



W.A. No. 1702 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

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&
C.M.P. No. 15046 of 2023

1. The Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region,
Rep. by its General Manager,
Rangapuram, Vellore – 09.
2. The General Manager,
The Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai. ..Appellants

Vs.

Dayanithi

..Respondent

Prayer: Writ Appeal as against the order dated 30.06.2022 passed in



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W.P. No. 7648 of 2010.

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For Appellants :: Mr.M. Aswin

For Respondent :: Mr.V. Ajoy Khose

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The present writ appeal has been preferred as against the order dated 30.06.2022 passed in W.P. No. 7648 of 2010 wherein the learned Single Judge, taking into account that the respondent/writ petitioner had attained superannuation, had directed the appellant Management to grant notional promotion to the respondent/writ petitioner with continuity of service only for the purpose of terminal benefits without backwages from the date on which his juniors were promoted.

2. The minimum facts required for the disposal of the writ appeal are stated hereunder:

(i) The respondent/workman joined the services of ‘Thanthai Periyar Transport Corporation’ which was renamed as ‘Tamil Nadu State Transport Corporation (Villupuram) Limited’ as an Electrical Helper in 1979. The respondent was absorbed into the services of the new

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Corporation, namely, TNSCL, Villupuram, the 1st appellant herein as a Junior Tradesman with continuity of service on the same conditions of service. While working so, the respondent/workman completed Diploma Course in Electrical Engineering, which is a requisite qualification for promotion to the post of Junior Engineer and therefore, he submitted an application on 18.12.1985 to the 1st appellant requesting promotion to the post of Junior Engineer. Since, no orders were passed, based on the circular dated 20.11.1986 issued by the 1st appellant stating that representation could be made to the Management, in case of any grievance, the respondent/workman submitted an application requesting grant of promotion to the post of Junior Engineer, pursuant to which, he was called for an interview on 14.11.1987. However, by order dated 28.11.1987, the respondent's request for promotion was rejected.

(ii) Aggrieved by the said rejection and also by the grant of promotion to two of his juniors by another order of even date, the respondent/workman raised an industrial dispute with the help of Union which was referred by the Government of Tamil Nadu on 28.10.2004 for adjudication by the Industrial Tribunal and the Industrial Tribunal passed an



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award dated 14.02.2007 directing the appellant Corporation to consider the case of the respondent/workman for promotion afresh as Junior Engineer on par with Thiru Kotti, who was promoted as Junior Engineer from 28.11.1987 on the same criteria on which the juniors were promoted and if found fit for promotion, to grant the respondent/workman all consequential benefits in the manner known to law. Subsequent to the award passed, the respondent/workman was called for an interview by the appellant Corporation and by order dated 26.03.2008, the respondent's claim for promotion came to be rejected, resulting in the filing of the writ petition.

(iii) The learned Single Judge, on considering the submissions made on either side and on perusing the materials on record, by a detailed order, found that the denial of petitioner's promotion was vitiated by malice and that the rejection was predetermined. The writ petition came to be disposed of directing the appellant Corporation to grant notional promotion to the respondent/workman, as he had attained the age of superannuation, with continuity of service only for the purpose of terminal benefits without backwages from the date on which his juniors were promoted. Questioning the said order, the appellants are before this Court.



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3. The main contention of the appellants/Management before this Court was that the employee/respondent had suffered punishments on previous occasions and that he cannot be treated on par with Kotti, who was not imposed with any such punishment.

4. On the other hand, learned counsel appearing for the respondent/workman would submit that the appellants had wantonly denied promotion to the respondent/workman and it cannot be gainsaid that the approval petition, which was filed on an earlier occasion, seeking approval of dismissal of the respondent/workman from service on charges of theft, was rejected by the Tribunal holding that the charges were not proved and pursuant to the settlement arrived at under Section 18(1) of the Industrial Disputes Act, 1947, the respondent/workman was reinstated with continuity of service, but without backwages. He would further submit that the learned Single Judge was right in holding that the denial of promotion was vitiated by malice.



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5. Heard the submissions of the learned counsel on either side and perused the materials on record.

