



W.A(MD)No.968 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

W.A(MD)No.968 of 2017
and
C.M.P(MD)No.6494 of 2017

R.Ashok Kumar
Shift Engineer,
Tamil Nadu Civil Supplies Corporation,
Modern Rice Mill, Manamadurai,
Sivagangai Region,
Sivagangai District.

... Appellant

vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary,
Food Ministry Department,
Fort St.George,
Chennai-600 009.

2.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Kilpauk, Chennai – 600 010.

3.The General Manager(Administration),
Tamil Nadu Civil Supplies Corporation,
Kilpauk, Chennai – 600 010.

... Respondents

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PRAYER : Appeal filed under Clause XV of Letters Patent, against the order passed in W.P(MD)No.2921 of 2017 and W.M.P(MD)No.2368 of 2017 dated 21.02.2017.

For Appellant : Mr.S.Rajasekar for
M/s.T.Lajapathiroy and Associates
For R1 : Mr.M.Prakash
Additional Government Pleader
For R2 & R3 : Mr.G.Mohan Kumar

JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Challenging the order passed in W.P(MD)No.2921 of 2017 dated 21.02.2017, the writ petitioner has filed this appeal.

2. The appellant was appointed as Shift Engineer in the year 2007 on sponsor through the Employment Exchange. According to him, he has possessed the Bachelor degree in Computer Application and MBA in Marketing and the said qualifications have been entered in his service register. In the year 2011, the recruitment by transfer to the post of Assistant Manager(General) was notified and all who possess the

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required qualification within the department were asked to apply for the same. Since the appellant possessed MBA in Marketing which is the required qualification for the post of Assistant Manager (General), he applied for the same, but he was not selected. Hence, the appellant made representation to consider his case for promotion to the post of Assistant Manager(Administration) and finding no heed to it was paid, the appellant filed W.P(MD)No.22942 of 2012, wherein, this Court directed the respondents to consider the appellant's representation. Pursuant thereto, by order dated 31.01.2017, the 2nd respondent rejected the request of the appellant on the ground that his request can be considered in the next recruitment process to the post of Assistant Manager(Administration).

3. Challenging the said order, the appellant filed writ petition contending that when there are vacancies in Coimbatore, Nagercoil and Theni, for the aforesaid post and that the post at Coimbatore is still vacant, considering the fact that the appellant has possessed the required qualification, the respondents ought to have selected and appointed him to the said post. The appellant further contended that already the



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recruitment process is over and there is no chance of filling up the vacancies in the near future and since he has acquired the required qualification for the above said post, his case may be considered for the said post. The respondents contended before the Writ Court that only through direct recruitment, the post of Assistant Manager(General) shall be filled up and it cannot be made through appointment by transfer.

4. The Writ Court finding that the post of Assistant Manager(General) can be filled up only by way of direct recruitment and the appellant cannot seek for posting to the said post based on transfer and that the recruitment rules is silent in this regard, disposed of the writ petition granting liberty to the appellant to compete along with others as and when direct recruitment/selection to the post of Assistant Manager(General) takes place. Aggrieved by the said order, the writ petitioner is on appeal.

5. Assailing the order of the Writ Court, learned counsel appearing for the appellant/writ petitioner submitted that without considering the relevant provisions concerning direct recruitment to the



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post of Assistant Manager(General), the Writ Court erroneously dismissed the claim of the appellant. He further submitted that the rule for promotion is clearly **spelt** out under Serial No.6, Category (2)-Assistant Manager, of the Employees' Service Regulations 1989 for the Tamil Nadu Civil Supplies Corporation Limited, wherein, under the head "Method of recruitment and Qualification" by direct recruitment, apart from prescribing MBA as required qualification, it has been specifically stated that every 4th vacancy shall be by direct recruitment. Thus, the learned counsel submits that the said Regulations implies that recruitment by transfer to the post of Assistant Manager can be made.

6. Learned counsel further submitted that vide proceedings dated 05.11.2016, while the 2nd respondent has effected 27 promotions to the post of Assistant Manager from the post of Superintendent, has not followed the aforesaid Employees' Service Regulations 1989, by keeping every 4th vacancy for direct recruitment. Thus, the action of the 2nd respondent reflects discrimination and mala fide which was not taken note of by the Writ Court. Therefore, the learned counsel submitted that the appellant is entitled to promotion to the post of Assistant Manager as



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like the case of similarly placed persons. Hence, he prayed to quash the order of the Writ Court.

7. Learned counsel for the respondents 2 and 3 submitted that the Writ Court finding that except the Superintendents who have completed five years of service eligible for promotion to the post of Assistant Manager, the post of Assistant Manager can always be filled up through direct recruitment, rightly dismissed the claim of the appellant which does not require interference by this Court.

8. We have heard the learned counsel for the appellant as well as the respondents.

9. The main bone of contention of the appellant is that Serial No.6, Category (2)-Assistant Manager, of the Employees' Service Regulations 1989 for the Tamil Nadu Civil Supplies Corporation Limited, specifically provides that every 4th vacancy shall be by direct recruitment and therefore, the appellant is entitled to the post of Assistant Manager(General) in the remaining vacancies either by transfer or



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promotion. The order dated 31.01.2017 of the 2nd appellant impugned in the writ petition refers to Chapter-1 4(g) of the Employees' Service Regulations 1989 of the Tamil Nadu Civil Supplies Corporation Limited, which reads as follows:-

"Direct Recruitment means recruitment for a category of post by competition open to public. Those who are already working in this corporation may also apply if they are fully qualified save age."

10. As rightly observed by the Writ Court, the said Regulation confers a complete relaxation with regard to the age for in-service candidate.

11. While dealing with the promotion to the post of Assistant Manager, the said Regulation states that those who are working as Superintendents and completed 5 years of service alone are entitled to promotion to the post of Assistant Manager(General) as a matter of promotion. The appellant is not working as the Superintendent, whereas he is working as a Shift Engineer. Mere mention of the words namely,



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"every 4th vacancy shall be by direct recruitment", would not confer any right to the appellant to seek appointment by transfer to the post of Assistant Manager(General) in the remaining vacancies, as the aforesaid Regulation is silent about filling up of the said post by transfer. When there is no explicit provision in the aforesaid Regulation, the appellant cannot seek transfer or promotion to the said post contrary to the Regulations. The only option left open to the appellant is to compete with public to get recruited to the post of Assistant Manager(General). As regards the contention of the appellant that vide proceedings dated 05.11.2016, 27 promotions were made to the post of Assistant Manager(General) without reserving 4th vacancy for direct recruitment, it is seen that the proceedings dated 05.11.2016 relates to Superintendents fit for promotion to the post of Assistant Manager(General). The appellant who is a Shift Engineer cannot seek promotion on par with them.

12. The Writ Court has rightly considered the said aspects and granted liberty to the appellant to compete along with others as and when direct recruitment to the post of Assistant Manager(General) takes place.



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The Writ Court is also right in holding that unless the aforesaid Regulations are amended, the appellant's request for appointment by transfer cannot be considered. We do not find any error in the order passed by the learned Single Judge.

13. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
26.03.2024

Index :Yes / No
Neutral Citation :Yes / No
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