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W.A.No.2304 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.06.2024**

DELIVERED ON: 27.06.2024

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.2304 of 2022
CMP.No.17587 of 2022**

V.Parthiban

... Appellant

Vs.

1.State of Tamilnadu,
Rep. by its Secretary to Government,
Micro, Small & Medium Enterprises Department,
Secretariat, Chennai-600 009.

2.Tamilnadu Small Industries
Corporation Limited (TANSI),
Rep by its Chairman & Managing Director,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai-600 032.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 05.08.2022 made in W.P.No.10735 of 2015.

For Appellant : Mr.V.Prakash, Senior Counsel
for Ms.M.Karthikeyani

For Respondents : Mr.C.Kathiravan
Special Government Pleader for R1



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Mr.A.Thiagarajan, Senior Counsel
for Ms.A.Vinupradha for R2

JUDGMENT

D.KRISHNAKUMAR, J.

This Intra Court appeal has been filed challenging the order of the Writ Court dated 05.08.2022 made in W.P.No.10735 of 2015, in and by which the challenge made by the appellant /writ petitioner to the impugned order of reversion came to be dismissed.

2. The appellant was initially appointed as Driver on 28.05.2010 in the respondent Corporation, namely Tamilnadu Small Industries Corporation Limited (TANSI). On coming to know that recruitment was proposed for the post of Junior Assistant in the office of the second respondent, the appellant submitted an application dated 06.10.2010 to the second respondent for considering him to the post of Junior Assistant, since he possessed the qualification prescribed for the said post. Considering the qualification and suitability for the post, the second respondent issued an order appointing the appellant as Junior Assistant, vide proceedings dated



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04.01.2011. In pursuant to the same, the appellant joined duty as junior Assistant on 06.01.2011 and he continued in the said post for 4 years and 2 months.

3. While that being so, the second respondent has passed the impugned order of reversion dated 04.03.2015, reverting him to the post of Driver. Being aggrieved by the order of reversion, he filed the writ petition before this Court. The Writ Petition, after contest, came to be dismissed, against which the instant writ appeal has been filed.

4. Mr.V.Prakash, learned Senior Counsel appearing for the appellant vehemently contended that the Managing Director, who is the head of TANSI, has got every power under its rules to convert the employees from one post to another post and in exercise of powers conferred under the said rules, the Managing Director has appointed the appellant on temporary basis and no further ratification or approval from the Government is required and therefore, the order of reversion is untenable. It is further contended by the learned Senior Counsel that the appellant has possessed the



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prescribed qualification for the post of Junior Assistant and he has also submitted his application and only on consideration of his application and satisfaction of other eligibility criteria, he has been converted from the post of Driver to Junior Assistant and there is no irregularity or illegality in appointing the appellant as Junior Assistant. The learned Senior Counsel for the appellant further submitted that the appellant has continued in service as Junior Assistant for more than 4 years and 2 months and also completed the period of probation as per Section 16 of the TANSI Rules and therefore, the order of reversion is contrary to TANSI rules and the same is liable to be set aside.

5. Mr.A.Thiagarajan, learned Senior Counsel appearing for the second respondent/TANSI has strongly objected that the initial appointment of the appellant as Junior Assistant was irregular, without any proper recruitment / selection process and also not in accordance with the Service Rules in force and as such, the impugned order of reversion has been rightly passed by the second respondent. It is further contended that mere continuation of the appellant in the post of Junior Assistant for 4 years and 2 months and



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completing the probation period will not confer any legal sanctity to the irregular appointment and there is no infirmity in the order of reversion passed by the second respondent and therefore, prays for dismissal of the writ appeal.

6. This Court has considered the rival submissions and also perused the materials available on record including the original records.

7. It is an admitted fact that the appellant/writ petitioner, who was initially appointed as Driver on regular basis, submitted the application dated 06.10.2010 to the second respondent seeking consideration for appointment as Junior Assistant in the Corporate Office and he is ready to work as a Driver also if required by the Corporate Office. Based on his application, the second respondent issued the proceedings dated 04.01.2011, appointing the writ petitioner as Junior Assistant on temporary basis, stipulating certain terms and conditions.



