



W.A.(MD).No.521 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.07.2024

PRONOUNCED ON : 18.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD).No.521 of 2018
and
C.M.P.(MD).No.3030 of 2018**

1. J.Kannan,
Unit – I,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division, Trichy.
2. V.Kirankumar (Died)
3. R.Muruganantham,
Unit – II,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy.
4. S.Mathialagan,
Musiri,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy.

... Appellants/Respondents 5 to 8



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5. V.Saroja

6. T.Kalaiselvi

7. Minor C.Rohith

8. Minor C.Rakitha ... Appellants

(Minor Appellants 7 and 8 are represented by their mother and natural guardian, 6th appellant)

(Appellants 5 to 8 are impleaded as LR's of the deceased 2nd appellant vide order dated 24.04.2024 made in C.M.P.(MD).No.11937 of 2022 in W.A.(MD).No.521 of 2018)

Vs.

1. M.P. Raja Suresh

2. The District Employment Officer,
District Employment Exchange (Technical),
Trichy.

3. The Managing Director,
Regional Office,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Periya Milaguparai,
Trichy.

4. The District Employment Officer,
District Employment Office, Karur.



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5. M. Thamaraiselvan,
Unit I,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy.
6. T. Siva, FC Unit,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy.
7. Muthusamy,
Rock Fort Depot,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy.
8. Karthi,
Manthurai Unit,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy.
9. The District Employment Officer,
Perambalur. ... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, against the Order dated 07.03.2018 passed in W.P.(MD).No.14365 of 2011 on the file of this Court.



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For Appellants : Mr. G. Prabhu Rajadurai
(For M/s.A. Rahul)

For R-1 : Mr. D. Saravanan

For R-2, R-4 & R-9 : Mr. A. Kannan
Additional Government Pleader

For R-3 : Mr. S.C. Herold Singh

For R-5 & R-6 : No appearance

For R-7 & R-8 : Given up

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This Writ Appeal is filed by the respondents 5 to 8 in the Writ Petition challenging the order passed by the learned Single Judge in W.P.(MD).No. 14365 of 2011 dated 07.03.2018, wherein, the selection and appointment of the appellants to the post of Junior Engineer (Mechanical) was declared as null and void.

2. The brief facts leading to the filing of this Writ Appeal are as follows:



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The writ petitioner, namely, M.P.Raja Suresh was an aspirant, who has enrolled his name with the District Employment Exchange, Trichy on 10.03.1993. He is a diploma holder in Mechanical Engineering and he belongs to Backward Class community. The Regional Office of the Tamil Nadu State Transport Corporation, Trichy Division had decided to fill the post of Junior Engineer (Trainee) at Tamil Nadu State Transport Corporation, Kumbakonam, Trichy Region and notified the vacancies to the concerned District Employment Exchange as detailed as follows:

Reservation	Number of Vacant	Number of sponsoring candidates in 1:5 Ratio
SC Priority	1	3 (Available)
SC Non Priority	1	5
BC Priority	1	2 (Available)
BC Non Priority	2	10
MBC Priority	1	1 (Circulated other Employment Candidate)
MBC Non Priority	1	5
OC Non Priority	3	15
Total	10	40 + 1

2.1. In continuation with the above process, the District Employment Exchange, Karur sent a list consisting of 10 candidates vide letter dated



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22.06.2009. Immediately, the interview process was completed and 9 candidates were selected by the interview committee. Pursuant to the selection made in the interview, four candidates were appointed on 18.09.2009 and 13.11.2009. Subsequently, after completion of the selection process, the District Employment Exchange, Trichy has sent the names of 41 candidates and the District Employment Exchange, Perambalur has sent the names of 10 candidates on 14.07.2009. The list of candidates sent by the District Employment Exchange, Trichy and Perambalur were returned on 10.12.2009 by stating administration reasons. The name of the writ petitioner was not forwarded by the District Employment Exchange, Trichy on the ground that he has crossed the eligible upper age. But the age relaxation prescribed by the Government was not followed by the Transport Corporation and not extended to the writ petitioner herein. Subsequently, he filed a Writ Petition in W.P.(MD).No.8798 of 2009 seeking the relief of age relaxation and direction to the District Employment Officer, Trichy to sponsor his name to the notified post. Based on the direction passed by this Court in W.P. (MD).No.8798 of 2009, his name was sponsored to the Transport Corporation on 07.01.2011 and it was returned by the Corporation stating that no recruitment was made in the year 2011.



