



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

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**CORAM:
THE HONOURABLE MS.JUSTICE R.N.MANJULA**

W.P.No.9257 of 2014

1.T.Munusamy

2.M.Durai

...

Petitioners

Vs.

1.The Management,
Tamil Civil Supplies Corporation Ltd.,
12, Thambusamy Road,
Kilpauk, Chennai 600 010.

2.The Presiding Officer,
II Addl.Labour Court,
High Court compound,
Chennai 600 014.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the files of the 2nd respondent in I.D.No.472 of 2002 and quash the impugned Award made therein dated 17.12.2013 and consequently direct the 1st respondent corporation to grant retrospective promotion to the petitioners as Assistants from 07.03.2001 the date on which other junior assistants were granted promotion pursuant to the panel drawn for the year 2000 with all consequential monetary benefits, seniority and other attendant benefits.



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For Petitioners : Mr.K.M.Ramesh, senior counsel for
for M/S.G.K.Bharathi

For Respondents : Mr.R.Neelakandan, AAG-VIII
assisted by Dr.k.Thirugnanam,
standing counsel for Tamilnadu Civil
Supplies Corporation.

: Ms.M.Jayanthi, AGP for R2

ORDER

The petitioner's Union had filed an Industrial Dispute in I.D.No.472 of 2002 before the second respondent by seeking promotion with retrospective effect from 2001 and the same was not considered positively and an order was passed on 17.12.2013, rejecting the claim of the petitioners. Challenging the said order, the petitioners are before this Court by way of the present Writ Petition.

2. Heard Mr.K.M.Ramesh, learned senior counsel for the petitioners and Mr.R.Neelakandan, learned Additional Advocate General-VIII for the 1st respondent and Ms.M.Jayanthi, learned Additional Government Pleader for the 2nd respondent and perused the materials available on record.



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3. The Government has issued G.O.Ms.No.417 dated 01.02.1993 for devising a procedure for promotion to the post of Assistant by having a combined seniority list of Junior Assistant, Typist, Steno-Typist and Telex Operators. The said Government Order has been adopted by the respondent corporation as well in the 308th meeting held on 12.05.2000. As soon it was adopted, a next panel was drawn to implement the Government Order in the ratio 4:1. However, the above Government Order was not implemented but later provisional seniority list has been prepared on 25.01.2001 by simply accommodating the Junior Assistants alone. On 31.01.2001 another separate seniority has been issued for the persons working as Typist, Steno-Typist and Telex Operators and subsequently promotion was granted. A promotion panel was prepared on 22.02.2001 by including seven Junior Assistants and two Typists and they have been promoted to the post of Assistant. The petitioner's name has been included in the panel of persons who have not been considered for promotion. The reason stated for non-accommodating the petitioners in the promotional opportunity is that they did not complete the mandatory completion of six years in the cadre of typist. The Government Order in G.O.Ms.No.417 does not mandate any qualifying service of six years for promotion to the post of promotion. Despite the petitioners have been considered for promotion during the following year, they lost one year of



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service in the promotional post and the attendant service benefits along with seniority for getting promoted to the next level promotion. When the petitioners have filed Industrial Dispute by raising the above issue in I.D.No.472 of 2002 the learned Presiding Officer of the II Additional Labour Court, Chennai dismissed the Industrial Dispute on the observation that the adoption of G.O.Ms.No.417 cannot place a bar on the corporation's regulations which would contemplate a mandatory completion of six years of service in the cadre of Typist for the purpose of promotion to the post of Assistant.

4. Mr.R.Neelakandan, learned Additional Advocate General-VIII for the 1st respondent submitted that the above observation of the petitioner is not on the basis of the Government Order. Even while adopting the Government Order the corporation did not stipulate a condition of six years of completion of service for promotion and hence the award is not correct.

5. The learned Additional Advocate General appearing for the 1st respondent further submitted that by virtue of the issuance of G.O.Ms. 417 dated 01.02.1993, the ratio between the Junior Assistant and the other category from Typist, Steno typist, and Telex Operators alone has been fixed at 4:1 for the promotion to the post of Assistant, and the Government Order is in no way



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diluted by the requirement of six years of service as the mandatory requirement for promotion.