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8. The learned Senior Counsel for the appellant contended that the appellant has continued as Junior Assistant for 4 years and 2 months from 06.01.2011 to till date and also relied upon Rule 16 (d) of the TANSI Service Rules and as per the said Rule, the appellant has completed the probation period on 05.01.2023 and therefore, he is legally entitled to continue as Junior Assistant. It is also contended by the learned Senior Counsel for the appellant that the appointment of the appellant as Junior Assistant should be treated as a fresh appointment taking into consideration the requisite qualification possessed by him and not as a conversion or promotion from the post of Driver and therefore, the impugned order of reversion is arbitrary and unjustifiable. The aforesaid contention of the senior counsel for the appellant cannot be countenanced for the reason that the very appointment of the appellant as Junior Assistant is illegal, without following any due recruitment process and also in violation of TANSI Rules. Mere completion of probation period or continuing in the post for years together will not confer any legal sanctity to illegal or irregular appointment.

9. Furthermore, Rule 11 of the Service Rules of TANSI contemplates



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that appointment to the post of Junior Assistant shall be by (i) direct recruitment or (ii) by promotion from among the holders of the post of Timekeeper Grade II / Salesman Grade III / Record Clerks and Office Assistants. The abovesaid Rule clearly prescribes that the post of Driver is not a feeder category for promotion to the post of Junior Assistant. When there is a Specific Rule providing the feeder category, mode of promotion, procedure and other eligibility criteria for appointment to a particular post, the authorities cannot deviate from such rules, as any such contravention would be illegal.

10. Admittedly, the appellant neither been appointed under Direct Recruitment as Junior Assistant nor been promoted to the said post under feeder categories viz., Time Keeper Grade II, Salesman Grade III, Record Clerk and Office Assistants. Direct recruitment to a particular post has to be made by strictly following the procedures as contemplated under the Statute/Rules.

11. Law is well settled as per catena of decisions of the Hon'ble Apex



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Court that all appointments are to be made only under the Constitutional Schemes and by following recruitment rules in force. Equal opportunities in public employment is the constitutional mandate and therefore, the illegal appointments cannot be regularized merely on the ground of length of the services rendered, as per the principles settled by the Hon'ble Supreme Court in catena of decisions. The appointment of the appellant as Junior Assistant, considering in any angle, can utmost be termed as illegal appointment and it cannot be ratified at any stage.

11. Now coming to the case on hand, the second respondent has entertained the application of the appellant/writ petitioner merely on the ground that he possessed the requisite qualification for the post and appointed the appellant as Junior Assistant, simply brushing aside the fact that the said post of Driver is not a feeder category for the post of Junior Assistant. Since the appointment of the appellant as Junior Assistant is in contravention of the Service Rules of TANSI, the proposal submitted by the second respondent to the Government for ratification of such appointment was rightly rejected by the Government and in pursuance thereof, the second



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respondent has passed the impugned order of reversion dated 04.03.2015.

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12. In the light of the clear and explicit rule, namely Rule 11 of TANSI Rules, specifying the terms and conditions for appointment as Junior Assistant, this Court finds no illegality or infirmity in the impugned order of reversion passed by the second respondent. The Writ Court has considered all these aspects in proper perspective and rightly rejected the claim of the appellant/writ petitioner and therefore, the order of the Writ Court does not warrant interference.

13. In the light of the reasons assigned above, this Writ Appeal Stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

(D.K.K.J.) (K.B. J.)
27.06.2024

Internet: Yes/No
Index : Yes/No
Jvm

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.



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To

1. The Secretary to Government,
State of Tamilnadu,
Micro, Small & Medium Enterprises Department,
Secretariat, Chennai-600 009.
2. Chairman and Managing Director,
Tamilnadu Small Industries Corporation Limited (TANSI),
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai-600 032.

Judgment in
W.A.No.2304 of 2022

27.06.2024