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2.2. Subsequently, he has come forward with the present Writ Petition stating that purposely his name was returned by the Transport Corporation and the vacant posts notified by them have been filled up by illegal and irregular appointment.

2.3. After hearing the parties concerned, the learned Single Judge of this Court called for records and has passed a detailed order and quashed the appointment orders of the candidates appointed through the interview held on 09.07.2009. The relevant portion of the order reads as follows:

“41. In the present writ petition, the notification stipulates the vacancy position. As per the notification, 10 vacancies had been notified for Trichy, 3 vacancies had been notified for Perambalur and 2 vacancies had been notified for Karur. However, the vacancies notified for Trichy and Perambalur were filled from amongst the candidates, whose names were sponsored from the District Employment Exchange Karur alone. Thus, the respondents had violated the very terms of the notification itself. The vacancies are notified to provide equal opportunity to all the candidates, who have registered their names in their respective jurisdictional employment exchanges. Thus, the eligible candidates registered their names in Trichy, Perambalur were absolutely denied of their right to participate in the selection



process so as to secure employment in respect of the notified vacancies for Trichy and Perambalur.

42. This Court is of an undoubted opinion that the process of selection conducted by the second respondent was a mockery and a fraud on the Constitution of India. The process of selection was in violation of the very recruitment notification itself. Thus, the appointment of the respondents 4 to 11 cannot be saved at all. The respondents 4 to 11 were also parties to such fraudulent selection process and therefore, this Court cannot set a wrong precedent by saving the fraudulent selection or misplaced sympathy or by showing any leniency. Such misplaced sympathy if shown will affect the fundamental principles of the Constitution of India. Equal opportunity enshrined in Article 14 is a fundamental right of the citizens of our great nation. Thus, this Court cannot show any such leniency only on the ground that the respondents 5 to 8 are serving for a considerable length of period. Mere continuance, more specifically, based on the illegal selection process cannot be allowed. The writ petitioner right from the beginning of the process of selection is adjudicating the issues before this Court. The mere pendency of the present writ petition, before the Court for a long period cannot be a ground to take a lenient view. The legal principles settled are to be upheld and there cannot be any compromise in respect of the rights ensured to the citizens of our great nation under the Constitution of India.



When the Court came to the conclusion that there was no selection at all and the second respondent had committed an act of fraud by selecting 9 candidates from the list sent by one employment exchange, Karur, then the same cannot be validated nor allowed to be continued. However, if at all, the respondents 4 to 11 are also aggrieved from and out of the illegal action of the second respondent, it is left open to them to redress their grievances or claim for any exemplary damages from the officials, who had committed such fraudulent activities. However, this Court has to adhere to the Constitutional principles strictly and scrupulously.

43. If the Courts compromise these Constitutional principles by allowing these illegal appointments to go on, then, there would be a great injustice to the teeming millions of people of our great nation, who all are aspiring to secure public employment by participating in the open competitive process under the Constitutional schemes.

44. Thus, this Court is of a firm opinion that the authorities, who had conducted such fraudulent selection are liable to prosecuted, if necessary, complaint is to be registered before the Vigilance and Anti Corruption Department for initiation of appropriate action against the officials, who had conducted such illegal selection.



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45. *However, in respect of the appointment of the writ petitioner, the same cannot be granted in view of the fact that the writ petitioner had not participated in the selection process. Now after this length of time, without undergoing the process of selection, the writ petitioner cannot be appointed. It is brought to the notice of this Court that the respondents 4, 9 and 10 were already dismissed from service and the 11th respondent had already left the job. In this view of the matter, the following orders are passed.,*

(i) The selection and appointment of the respondents 5 to 8, to the post of Junior Engineer (Mechanical) are declared as null and void and accordingly, the second respondent is directed to issue appropriate relieving orders and relieve them from service forthwith.

