Ramanlal

Additional Advocate General

assisted by Mr.A.Vinothraj

for R2 and R3

Mr.R.Premnarayan

for R4 to R 14

No appearance for R15

W.P.No.15141/2020

1. P.S.Sivakumar
2. V.Saravanan
3. C.Sathishkumar
4. P.Vinod Kumar
5. B.Sathish Kumar
6. R.Balaji
7. B.Saravanan
8. C.Jayakar Raja
9. R.Govindarajan
10. K.Baskar

...

Petitioners

-Vs-

1. State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Transport Department,
St. George Fort,
Secretariat,
Chennai – 600 009.

2. The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 600 002.



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3. The Senior Deputy Manager,
(Human Resources & Development),
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 2.

4. S.Sambasivam
5. A.M.Sahul Hameed
6. A.Raghupathy
7. R.Venkatesan
8. D.Kumar
9. J.Justin Kumar
10. B.Senthilkumar
11. C.Thirumalai
12. P.Sathyanath Singh
13. S.Vivitha
14. M.Vijayakumar
15. S.S.Jayashanker
16. P.Balakrishnan
17. V.Sivavadivelan
18. D.Jegannathan
19. A.Sathyanarayanamurthy
20. P.Nagarajan
21. S.Sivaraman
22. S.J.Senthilkumar
23. M.Subramanian
24. K.Muthu Elango
25. R.Madhavan

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned seniority list – Assistant Engineer (Degree Holders) issued by the second respondent in No.Nil dated 17.06.2020 and to quash the same in respect of the respondents 4 to 25



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and consequently direct the respondents 1 to 3 to draw year wise seniority list / panel in the post of Assistant Engineer for promotion to the post of Assistant Manager from the year 2015 by reckoning seniority and eligibility of the petitioners for the relevant panel year from the date of confirmation in the post of Assistant Engineer and to consider the petitioners for promotion to the post of Assistant Manager based on their seniority and eligibility, within a time frame fixed by this Court.

For Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For Respondents	: Mr.K.H.Ravikumar Government Advocate for R1 Mr.R.Ramanlal Additional Advocate General assisted by Mr.A.Vinothraj for R2 and R3 Mr.R.Premnarayan for R4 to RR 8, 10 to 12 Mr.L.Chandrakumar for RR 16, 17, 20, 23, 25 No appearance for RR13, 14, 15, 18, 19, 21, 22 & 25



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W.P.No.1769/2021

1. P.S.Sivakumar
2. V.Saravanan
3. C.Sathiskumar
4. P.Vinod Kumar
5. B.Sathish Kumar
6. R.Balaji
7. B.Saravanan
8. C.Jayakar Raja
9. R.Govindarajan
10. K.Baskar

...

Petitioners

-Vs-

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Transport Department,
Secretariat, St. George Fort,
Chennai – 600 009.
2. The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 1.
3. The Senior Deputy Manager
(Human Resources & Development)
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 2.

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Mandamus directing the respondents
to pass orders granting promotion to the petitioners to the post of



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Assistant Manger based on the eligibility in 2015, 2016 and 2017 panel respectively, on par with juniors granted promotion in the year 2015, 2016 without drawl of regular panel, with all consequential and other attendant benefits relating to pay parity including payment of arrears of salary and other service benefits, based on the representation / objection submitted by the petitioners dated 21.02.2020, within a time frame fixed by this Court.

For Petitioner	: Ms.D.Malarvizhi
For Respondents	: Mr.K.H.Ravikumar Government Advocate for R1 Mr.R.Ramanlal Additional Advocate General assisted by Mr.A.Vinothraj for R2 and R3 Mr.R.Premnarayan for R4 to R 14 No appearance for R15

COMMON ORDER

W.P.No.3265/2018 is filed challenging the panel seniority list of the year 2017-2018 prepared by the second respondent and to direct the second respondent to revise seniority promotion list of the year 2017-2018 and include the petitioners name.



