

(2003) 04 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No. 4580 of 1998

S. Vincent Prabakar

APPELLANT

Vs

Metropolitan Transport Corporation (CD-II) Ltd.

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 04 MAD CK 0032

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : K.P. Chandrasekaran, for the Appellant; P. Ganesan, for T. Chandrasekaran, for the Respondent

Judgement

P.D. Dinakaran, J.—Aggrieved by an order of reversion dated 19.3.1998 of the first respondent, reverting the petitioner from the post of

Foreman to the post of Assistant Foreman, on the ground that his promotion as Foreman with effect from 1.10.1996 was contrary to the service

rules of the respondent-Corporation for want of five years experience as Assistant Foreman, the petitioner has preferred the above writ petition for

issue of a writ of Certiorarified Mandamus to call for the records in respect of the order No. 299/P.S.(E)1/MTC(CD-II)/97-2, dated 19.3.1998

issued by the first respondent, quash the same and to direct the respondent to restore the petitioner to the original post of Foreman, on the only

ground that he had not been given an opportunity before reverting him from the post of Foreman to the post of Assistant Foreman.

2. The fact that the petitioner did not possess five years experience as Assistant Foreman, which was required qualification under the service rules

of the Corporation while he was promoted as Foreman with effect from

1.10.1996, is not disputed by the petitioner.

3. Concededly, the order of reversion dated 19.3.1998, was not passed pursuant to any disciplinary action initiated against the petitioner, nor it is

the contention of the learned counsel for the petitioner that the required condition of experience, namely five years of service as Assistant Foreman

was relaxed in the case of the petitioner while he was considered for promotion to the post of Foreman with effect from 1.10.1996. In fact, the

impugned order of reversion dated 19.3.1998 was passed finding that the promotion of the petitioner as Foreman with effect from 1.10.1996 was

contrary to the service rules. If that be so, the argument that the petitioner should have been heard before passing the order of reversion would be

of no consequence for the simple reason that his promotion was per se illegal and void ab initio, and there would be no question of hearing the

petitioner, as by hearing the petitioner nothing would have been achieved.

4. It is trite law that candidates appointed in an unauthorised manner and against non-existent vacancies contrary to the relevant regulations are not

entitled to complain against the termination of service, even if the same was sought to be done after regularisation, as the principles of natural justice

are not violated and the orders of termination of such candidates are not vitiated on that ground as their very appointment was contrary to the

regulations, vide *Ashwani Kumar and Others Vs. State of Bihar and Others*, . However, the Apex Court, tempering justice with mercy, directed

the appointing authority on humanitarian grounds that all the affected candidates shall be considered for fresh recruitment in the vacancy that may

arise in the sanctioned post under the department.

5. Applying the said decision of the Apex Court in *ASHWANI KUMAR & ORS. Vs. STATE OF BIHAR & ORS.*, referred supra, suffice it to

permit the petitioner to represent to the respondent-Corporation to consider him for future vacancy in the cadre of Foreman based on his

experience as on date and the same shall be considered by the respondent-Corporation for the existing or immediate future vacancies to the post

of Foreman.