(ii) The Principal Secretary to Government, Transport Department, Fort St.George, Chennai – 9, is directed to conduct an enquiry into the illegalities committed in the process of selection conducted for appointment to the post of Junior Engineer (Mechanical) in the Tamil Nadu State Transport Corporation Ltd., Trichy Division and initiate appropriate actions against all the officials concerned, including the retired employees.



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46. Accordingly, the writ petition stands allowed.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.”

2.4. Aggrieved over the quashing of the selection process, the four persons, who were appointed through the above interview process, have come forward with this Writ Appeal on the ground that they have not involved in any malpractice or illegal act in securing employment. They were not aware about the selection process adopted by the Corporation and they were under the belief that they have been selected purely based on the interview conducted by the selection committee on the basis of names sponsored by the concerned District Employment Exchange. Further, they have also stated that only seven candidates have been impleaded as respondents in the Writ Petition and two candidates were not added as a party to the Writ Petition. To vindicate the rights of the writ petitioner herein, the Writ Petition filed in the nature of Public Interest Litigation is not maintainable.



Submissions on behalf of the Appellants:

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3. The learned counsel for the appellants submits that based on the order passed by the learned Single Judge, the Government has ordered for vigilance enquiry and accordingly, an enquiry was conducted and the Government has found that the candidates have not involved in any of the illegal acts for securing employment. The Transport Corporation has adopted improper procedure in selection process. The appellants are working for a long period based on the selection and if they are sent out, they could not secure employment, since they have already served in the Transport Corporation for almost 15 years. The writ petitioner has no manner of right to challenge the selection process, since he was not a participant in the selection process and he is not an aggrieved party. The writ petitioner has filed the Writ Petition as if he has raised a Public Interest Litigation. Hence, the Writ Petition itself is not maintainable. However, considering the fact that the vigilance enquiry has been ordered and it is found that some of the officers have not properly followed the procedure in selection process and the mistake of the Selection Committee shall not be put against the appellants herein, who have not involved in any malpractice. The learned counsel further submits that many persons, who joined subsequently, have already resigned from the



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job and only four persons were working at the time of filing of the Writ Appeal and during the pendency of the Writ appeal, one person died. Hence, only three persons are working at present, thereby, the learned counsel prays to set aside the portion of the order relating to setting aside the selection process. In support of his submission, the learned counsel relied upon the following judgments:

(i) Judgment of the Hon'ble Apex Court in *Tridip Kumar Dingal and others Vs. State of West Bengal and others [(2009) 1 SCC 768]*,

(ii) Judgments of this Court in *J.M.Jacqueline Maley and others Vs. Union of India [(2009) 7 MLJ 749]*, *Joint Director of School Education and others Vs. C.Lesley Jayaseelan [(2011) 3 MLJ 673]* and *B.Suresh Vs. The Registrar, Madurai Kamaraj University and another* passed in *W.A.(MD).Nos.925 and 1582 of 2016 dated 23.08.2023*.

Submissions on behalf of Respondents 2,4 and 9:

4. Per contra, the learned Additional Government Pleader appearing for the respondents 2, 4 and 9 submits that as per the directions of the learned Single Judge, an enquiry was also been ordered and the departmental proceedings have been initiated against the serving officers. He



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also reported that the appellants herein are not involved in any malpractice for securing employment and based on the interim order obtained in this Writ Appeal, they are now working in the Transport Corporation. He further submitted that for the purpose of filling one region, names were called from the District Employment Exchange of the districts falls within the regions were called, and since the names from one district was received at relevant time, the Recruiting Officer, without awaiting the receipt of names from other Districts, followed the selection process and appointed the selected candidates. There is irregularity, found in the selection processes. Hence the Government had not filed any appeal against the order passed in writ petition.

