

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.04.2024

Pronounced on : 30.04.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.290 of 2019 and 24441 of 2018

W.P.No.290 of 2019

Mr.C.Subramani

... Petitioner

Vs.

1. The Additional Chief Secretary to Government
& Chairman of All State Transport Undertakings,
Transport Department Government of Tamil Nadu,

[Redacted]

2. The Managing Director,
Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore,

[Redacted]

3. The General Manager,
Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore,

[Redacted]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint the petitioner to the post of Superintendent (Legal) / Senior Superintendent (Legal) as per the CSR (Common Service Rules) from the date of Petitioners eligibility from 1.05.1993 and 01.10.1966 respectively based on petitioners representation dated 14.10.2018 along with all retrospective benefits



W.P.No.24441 of 2018

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Mr.C.Subramani

... Petitioner

Vs.

1. The Additional Chief Secretary to Government
& Chairman of All State Transport Undertakings,
Transport Department Government of Tamil Nadu,

2. The Managing Director,
Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore,

3. The General Manager,
Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore,

4. C.Vachravel

5. K.Jayakumar

6. P.Umashankar

7. R.Hariharan

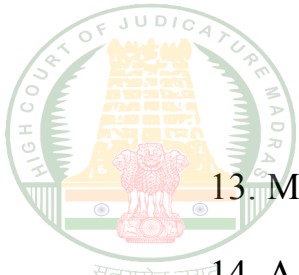
8. C.Saravanan

9. M.Jeevanandam

10. G.Thangavelu

11. M.Murugesan

12. K.Jeevanandam



13. M.Gandimathi

14. A.Shanmugam

15. S.Sekar

16. S.Natarajan

17. R.Shanmugasundaram

18. V.Muthusamy

19. M.Velmurugan

20. A.S.Sekar

21. C.Chandrasekaran

22. A.Rajakumar

23. T.Kathirvel

24. N.Rajavelu

25. M.Saleem Basha

26. B.Kurusadi Rajan

27. K.Gunasekaran

28. V.Kesavan

29. R.Palanisamy

30. C.Palanisamy

31. K.Venkatachalam

32. J.Jayakumar



33. N.A.Musthapa

34. S.Vadivel Murugan

35. R.Ramakrishnan

36. S.Venkatachalam

37. P.Mathappan

38. P.Shanmugasundarasamy ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned seniority list issued by the 3rd Respondent in Pa.No.SPL / P3 / P.D.2 / TNSTC / CBE / ER /2018 dated 07.08.2018 quash the same and consequentially direct the 3rd Respondent to issue fresh seniority list by including petitioners name by considering his representation dated 16.08.2018 in the light of the common service Rules and Govt.Lr.No.89 / Cho / 2001 Transport Department dated 16.08.2001.

For Petitioner : Mr.L.Chandrakumar
for E.Mohamed Abbas (in all W.Ps)

For R1 : M/s.E.Ranganayaki,
Additional Government Pleader
(in all W.Ps)

For R2 & R3 : Mr.R.Neelakandan,
Additional Advocate General VIII
assisted by Mr.R.Babu,
Standing Counsel for TNSTC
(in all W.Ps)

COMMON ORDER

The petitioner in these two Writ Petitions is one and the same and the



claim of the petitioner is for promotion to the post of Superintendent (Legal) and for further promotions and as such, both the matters were heard together and are being disposed of by this common order.

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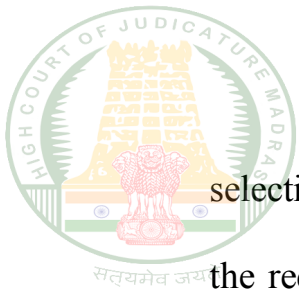
2. The petitioner herein was originally appointed as “Junior Assistant” on 18.09.1987 and his services were regularized with effect from 24.09.1988. Thereafter, he was posted as “Assistant” on 01.02.1994 and further promoted as “Senior Assistant” on 01.08.2013. In the meanwhile, the petitioner claims to have completed Degree in Law in the year 1992 and thereafter, Diploma in Labour Law in the year 1993. Thus, he claimed that he is fully eligible to be appointed as “Superintendent (Legal)” and submitted various representations before the respondents seeking appointment to the post of “Superintendent (Legal)”. It is also the contention of the petitioner that several other persons who does not possess the requisite qualification of Degree in Law have been appointed to the post of “Superintendent (Legal)” and “Senior Superintendent (Legal)”, contrary to the Rules. When the respondents have prepared a seniority list of candidates for consideration for promotion to the post of “Superintendent (Legal)”, the petitioner approached this Court by filing W.P.No.24441 of 2018, contending that various persons who are juniors to