6. Insofar as the contention of the appellants that the award, though not questioned, does not direct promotion to be given and that the award specifically states that in case, the employee was found fit for promotion, he could be granted all consequential benefits, is concerned, the result of the award alone cannot be looked into. The entire award has got to be gone into. From paragraph No. 31 of the award, it is very clear that one Kotti, with whom the respondent/workman compares himself for promotion as a Junior Engineer was not even sent call letter for attending the interview and the relevant portion of paragraph No.31 of the award is extracted hereunder:

“31. It is not known as to how Thiru Kotti was given promotion as Junior Engineer when he was not given any call letter for attending personal interview. WW1 in his proof affidavit in para.13 has alleged that Thiru Panneerselvam was promoted as Junior Engineer by the management on the basis of extraneous consideration. The Workman Thiru



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V. Dayanidhy was not given promotion on account of legal mala fide and victimisation and malice in law and effectual victimisation are quite obvious in the case on hand before us. Suffice it to state that the evidence of WWI workman V. Dayanidhy is unassailable and the same is not controverted. Inasmuch as the workman V. Dayanidhi was not given the promotion, and in view of the evidence of WWI Thiru V. Dayanidhy and on a perusal of documents and available material on record, this Tribunal comes to the conclusion that the workman Thiru V. Dayanidhi's case should be considered by the Respondent for his promotion as Junior engineer afresh on par with Thiru Kotti who was promoted as Junior Engineer from 28.11.87 on the same criteria on which the juniors were promoted and if found fit for promotion to grant him all the consequential benefits in the manner known to law and the point is answered accordingly."

From the above extract, it is very clear that Kotti was given promotion as Junior Engineer on 28.11.1987 even without any call letter for attending the interview.



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7. After the award, without questioning the same, thinking that the award was in favour of appellant Corporation, the appellant Corporation passed an order dated 26.03.2008 wherein it was stated that the Committee consisting of Assistant Manager (Personnel), Branch Manager (Arcot) and Deputy Manager (Technical) had interviewed the respondent/writ petitioner for promotion afresh as Junior Engineer as per the directions of the Industrial Tribunal, Chennai dated 14.02.2007 in I.D. No. 78/2004 and after conducting the interview, the Committee decided that the respondent/writ petitioner was found unfit for promotion to the post of Junior Engineer, as his performance during the interview was found unsatisfactory for promotion. The said order, which was the subject matter of the writ petition, is reproduced hereunder:

"இளநிலை பொறியாளர் பதவி உயர்வுக்கான உமது கோரிக்கை தொடர்பாக தொழிற் தகராறு எண் 78/2004-ல் சென்னை தீர்ப்பாயம் பிறப்பித்த உத்தரவின் அடிப்படையில் 05.03.2008 அன்று இவ்வலுவலகத்தில் உமக்கு நேர்முய தேர்வு நடத்தப்பட்டது.

நேர்முக தேர்வில், அதற்காக அமைக்கப்பட்ட



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குழுவானது பதவி உயர்வு பெறுவதற்குண்டான செயல்திறன் (Performance) உமக்கு இல்லை என கண்டறிந்து அறிக்கை அளித்துள்ளதால். உமக்கு பதவி உயர்வு அளிக்க இயலாத நிலையில் உள்ளோம் என்று தெரிவித்துக் கொள்ளப்படுகிறது."

8. Thereafter, the respondent/workman appears to have submitted an application to the Public Information Officer on 20.11.2008 seeking information under the RTI Act with regard to documents containing the details of assessment of his performance and the report given by the interview committee about his performance. In response to the said queries, the appellant Corporation had accepted that there was no record with regard to the performance of the respondent/workman and the 1st appellant had admitted that they did not record the questions put to the respondent/workman and the answers given by him during the interview. From the reply given under the said Act, it is very clear that the Management had accepted that there were no materials to show that the performance of the respondent/writ petitioner was poor so as to reject his candidature for



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promotion.

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9. The learned Single Judge, after taking into account, the overall aspects and the pleadings, came to the conclusion that though the matter could be remitted to the appellant Transport Corporation for fresh consideration, refrained to do so as the employee had attained the age of superannuation, a decade prior to the date of passing of the order in the writ petition. That apart, the learned Single Judge had held that denial of promotion was vitiated by malice and the interview conducted for others appeared to be a mere formality and the rejection was pre-determined. However, in order to give a quietus to the issue on hand and bring down the life of litigation, in paragraph No. 8 of the order, the learned Single Judge has moulded the relief granting notional promotion to the respondent/writ petitioner with continuity of service only for the purpose of terminal benefits without backwages from the date on which his juniors were promoted.

10. We are of the view that the order of the learned Single Judge is a well-considered one and does not deserve to be interfered with. As rightly



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observed by the learned Single Judge, the employee has attained the age of superannuation and remitting the matter for fresh consideration, would result in one more round of litigation, which we are not inclined to do so. We, therefore, confirm the order of the learned Single Judge and the appellants are directed to implement the same within a period of four months from the date of receipt of a copy of this order.

11. The writ appeal is dismissed with the above directions. No costs. Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
25.07.2023

To

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Rep. by its General Manager,
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2. The General Manager,
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