Submissions on behalf of the writ petitioner:

5. The learned counsel for the writ petitioner submits that originally the name of the petitioner was not forwarded by the first respondent for the selection on the ground that the writ petitioner has crossed the upper age limit for the recruitment, thereby the writ petitioner had approached this Court seeking mandamus and subsequently, this Court in W.P.(MD).Nos.7349 and 8798 of 2009 passed an order declaring that the petitioner was entitled for age relaxation as per the G.O. Ms. No.98, P &



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AR(S) Department dated 17.07.2006 and directed the second respondent -Transport Corporation to consider the writ petitioner for the selection process. In the mean time, the recruitment process was completed without considering the name of the petitioner and in the recruitment, totally 10 posts were available and for the purpose of filling these 10 posts, selection list in respect of three districts were called for, but only the names of the candidates given by the District Employment Exchange, Karur alone considered and appointment were given, thereby this Court found that there is corrupt practices by the serving Officers and ordered the Government to conduct enquiry in this regard. Without extending the benefits ordered by this Court, in earlier writ petition to the petitioner, these appointments have been made. He has also submitted that he has not challenged the impugned order, wherein the claim of the petitioner to seek appointment in the second respondent – Corporation has been rejected.

6. We have considered the representation of the parties concerned and perused the records.



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Discussions and Conclusion:

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7. The learned Additional Government Pleader produced the copy of the letter dated 18.04.2023 addressed by the Additional Secretary to Government to the Managing Director, Tamil Nadu State Transport Department and directed the Corporation to conduct enquiry in the matter of recruitment, which is challenged herein. Based on this letter, the enquiry was conducted and the enquiry report submitted by the Vigilance Department was accepted by the Government and it has issued G.O.(2D).No.16 dated 25.04.2023, Transport (D) Department, wherein the Government has ordered Disciplinary proceedings against 11 officers. Consequently, some officers ordered to be suspended and these orders also produced before this Court. These documents show that the Government after accepting the order passed by the learned Single Judge of this Court, ordered investigation and found that there is *prima facie* evidence and disciplinary proceedings have been initiated.

8. The major allegations of corrupt practices leveled against the officers at the time of investigation is that for the appointment in Regional



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Office of respondent No.2, for the post of Junior Engineer (Transport), ten vacancies for Trichy, three vacancies for Perambalur and two vacancies for Karur were notified. But based on the seniority list of ten candidates forwarded by the District Employment Office at Karur, nine posts were filled, thereby the persons, who are in the seniority list of Trichy and Perambalur were not been included in the selection process. In the investigation, no *prima facie* allegation of corrupt practice were found against the selected nine candidates. After the issuance of appointment orders, out of nine persons, eight persons joined in the respective posts. Subsequently at the time of disposal of the writ petition, it has been stated that only four persons, who are the appellants herein alone in service. Now the second appellant also died during the pendency of this appeal and his legal representatives were impleaded in this appeal vide order of this Court dated 24.04.2024 in C.M.P. (MD).No.11937 of 2022, therefore at present, only three persons, appellants 1, 3 and 4 alone were presently in the service.

9. The learned Single Judge after ordering the Government to conduct enquiry regarding the selection process, he has not accepted the case of the writ petitioner that he is eligible to be appointed with the second



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respondent - Transport Corporation. This has not been challenged before this Court by the writ petitioner. Now the question arises for consideration by this Court is about the status of three persons now continuing in the service. The learned Single Judge in the order has set aside the order of appointment of the appellants and other selected candidates, however by an interim order dated 27.03.2018, this Court permitted them to continue in the employment. Based on this interim order, now they have been in service nearly for 15 years.

10. It is pertinent to note that the Vigilance Department conducted the enquiry and concluded that the selected candidates had not involved in the corrupt practice with the serving Officers. In the G.O.(2D).No.16 dated 25.04.2023, the Government by relying on the Enquiry Report has recommended the action against the 11 officers and the copies of the charge framed against the serving Officers also shows that they are irregularly appointed the appellants herein without following the roster and without awaiting receipt of the seniority list from the District Employment Offices of Trichy and Perambalur and filled the post by the list provided by the District Employment Office in Karur.



