

(2011) 02 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No. 20577 of 2010

N. Dakshinamurthy

APPELLANT

Vs

The Managing Director State Express Transport Corporation
Ltd. and Government of Tamil Nadu

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Assistant Manager (Public Relations) in the Common Service Rules — Rule 14
Constitution of India, 1950 — Article 14

Citation : (2011) 02 MAD CK 0060

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

**Advocate : S. Vijayaraghavan, for the Appellant; Rita, for Jayes B. Dolia, for R1
and B. Vijay, Government Advocate for R2, for the Respondent**

Final Decision : Dismissed

Judgement

Vinod K.Sharma, J.—The Petitioner has approached this Court with the prayer for issuance of a writ in the nature of Mandamus, directing

the Respondents to pay emoluments for the post of Assistant Manager (Public Relations) by treating him to be holding the said post with effect

from 01.02.2002 till 31.03.2003, i.e. the date of retirement of the Petitioner. The Petitioner also prays for grant of additional pension along with

arrears thereon.

2. It is pleaded by the Petitioner in the affidavit as under:

2. I humbly submit that I was first appointed as a Junior Assistant in the Tamil Nadu State Transport Department. After the formation of

Thiruvalluvar Transport Corporation (now S.E.T.C.), I was posted to work and co-ordinate in the Editorial Board of the House Journal in the

Public Relations Cell and subsequently, I was promoted as Assistant in the year 1972, and then to the post of Superintendent with effect from

01.07.1983. From 06.09.1984 to 30.06.1988, I worked as Assistant Public Relations Officer and I was awarded merit and appreciation letter

from the Managing Director with effect from 01.07.1990 I was promoted and appointed as Senior Superintendent, a feeder post for appointment

on promotion to the post of Assistant Manager (Public Relations). I possessed M.A. Degree in Political Science with Public Administration and

Mass Communication and also a P.G. Diploma in Personnel Management with Industrial Relations of Annamalai University, which Diploma is

recognized by the Government of Tamil Nadu. I had put in more than 10 years of service in the Supervisory Category.

3. While so, the Expert Committee on Transport Corporations constituted by the Government of Tamil Nadu under G.O. Ms. No. 8, Transport

dated 03.01.1990, submitted a Report prescribing qualifications and recommending for appointment to the post of Public Relations Officer as the

Post of Public Relations Officer was required to be maintained for each State Transport Undertakings. However, the Government of Tamil Nadu

did not agree for the creation of the post of Public Relations Officer. Moreover that each Transport Corporation in Tamil Nadu is registered under

the Companies Act. And all the Transport Corporations have a Common Service Rules. They have to follow the Common Service Rules and the

Board is the Supreme Authority. The Chairman of the Board is the Secretary Transport Department. There is no such post as Assistant Manager

(Public Relations) in the Common Rules. The Assistant Manager Post in all categories are filled up by promotion only. There is no direct

recruitment for the post of Assistant Manager (Public Relations) in the Common Service Rules. They are filled up from the Seniority List of Senior

Superintendent. The Transport Corporations follow the Common Service Rules for all promotions from Assistant Manager to Managing Director.

The Commissioner and Secretary to Government Transport Department in his Lr. No. 8149/CI/81-1 Transport Department dated 26.03.1981

stated that the Sub Committee Report on Organisation Structure in Managerial Supervisors Cadres are only broad guidelines and the Board of

Directors of the Corporations should take a decision. Further in the G.O. Ms. No. 2109 dated 06.05.1992 also it has been clearly stated that

there is no immediate need to create the Public Relations Officer Post and the existing Administrative Manager (Public Relation) should be properly utilized.

