

(2002) 04 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No's. 19400 of 1996 and 13472 of 1998

V.T. Loganathan Pals Flat, Nungambakkam, Chennai

APPELLANT

Vs

Dr. Ambedkar Transport Corp. Ltd.
A. Dhanesekaran,
C.J. Vijayakumar and P. Ganesan Vs Metropolitan Transport
Corp. (Chennai Division II), Ayanavaram, Chennai and V.T.
Loganathan, Superintendent, Metropolitan Transport Corp.
(Chennai Division II), Ayanavaram, Chennai

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Citation : (2002) 04 MAD CK 0068

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : V.T. Loganathan, M. Palani and Hari Paranthaman, for the Appellant;
R.P. Kabilan, for the Respondent

Judgement

V.S. Sirpurkar, J.—Writ petition No: 19400 of 1996 is filed by one V. T. Loganathan challenging the order of reversion. The petitioner

joined as a Junior Assistant in the year 1973, was promoted as an Assistant in the year 1982, was further promoted as Senior Assistant in the year

1988 and was ultimately promoted to the post of Superintendent by an order dated 02.04.1996. For the post of Superintendent, the selection

committee had selected him. However, to his utter dismay he received an order dated 17.12.1996 wherein his promotion was cancelled by the

order of a Managing Director. The order does not speak of any reason. It merely directs the petitioner to work as a Senior Assistant in the same

place and service as he was working earlier before his promotion. The learned counsel for the petitioner points out that the promotion was after a

selection because the post of Superintendent is a supervisory cadre post which

depends on the selection and not merely on the basis of seniority.

In that view, the learned counsel for the petitioner invites my attention to the promotion order dated 2.4.96 which clearly speaks of the promotion

being granted. One other significant thing is that he is treated to be a probationer for a period of two years.

2. The learned counsel for the petitioner therefore urges that this is patently incorrect, arbitrary and illegal order in law. The matters do not stop here.

3. In this writ petition one A. Dhanasekaran, C. J. Vijayakumar and P. Ganesan have got themselves impleaded. Not stopping at this the said three

persons have also filed a writ petition in W.P. No: 13472 of 1998 challenging the promotion order dated 2.4.96 in favour of Mr. Loganathan, the

petitioner in the earlier mentioned writ petition. In the second writ petition viz. W.P.13472 of 1998, the prayer is in the following terms,

... it is prayed that this Hon"ble Court may be pleased to issue orders, directions and particular issue a writ in the nature of writ of

CERTIORARIFIED MANDAMUS after calling for the records relating to the order dt.2.4.96 passed by the 1st respondent to promoting the 2nd

respondent as Superintendent (liaison work) and quash the same and to direct the 1st respondent to promote the senior most Assistant as

Superintendent (liaison work) and award costs.

In the first place seeking for a direction by way of a mandamus to promote the three petitioners namely Dhanasekaran, Vijaya Kumar and Ganesan

is patently incorrect because there cannot be a direction to promote three persons unless there is a right to be promoted and it is already an

admitted position herein that the promotion to the post of Superintendent is by way of selection and not based on seniority.

4. However, without going further into the merit of this petition, the learned counsel for the petitioners Mr.Hari Paranthaman submits that the

promotion which was awarded to Mr. Loganathan was being sought to be challenged before the industrial Court under the Industrial Disputes Act

and for that purpose the union namely the Transport Corporation Employees Union had raised an industrial dispute questioning the promotion. He

then pointed out that however the conciliation officer also reported a failure of conciliation since the earlier mentioned writ petition viz. W.P.No:

19400 of 1996 was filed and that is the reason these petitioners approached this Court by way of a writ petition. Be that as it may. The learned

counsel for the petitioners now points out that during the pendency of all these litigations, the Government has refused to refer the dispute on the

ground that these writ petitions are pending before this Court.

5. On this Mr. Palani, the learned counsel appearing for Mr. Loganathan urges that the order of reversion is patently incorrect whereas the

contention of Mr. Hari Paranthaman is that the promotion order itself was incorrect and therefore the reversion order is absolutely correct. On this

backdrop it will be interesting to see the stand taken by the Corporation.

6. In its turn the Corporation has specifically alleged that a selection committee was formed and an interview was conducted on 30.03.1996 for the

post of Superintendent wherein Mr. V. T. Loganathan was selected by an order dated 2.4.96. Therefore it is not as if there was no interview or

that the petitioner/Loganathan was not selected at all. The Corporation however relies on clause 25A or on clause 42A of the Common Service

Rules and says that an order promotion an employee can be revised by the authority to which the appeal would lie. In that view the Corporation

supports the petitioners in writ petition No: 13472 of 1998. Before that the Corporation raises a plea that those persons who were not selected

had made a representation / appeal to the Government challenging the selection of the petitioner Loganathan and the Government had come to the

conclusion that the selection was bad and had sent a letter dt. 10.12.1996 bearing No: 35/00447/PS(A)1/DATC/96 to revert Loganathan.

7. Now one fails to see the role that the Government can play in the whole affair. Since a plea was raised, the availability of an appeal remedy and

the appellate authority who is competent to revise the promotion orders and the relevant rules were seen. There is nothing in clause 25A and 42A

to suggest that the Government has any such power. This is apart from the fact that this letter dt.10.12.1996 is not to be found on record.

Therefore, one thing is certain that the transport corporation, even if it has bent to the Government's wishes, has acted illegally in reverting

Loganathan without even giving him any chance. I am not here to examine the other aspects for the simple reason that an order spelling out a

reversion of a person who is selected by a selection committee cannot be passed

atleast without giving a hearing to the said person or giving him an opportunity to explain as to why he should not be reverted. After all it is not the case of the Corporation that the man was found to be incompetent or he had in any manner committed any misconduct. That could have been a reversion if it had been done only on the grounds available in the Rules and I do not find any such grounds available to the Corporation. In the result the Writ Petition No: 19400 of 1996 must succeed. The impugned order of reversion is quashed and set aside and the earlier status of the petitioner is restored. However, before closing I may make it clear that if the Corporation so feels, it may take such action as is available to it under the applicable rules. So also these observations in this judgment shall not affect the proceedings before the Industrial Tribunal if they are so taken at the instance of the petitioners in W.P.No: 13472 of 1998. That matter shall be decided on its own merits. Since W.P. No: 19400 of 1996 succeeds on the grounds which have been set out above, the other writ petition i.e. W.P.No: 13472 of 1998 must fail and is dismissed but in the light of the observations made by me in respect of the proposed proceedings under the Industrial Disputes Act. Consequently, connected W.M.Ps. are closed.