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11. In the charge sheet, against the 11 officers, these appellants have been cited as witnesses. These appellants names have been properly referred by the District Employment Exchange, Karur and only the Officers alone committed some irregularities in the appointment. Based on these document, the appellants now seeks indulgence of this Court. They pleaded that they were not aware about the irregularity, or dereliction of duty by the concerned Officers of the second respondent - Transport Corporation. They had already completed nearly 15 years of service, and they need not be sent out of their employment. They also further stated that they have diligently participated in the selection process and they have been appointed by considering their merits and suitability to the post.

12. The Hon'ble Apex Court in ***Tridip Kumar Dingal and Others vs. State of West Bengal and others [2009 (1) SCC 768]*** cited supra, by following the catena of judgments of the Apex Court have given relief to the appointed candidates, who have gained rich experience in the post and found that it is inequitable to set aside the appointment of the candidates selected and working for quite later periods. The Hon'ble Apex Court in paragraph



Nos.49 to 54 has held as follows:

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49. *In Munindra Kumar vs. Rajiv govi [(1991) 3 SCC 368]*, the selection comprised of written test, group discussion and oral interview. The relevant rule fixed 40% of total marks for group discussion and oral interview (20% each). though this Court held fixation of marks as arbitrary, being on higher side, it refused to set aside selection made on that basis since selection had already been made, persons were selected, appointed and were in service.

50. *In Gujarat State Dy.Executive Engineers' Assn. Vs. State of Gujarat [1994 Supp (2) SCC 591]*, this court recorded a finding that appointments given under the "wait list" were not in accordance with law. It, however, refused to set aside such appointments in view of length of service (five years and more).

51. *In Buddhi Nath Chaudhary vs. Abahi Kumar [(2001) 3 SCC 591]* appointments were held to be improper. But this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained good experience. "We have extended equitable considerations to such selected candidates who have worked on the post for a long period", said the Court (at SCC p.331, para 6).

52. *In M.S.Mudhol (Dr.) vs. S.D. Halegkar [(1993) 3 SCC 591]*, the petitioner sought a writ of quo warranto and prayed for removal of a Principal of a school on the ground that he did not possess the requisite qualification and was wrongly selected by the Selection Committee. Keeping in view the fact, however, that the incumbent was occupying the office of Principal since more than ten years, this Court refused to disturb him at that stage.

53. *In our considered opinion, the law laid down by this Court in aforesaid and other cases applies to the present situation also. We are of the considered view that it would be inequitable if*



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we set aside appointments of candidates selected, appointed and are working since 1998-1999. We, therefore, hold that the Tribunal and the High Court were right in not setting aside their appointments.

54. It is undisputed that by the time we are called upon to decide the matter, the selected and appointed candidates have completed ten years. They are thus having rich experience in the field. There are several vacancies. The stand of the State Government is equally fair and reasonable. It was stated that those candidates who had grievance against the selection and had not waived their right to get similar treatment and had approached the Tribunal, the High Court and this Court, may be granted similar relief. We are also of the view that such relief can be granted in favour of the appellants who were agitated and had raised voice against the selection of candidates before the Tribunal, before the High Court and before us."

13. In this case, even though several number of posts were notified, for selection, only 9 candidates were selected and at the time of filing of this appeal, out of 9 candidates, only 4 candidates were continuing in the service with the second respondent - Transport Corporation. The appellants herein have not involved in any corruptive practices and they are being selected on merits and suitability to the post. Further, the appellants are working almost for 15 years and gained rich experience in the post. We have also taken note of the fact that out of nine persons, only four persons, who are the appellants herein alone have continued their service, hence we are inclined to extend



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the equitable relief to the appellants herein. Accordingly, the portion of the learned Single Judge Order dated 07.03.2018 in para 45 (i) quashing the appointment of these appellants herein alone is hereby set aside and accordingly, to that extent, this appeal is allowed.

14. Accordingly, this writ appeal is allowed. Consequently, connected writ miscellaneous petition stands closed. There shall be no order as to cost.

(A.D.J.C.,J.) (K.R.S.,J.)
18.11.2024

NCC : Yes / No
Index : Yes / No
Lm/stn



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To

1. The District Employment Officer,
District Employment Exchange (Technical),
Trichy.
2. The District Employment Officer,
District Employment Office,
Karur.
3. The District Employment Officer,
Perambalur.



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