6. There is no disagreement on the point that the corporation has adopted the G.O.Ms. 417, dated 01.02.1993, in view of giving fair opportunity to both the junior assistants and the category falling under the typist for getting the next level promotion of Assistant in the ratio of 4:1. The only point raised by the petitioner is that in the government order in G.O.Ms.No.417 dated 01.02.1993 which was adopted by the Government, there is no requirement of minimum years of service in any of the categories for promotion to Assistant and all that is required is the attainment of seniority to the next level promotion in accordance with the ratio.

7. To be noted while adopting the government order, i.e., G.O.Ms. No. 417 dated 01.02.1993, in the Board meeting No. 308 of the 1st respondent corporation on 12.05.2000 also, a simple resolution has been passed to adopt the G.O.Ms. No. 417 dated 01.02.1993, and it does not state that the corporation has chosen to relax the mandatory requirement of six years of completion of service.



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8. The G.O.Ms. No. 417 dated 01.02.1993 also simply states about the ratio from two channels for promotion to the post of Assistant and does not state about diluting the minimum mandatory requirement that is contemplated in any of the service rules of the corporation. In fact, none of the aspirants of the corporation who aim for promotion to the post of Assistant have ever challenged the service rules, which mandate six years of minimum service experience as an essential requirement.

9. Despite the adoption of G.O.Ms.No.417 dated 01.02.1993, the 1st respondent corporation continues to prepare the promotion panel for the post of promotion only after the candidate concerned has completed six years of minimum service in the cadre of typist and three years of minimum service in the cadre of Junior Assistant. The grievance of the petitioner and the persons similar to him is understandable because when the government considers both the typist and the junior assistant as equal feeder cadre posts for the purpose of promotion to Assistant, the corporation rules discriminates the junior assistant and the typist by prescribing different eligibility criteria. While three years of minimum service is required for the junior assistant post, six years of minimum service is required for the typist for getting the promotion of the post of Assistant.



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10. Had the mandatory minimum service requirement been kept at three years for both the junior assistant and the typist, there would not have been any problem. Even though the mode of requirement for both the junior assistant and the typist is different, the scale of pay for both categories is one and the same. In this regard, it is relevant to refer to the earlier judgement of this Court held in W.P.No. 20065 of 2012 dated 10.09.2012 in ***V.Gurunathan and others Vs. The Tamil Nadu Civil Supplied Corporation and another.*** In the said writ petition, also the discrimination between the two categories of posts with regard to the minimum educational qualification and service experience for the promotion to the post of Assistant has come into consideration. After making an exhaustive discussion, the Court has given suggestions that the corporation in that case can relax the educational qualification and the qualification regarding experience before making an appointment through direct recruitment.

11. Though the petitioners are justified in making the claim that the 2nd respondent ought not to have kept a condition requiring six years service in the post of Typist for promotion to the post of Assistant, the fact remains that the Service Rule still remains in force. In fact, the issuance of G.O.Ms.417 dated 01.02.1993 did not take away the Service Rules of the 2nd respondent with



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regard to other qualifications in the matter of recruitment of junior assistants and typists. It would be appropriate to make a claim that the government, while issuing the government order in G.O.Ms.417 dated 01.02.1993 has considered both the posts of junior assistant and typist on par with each other and fixed the ratio for the next level promotion. The 2nd respondent corporation could have also gotten the cue in order to amend its service rules suiting to the similarly placed persons working in the government.

12. It is submitted by the learned Additional Advocate General that the six years of service experience is fixed for the typist because the post of typist and others fall under the technical category and for whom the qualification and mode of recruitment itself are different. Only because of that, the candidates who can acquire the eligibility by passing the required departmental examination for the promotion to the post of Assistants alone be considered for inclusion in the panel for promotion to Assistants.

13. Having placed such a precondition and filtering all those who had passed those examinations in order to bring them under the zone of consideration, the other condition of completion of six years of service is onerous. There is no rationales for fixing more number of years of service



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because the whole of the required six years of service can be only in the post of typist and not any clerical experience. Hence, it does not serve any purpose also. Instead of challenging the service rules and then making the claim for promotion, the petitioners have straight away raised an industrial dispute before the Labour Court and failed.

14. All that, this Court can record that the mandatory requirement of service experience of six years for the other category of Typist/steno-typists, and Telex Operators is unreasonable, though the said rule is very much active and remains in the service rules of the First respondent corporation. In view of the existing service rules governing the petitioners, no relief as sought can be granted.

In view of the above stated reasons, the Writ Petition stands **dismissed**. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed if any.

05.09.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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To

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