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the petitioner in terms of appointment into service were included in the said seniority list, but the name of the petitioner was not included. He also further contended that the said seniority list for promotion to the post of “Superintendent (Legal)” was prepared without taking into consideration the eligibility criteria of the persons included in the said seniority list. As the case of the petitioner was not considered by the respondents, the petitioner approached this Court by filing W.P.Nos.290 of 2019

3. The basis for the petitioner to make a claim for appointment to the post of “Superintendent (Legal)” is Rule 59 of Common Service Rules read with Appendix-II of the said Rules. Sri.L.Chandrakumar, learned counsel appearing for the petitioner contended that, in terms of clause (d) of Rule 59, if suitable persons are not available for appointment by promotion to a category of posts, the vacancies existing in such category of posts are required to be filled up by direct recruitment by selection from among the holders of any other category of posts, who possess the qualifications prescribed for direct recruitment. According to the learned counsel for the petitioner, as there were no qualified candidates for filling up the post of “Superintendent (Legal)”, the said vacancies are to be filled up by direct recruitment by



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selection from among the holders of any other category of posts, who possess the requisite qualifications. Thus, it is contended that for want of availability of qualified candidates for filling up the post of Superintendent (Legal) by way of promotion, the respondents are under obligation to fill up the said post by way of direct recruitment from among the holders of any other category of posts, who possess the required qualification like the petitioner. The petitioner has been making such claim right from the year 1992 by submitting various representations.

4. As already noted above, the petitioner was appointed as “Junior Assistant” in the year 1987 and his services were regularized in the year 1988 and thereafter, he was promoted to the post of “Senior Assistant” only on 01.08.2013. Thus, the petitioner is not in the feeder category to the post of “Superintendent (Legal)” till 01.08.2013. But the petitioner has been making claim for appointment to the post of “Superintendent (Legal)” from the year 1992 onwards on the ground that he is fully eligible and qualified to be appointed to the said post by way of direct recruitment by placing reliance on Rule 59 of the Common Service Rules. Clause (d) of Rule 59 reads as under:-

“ (d) Where the Rules stipulate the method of



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recruitment to a category of post (as specified in Appendix-II) “by promotion” only, and if suitable person are not available for such appointment by promotion, the vacancies existing in such category of post may be filled up “by direct recruitment” by selection from among the holders of any other category of post who possess the qualification(s) prescribed for direct recruitment to the next lower category (in the line of promotion to the higher category) and the experience prescribed, if any.”

5. From the above, it is clear that the said Clause (d) would apply only in case, the relevant Rules stipulate the method of recruitment to a category of posts by promotion only, and in case if suitable persons are not available for such appointment by promotion. Therefore, it is necessary to notice the relevant Rules governing the filling up the post of “Superintendent (Legal)”. In terms of part B of Appendix-II appended to the Common Service Rules, the post of “Superintendent (Legal)” is required to be filled up by transfer from among the holders of the post of Superintendent (Admin and Accounts), who possess Degree in Law, awarded by recognized University. Thus, the post of “Superintendent (Legal)” is required to be filled up by way of “transfer”, but not by way of “promotion”. The said transfer is from the equivalent cadre,



but not appointment by transfer from one service to the other service.

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6. Then, coming to the post of “Senior Superintendent (Legal)”, the said post is required to be filled up by three methods. Firstly, by way of transfer from among the holders of the post of “Senior Superintendent (Admin and Accounts)” and “Assistant Welfare Officer”, who possess Degree in Law awarded by recognized University. Secondly, by way of promotion from among the holders of the post of “Superintendent (Admin and Accounts)” and “Superintendent (Legal)”, who possess Degree in Law and who have completed not less than five years in the grade of “Superintendent (Legal)”. Thirdly, by way of direct recruitment. Thus, even the post of “Senior Superintendent (Legal)” can be filled up by three methods of recruitment, as noted above. Thus, it is clear that either the post of “Superintendent (Legal)” or “Senior Superintendent (Legal)” are not the posts, which can be filled up only by way of promotion. Therefore, the entire claim made by the petitioner by placing reliance on Clause (d) of Rule 59 is totally misconceived and falls to the ground.