4. However, the First Respondent herein issued a Circular dated 30.12.1993 calling for the Applications from the employees of the First

Respondent Corporation for filling up the post of Assistant Manager (Public Relations) by Direct Recruitment in the time scale of pay of 2200-

4000. The First Respondent also prescribed certain qualifications for direct recruitment. The post of Assistant Manager (Public Relations) is a

promotion post for which as per the guidelines and the Rules only, promotion has to be resorted to for making appointment from the post of Senior

Superintendent, the feeder category. Myself and other persons like me were holding the post of Senior Superintendent in the feeder category

possessing required qualifications and in addition to that I had already been working as Assistant Public Relations Officer from 1984 to 1988, and

hence I was the Senior Most in the feeder category of Senior Superintendent and I possessed all required qualifications, not only for being

considered for promotion to the post of Assistant Manager (Public Relations), but also eligible to be promoted to the post of Assistant Manager in

any Administrative Category. As per Chapter III General Rules 14 of Common Service rules of the Corporation all appointments by direct

recruitment to categories of posts included in the Managerial Cadre, Supervisors, working Groups and Miscellaneous Groups shall be through

Employment Exchange. But the First Respondent resorted to direct recruitment method to fill up the Post of Assistant Manager (Public Relations)

contrary to the practice and Rules and Regulations of the First Respondent Corporation as directed by the Second Respondent. As such the

Circular was arbitrary, suffered from legal infirmities like lack of authority and legal sanction.

5. The First Respondent by resorting to direct recruitment method was trying to eliminate the eligible persons holding the post in the feeder

category of Senior Superintendent and thereby curtailed the promotion opportunities. However, I made applications and representations to the

Respondents after the circular was issued and I was not considered for promotion. Following the circular and on applications made by the

employees of the First Respondent Corporation, interview cards were issued by the First Respondent fixing up the date of interview on

04.06.1994 and the selection was not completed.

6. I submit that the Circular was issued by the First Respondent so as to accommodate and appoint under the guise of direct recruitment, a

particular individual namely Mr. C.K. Syed Shaffi, who was employed as Superintendent, overlooking the seniority of eligible seniors in the lower

category. Even for direct recruitment from the employees of the Corporation, it was a must to prescribe qualifications and to publish, instructing the

employees to acquire the qualifications. By failing to do so, the First Respondent had acted illegally in violation of Article 14 of the Constitution of

India, and against the interest of the rights of the employees of the first Respondent Corporation.

3. The case of the Petitioner is that the Petitioner filed W.P. No. 10160 of 1994, seeking writ in the nature of Certiorari to quash the Circular

dated 30.12.1993 with further prayer to direct the Respondent to follow the promotion policy for filling the post of Assistant Manager (Public

Relations), and further consider the Petitioner for the post.

4. The Petitioner claims, that the writ petition was allowed in favour of the Petitioner, and it was held that the Petitioner possessed requisite

qualification for promotion to the post of Assistant Manager (Public Relations), and was entitled to be considered for the post. Direction was also

issued to fill up the post, which was lying vacant, as and when required, by considering the case of the Petitioner.

5. The case of the Petitioner is that in spite of direction issued by this Court, his case for promotion was not considered.

6. The Petitioner did not take any action for enforcement of the order passed by this Court, instead made representations on 04.10.2001 and

06.06.2002, followed by a legal notice dated 02.08.2002.

7. In reply to the legal notice, the Petitioner was informed that the post of Assistant Manager (Public Relations) was filled up in the month of

February, 2002, by reverting Mr. C.K. Syed Shaffi and, that no vacancy available.

8. The case of the Petitioner is that process followed for promotion was not in accordance with the order passed by this Court. However, for the

reasons best known to the Petitioner, he chose not to challenge the order. It is

only in the year 2010, that the writ has been filed to challenge the promotion, made in the year 2002. The Petitioner has not also impleaded the person, promoted, and is likely to be affected by any order passed by this Court.

9. Without impleading the promoted person, the Petitioner now claims that he should be deemed to have promoted, such proposition is unknown to law. The prayer made in the writ petition is misconceived and challenge to the promotion of a person to the post of Assistant Manager (Public Relations) is otherwise not competent, being belated, as also for want of impleading him as a party. In the absence of challenge to the appointment to the post, no writ of Mandamus is competent. The Petitioner's case can only be considered against available vacancy, as ordered by this Court on earlier occasion.

10. Consequently, the writ petition, being misconceived, is ordered to be dismissed. No costs.