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W.P.No.15141/2020 is filed challenging the impugned seniority list

– Assistant Engineer (Degree Holders) issued by the second respondent in No.Nil dated 17.06.2020 and to direct the respondents 1 to 3 to draw year wise seniority list / panel in the post of Assistant Engineer for promotion to the post of Assistant Manager from the year 2015 by reckoning seniority and eligibility of the petitioners for the relevant panel year from the date of confirmation in the post of Assistant Engineer and to consider the petitioners for promotion to the post of Assistant Manager based on their seniority and eligibility.

W.P.No.1769 of 2021 is filed seeking a Writ of Mandamus directing the respondents to pass orders granting promotion to the petitioners to the post of Assistant Manager based on their eligibility in the years 2015, 2016 and 2017 panel with all consequential and other attendant benefits including payment of arrears of salary and other service benefits.

2. The petitioners who have been originally appointed as the “Assistant Engineer” in Villupuram and Kumbakonam Transport Corporation has been transferred to Metro Transport Corporation Limited



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(MTC), Chennai on their own volition. One of the condition for transferring from one corporation to another is that the seniority of the transferee in the seniority list will be kept below the last person in the same cadre of the respondent corporation. Though the petitioners did not deny the said condition, their contention is that at the time when they were transferred they have already completed two years of service in the earlier corporation and the rules of transfer does not prohibit the inclusion of their earlier period of service. Hence, it is claimed that when the promotion panel list for the post of “Assistant Manager” is prepared every year, and if their past services is included, they will be getting their chances of promotion to the post of “Assistant Manager” in any of the panel years during which there were no qualified candidates available in the respondent Corporation. The qualification required for the promotion to the post of “Assistant Manager” is prescribed under the Regulation 60 of Common Service Rules which reads as under:

“ 6. Assistant Manager : i) By transfer from among the holders of the post of Assistant Manager who are technically qualified.

(or)

ii) By promotion from among the holders of the posts of



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5. The contentions of the petitioners are vehemently opposed by Mr.A.Ramanlal, the learned Additional Advocate General for the respondents 2 and 3, stating that the petitioners who agreed to be placed below the junior most Assistant Engineer of the Transferee corporation cannot claim supremacy over the existing Assistant Engineers in the matter of promotion by claiming their past services at the transferor corporation to be included; the very purpose of having the said condition is that the Assistant Engineers have come on transfer to the transferee corporation only at request and so they should not disturb the seniority equilibrium that is being maintained in the transferee corporation and so they should be placed below the junior most in the transferee corporation;

6. If the arguments of the learned Senior Counsel for the petitioners are accepted, then that would amount to by-passing the very condition in the matter of promotion. If there is no service condition like promotion in any department, there is no need to maintain the list of seniority at all. The very object of maintaining a seniority list is to regularise the preference in the matter of promotion to the next level. A fair career progression for a person who stands above in the list by virtue of his



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merit is a natural phenomenon of a service condition.

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7. It may be true that the promotion panel is not prepared for each and every year. The persons who are qualified for the next level post may lose their opportunities of promotion in the relevant year despite they have the required qualification. But, the eligibility can be counted only from the date from which the petitioners assumes charge in the transferee corporation and not from the date when they assume charge in the earlier corporation. If such a limited interpretation is given to the condition adopted in the terms of inter-corporation transfer, that would amount to allowing to do something indirectly which cannot be done directly.

8. Reliance was placed by the learned Senior Counsel for the petitioner on the judgment of the Hon'ble Supreme Court in ***Union of India and others Vs. N.R.Banerjee and others reported in (1997) 9 SCC 287*** wherein it is held that the reason underlying the limitation of the period of a list for one year is to ensure that the other qualified persons are not deprived of their chances of applying for the post in the succeeding years and being selected for the appointment.



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9. The above position is the reiteration of the Hon'ble Supreme Court's observation in its earlier judgment held in *Nagar Mahapalika Vs. Vinod Kumar Srivastava reported in (1987) 1 SCC 602*. The very same principle has been adopted by this Court in *The Engineer – in – Chief, W.R.O and the Chief Engineer (General) & others Vs. C.L.Pasupathy* reported in *2013 SCC OnLine Mad 592* and it is held that the preparation for panel for a particular year will be valid for one year and it will be lapsed at the end of the year.

