

(1978) 02 MAD CK 0003
In the Madras High Court

K. Krishnan Nair

APPELLANT

Vs

Govt. of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-02-1978

Acts Referred:

Citation : (1978) 2 LLJ 40

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner was working as a Traffic Inspector in the Tamil Nadu State Trans. port Department, the second

respondent herein. On the formation of Pallavan Transport Corporation by G.O. Ms. No. 86 dated 8-11-1971, the petitioner on 1-1-1972 was

deputed to serve the said Corporation. From that day onwards the petitioner has been working in the said Corporation on deputation receiving the

same emoluments and enjoying the same service conditions and privileges as obtained in the Tamil Nadu State Transport Corporation Department.

The persons like the petitioner who were on deputation with the Pallavan Transport Department were asked to exercise their option to be retained

in the service of the Pallavan Transport Corporation. Though some of the persons like the petitioner exercised their option for retention in the

Pallavan Transport Corporation, the petitioner did not exercise the option. As a result the petitioner continued to be an employee of the State

Transport Department though he has been serving on deputation under the Pallavan Transport Corporation. The fact that the petitioner continues

even now to be an employee of the Tamil Nadu State Transport Corporation Department cannot be and has not been disputed in the counter-

affidavit. As a matter of fact in a proceeding issued by the Director, State Transport Department dated 22-4-1972 the petitioner has been shown

as No. 1 in the panel for promotion to the Traffic Managers cadre. The panel is said to be provisional for a period of one year during which time

the persons listed in the panel have to acquire the requisite qualifications. Since the petitioner has passed the requisite tests within the period

mentioned therein, he has acquired a right for promotion as per the said panel. The petitioner who has been included in the provisional panel has

actually been promoted and posted as a Traffic Manager in the scale of pay of Rs. 400-15. 475-20-575-25-650. But, the said order dated 22-4-

1972 promoting the petitioner as traffic Manager has kept in abeyance by a further order dated 39-4-1972. The said order does not give any

reasons as to why the promotion of the petitioner has been kept in abeyance. However, by a further order dated 26-3-1974 three persons who

are shown as Nos. 2, 9 and 10 in the provisional panel prepared on 22-4-1972 had been promoted temporarily as Traffic Managers under Rule

39(a)(i) of the Tamil Nadu State and Subordinate Service Rules. This order also does not indicate as to why the order dated 22-4-1972

promoting the petitioner as a Traffic Manager had not been given effect to and the persons in the provisional panel prepared on 22-4-1972 who

are juniors to the petitioner should be appointed though temporarily as Traffic Managers. The said order promoting the petitioner's juniors as

Traffic Managers ignoring the claims of the petitioner has been challenged in this writ petition,

2. According to the petitioner, he continues to be a member of the service under the Tamil Nadu State Transport Department though he is serving

as a Traffic Inspector in the Pallavan Transport Corporation on deputation, and his claim for promotion cannot be overlooked merely on the basis

that he is serving in the Pallavan Transport Corporation which is not of his choice and In fact he has not exercised his option for the retention in the

laid Corporation and therefore, he should have been promoted in the State Transport Department. It is not in dispute that the petitioner continues

to have lien in the parent department and he is in fact been promoted as Traffic Manager by an order dated 22-4-1972. The counter-affidavit does

not disclose any reason as to why the petitioner's promotion which was on 22-4-1972 by the State Transport Department was not given effect to

and his juniors were appointed on 26-3-1974. The ostensible reason given in the counter-affidavit is that the appointment of the respondents 3 to 5

as Traffic Managers ordered on 26-3-1974 is purely temporary under Rule 39(a) (i) of the Tamil Nadu State and Subordinate Service Rules. It is

not the case of the respondents 1 and 2 that the petitioner was called back from the Pallavan Transport Corporation to rejoin the parent

department and to take up the post of the Traffic Department Manager, and that the petitioner was unwilling to come over to the parent

department. The petitioner who had been sent on deputation to the Pallavan Transport Corporation had no choice to resist the order of deputation.

When the petitioner had no choice except to serve the Pallavan Transport Corporation on the basis of the order of deputation he cannot be

penalised by not giving a promotion on the basis that he is not readily available to take up the post of Traffic Manager. In this view the impugned

order dated 26-3-1974 promoting the respondents 3 to 5 though on a temporary basis, as Traffic Managers, cannot be sustained. The learned

Government Pleader would point out that the appointment is only temporary and it does not confirm any permanent status on those persons and

that as and when the service rules are framed the petitioner may get his due place. But, even in the matter of temporary promotion persons who are

seniors and duly qualified for promotion cannot be ignored. In this view the writ petition is allowed and the impugned order is quashed.