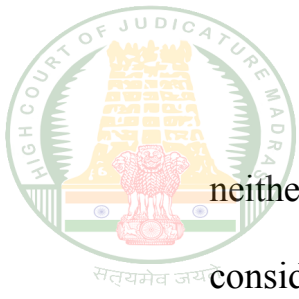
7. Even otherwise, “whether to fill up a post by way of direct



recruitment or not?” is not a matter that can be claimed or agitated by an aspiring candidate, but it is for the employer concerned to take a call on the same.

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8. In the light of the Part B of Appendix-II of the Common Service Rules, the post of “Superintendent (Legal)” can be filled up by way of transfer from the post of “Superintendent (Admin and Accounts)”. Admittedly, the petitioner is not the one, who is working as “Superintendent (Admin and Accounts)”. Further, the petitioner is neither a “Senior Superintendent (Admin and Accounts) nor Superintendent (Admin and Accounts) or Superintendent (Legal)” for considering his case either for appointment through transfer or for promotion to the post of “Senior Superintendent (Legal)”, as on the date of filing of either of the Writ Petitions. However, the petitioner has been making a claim for appointment to the said post right from the year 1992. May be, as contended by the petitioner, the respondents might have resorted to filling up the posts of Superintendent (Legal)/ Senior Superintendent (Legal) with the persons who does not possess the qualification of Degree in Law. But, by placing reliance on such an irregularity or illegality committed by the respondents, the petitioner, who is



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neither in the feeder category to the said post nor having any right of consideration for promotion to the said post under Rules, can have locus to raise any objection on such appointments made to the post of “Superintendent (Legal)” and “Senior Superintendent (Legal)”. Even assuming that such appointments made by the respondents are illegal, the same does not confer any right on the petitioner to make a claim as is made in these Writ Petitions. Hence, the entire claim made by the petitioner in W.P.No.290 of 2019 is wholly baseless and liable to be rejected. The validity or otherwise of the promotions alleged to have been made with the candidates not possessing requisite qualifications, cannot be gone into in this Writ Petition as the same is not questioned in this Writ Petition.

9. Then, coming to the claim of seniority made by the petitioner in W.P.No.24441 of 2018 is concerned, the respondents have taken a specific stand in the counter-affidavit filed in the said Writ Petition at Paragraph No.6 stating that the petitioner herein got transferred to the Erode region of the respondent Corporation with a condition that he will be placed as junior-most in the administrative capacity as on the date of joining in the said region, and he was at Sl.No.62, whereas the impugned seniority list was prepared for



filling up 24 vacancies of “Superintendent (Admin)” and therefore, the case of the petitioner is not coming within the zone of consideration. There is nothing to contradict the said statement made in Paragraph No.6 of the counter-affidavit filed by the respondents.

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10. In the absence of any contradiction to the above said statements made in the counter-affidavit filed by the respondents, the entire claim of seniority made by the petitioner does not stand to legal scrutiny. Further, the petitioner is claiming seniority over the persons whose names were included in the impugned seniority by claiming that the said persons were juniors to the petitioner with reference to entry in to the service of the respondent Corporation. Once the petitioner has opted to change his region on a condition that he will take the last rank in the administrative category of that region, the original date of entry into service has lost its significance and his seniority in the Erode region can only be counted from the date of his transfer to such region. Thus, the claim of petitioner, claiming seniority over the persons, whose name were included in the impugned seniority list cannot be accepted.

11. Added to the same, admittedly the petitioner was promoted to the



post of “Senior Assistant” only in the year 2013 and the said post of “Senior Assistant” is not the feeder category to the post of “Superintendent (Legal)” and hence, the question of petitioner making any claim to the said post is also totally baseless. Further, though the petitioner claimed to be senior to the persons whose names were included in the impugned seniority list, the petitioner failed to state as to how the petitioner is claiming seniority over the persons whose name were included in the impugned seniority list nor anything is brought to the notice of this Court to substantiate such contention.

12. In the light of the above, this Court does not find any merit in both the Writ Petitions and they are accordingly dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

30.04.2024
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skr
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The Additional Chief Secretary to Government
& Chairman of All State Transport Undertakings,
Transport Department Government of Tamil Nadu,



2. The Managing Director,
Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore,

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MUMMINENI SUDHEER KUMAR, J.

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