10. So the mandatory duty of the Government in considering the promotion of Government employees at the relevant time is ensuring their fundamental right guaranteed under Article 16 of the Constitution of India. The relevant paragraphs of the said judgment is extracted hereunder:

“ 10. The mandatory duty on the part of the Government in considering the promotion of Government servants at the relevant time was held to be a fundamental right guaranteed under Article 16 of the Constitution of India. The Supreme Court in the decision reported in (2010) 4 SCC 290 (*Union of India Vs. Hemraj Singh Chauhan*) in



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paragraphs 35 and 36 held as follows:

“35. The Court must keep in mind the constitutional obligation of both the appellants / Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare state.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion in virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”
(Emphasis supplied)”

11. There is no quarrel that there is a mandate for the respondent to prepare the promotion panel for each and every year in order to ensure a fair opportunity to those persons who are qualified in the relevant year to get promoted to the next level.

12. It is a well settled legal position that the promotion panels have to be prepared for each and every year in order to ensure the opportunity of promotion to all those who are eligible during the relevant year if they are found to be qualified otherwise. But the moot point that has arisen in



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this case is not whether the promotion panels can be postponed to the succeeding years by missing out any year in between but, the contentious issue raised in this case is whether a person's earlier service in the transferor corporation be included as qualifying services for the purpose of promotion in the transferee corporation even after his acceptance that he will be placed below the junior most person in the transferee corporation. So the judgment cited by the learned Senior Counsel for the petitioner is not applicable to the issue that has arisen in the present case.

13. If the petitioners' contention is that their past services should not be ignored for the purpose of his terminal benefits, it is understandable. But the argument of the learned Senior Counsel for the petitioners is that the petitioners' past services in the earlier corporation be included along with their services in the transferee corporation for the purpose of promotion would frustrate the very object of placing a condition that the person who come on transfer to the transferee department shall not claim seniority over the incumbent persons who are already in the same post of the transferee corporation. Hence, at any stretch of the imagination this Court is not able to accept the contention that the qualifying services should be counted along with the services of



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an employee rendered at the transferor corporation along with their services in the transferee corporation for the purpose of promotion. Since such computation of qualifying service would automatically place the persons who come on transfer to the transferee department above the existing employees of the same cadre in the transferee corporation, the said argument cannot be accepted.

14. The learned Senior Counsel for the petitioners cited that on an earlier occasion one Sanjiv Kumar has been promoted to the post of “Assistant Manager” by getting the advantage of inclusion of his earlier service rendered in the transferor corporation with his services in the transferee corporation. Such exceptional cases cannot be taken as a guiding factor when the rules are clear. Even if such exercise is done anywhere including the respondent corporation, the persons aggrieved has got the right to challenge the same unless the rules are amended otherwise.

15. In fact while prescribing the qualification for the post of “Assistant Manager” to be posted on transfer, the rules clearly states that the person ought to have held the same post in the transferor corporation.



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If the post of “Assistant Manager” can be offered on transfer to all those persons who have the eligible five years of service in their credit in the transferor department, the rules would state that all those persons who have the eligible five years service in the cadre of “Assistant Engineer” in the transferor corporation are eligible to be posted as “Assistant Manager” in the transferee corporation. But, the rules are carefully worded in order to avoid the contingency that a person’s past services in the transferor corporation should be considered as eligible service for the purpose of promotion by including the same with the services rendered by him in the transferee corporation.

16. The writ petitioners have come out with a claim which is not supported by rules and hence I am not inclined to grant the relief as prayed by the petitioners.

15. In the result, these writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

22.03.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No



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To:
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1. The Principal Secretary to Government,
State of Tamilnadu,
Transport Department,
Secretariat, St. George Fort,
Chennai – 600 009.
2. The Secretary to Government,
State of Tamilnadu,
Transport Department,
Secretariat, St. George Fort,
Chennai – 600 009.
3. The Managing Director,
Metropolitan Transport Corporation,
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5. The Senior Deputy Manager
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R.N.MANJULA, J.,

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Writ Petition Nos.3265 of 2018, 15141 of 2020
and 1769 of 2021

22.03.2024