

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.447 of 2012

K.S.Sankara Narayanan ..Appellant/Petitioner

-vs-

1. The Inspector General of Police
Railways, Chennai 8
2. The Superintendent of Police
Railways, Chennai ..Respondents/Respondents

WRIT APPEAL filed under Clause 15 of Letters Patent against the order dated 17.2.2011 passed in W.P.No.17749 of 2010.

Petition under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.A1/14276/2010 Maa.Aa.No.286/2010 dt.30.6.2010 and quash the same and direct the respondents to restore the promotion given to the petitioner as Head Constable (Driver) with effect from 2.9.1992 and grant him all consequential benefits.

For Appellant : Mr.P.Rajendran
For Respondents : Mr.N.Srinivasan,
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by
A.SELVAM, J)

This Writ Appeal has been directed against the order dated 17.2.2011 passed in Writ Petition No.17749 of 2010 by the learned Single Judge of this Court.

2. The appellant, as petitioner, has filed Writ Petition No.17749 of 2010 on the file of this Court under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in Na.Ka.No.A1/14276/2010 Maa.Aa.No.286/2010 dated 30.6.2010 by the second respondent and quash the same.

3. In Writ Petition No.17749 of 2010, it is averred as follows:

The petitioner has been appointed as Grade II Constable on 15.11.1980 and subsequently posted as Grade II Constable/Driver on 3.6.1986. During March 1992, the Motor Transport Test has been conducted. The petitioner has also taken part and secured highest marks and subsequently, his name has been included in the panel dated 2.9.1992 and on the same day, he has been promoted as Head Constable/Driver and subsequently, on 20.9.1994, he completed his probation and on 10.10.2000, the second respondent has reverted the petitioner to his original post by way of saying that there is no sanctioned post of Head Constable/Driver. Against the order dated 10.10.2000, the petitioner has filed Original Application No. 8693 of 2000 before the Tamil Nadu Administrative Tribunal and subsequently, on abolition of the Tribunal, the same has been transferred to the file of this Court and renumbered as W.P.No.39395 of 2005, This Court allowed the Writ Petition No.39395 of 2005 and thereby, set aside the order dated 10.10.2000 and a specific direction has been given to give a show cause notice and accordingly, a show cause notice dated 18.5.2010 has been given to the petitioner. The petitioner has given a proper reply to the show cause notice, but the same has not been considered and ultimately the second respondent passed the impugned order dated 30.6.2010 and the same is being challenged in the writ petition.

4. The learned Single Judge, after considering the divergent contentions raised on either side, has dismissed the writ petition No.17749 of 2010 by way of passing the impugned order and the same is being challenged in the present Writ Appeal.

5. The learned counsel appearing for the appellant/petitioner has drawn the attention of the court to G.O.Ms.No.737, dated 9.3.1972. Further, he has drawn the attention of the court to the promotions given to the identical Police Constables. Under the said circumstances, it is contended on the side of the appellant/petitioner to quash the impugned order dated 30.6.2010 passed by the second respondent.

6. The learned Additional Government Pleader has also equally contended that even though the appellant along with others have been promoted as Head Constable/Driver, there is no such sanctioned post and only to meet out unforeseen circumstances, such promotion has been given and subsequently, the second respondent has rightly reverted the appellant by way of passing the impugned order dated 30.6.2010. The learned Single Judge, after considering the rival stand taken by the respondents, has rightly dismissed the writ petition and

therefore, the order passed by the learned Single Judge does not suffer from any infirmity.

7. It is seen from the records that on 2.9.1992, the name of the appellant has been included in the panel of post of Head Constables and on the same day, he has been promoted as Head Constable/Driver and he successfully completed his probation on 20.9.1994 and all of a sudden, on 10.10.2000, the second respondent has passed the impugned order and thereby, reverted the appellant and others to their original post. Subsequently, the order dated 10.10.2000 has been set aside by this court with a direction to give a show cause notice to the petitioner and accordingly, a show cause notice dated 18.5.2010 has been given to the petitioner. After getting a proper reply from the appellant/petitioner, the impugned order dated 30.6.2010 has been passed, reverting him to the original post.

8. The only defence taken on the side of the respondents is that there is no sanctioned post of Head Constable/Driver.

9. As adverted to earlier, the learned counsel appearing for the appellant/petitioner has relied upon G.O.Ms.No.737, wherein no mention has been made with regard to post of Head Constable/Driver. Under such circumstances, on the basis of the said G.O., the Court cannot accept the contentions put forth on the side of the appellant/petitioner.

10. It is seen from the records that similar promotions have been given to the persons, namely Kaliappan and Karuppiah and especially, the said Kaliappan has been promoted as Head Constable/Driver in the place of one Paramasivam, who has been promoted as Sub Inspector of Police.

11. It is also seen from the records that the persons mentioned supra are also having similar posts and they have been promoted to the post of Head Constable/Driver due to vacancy, but the same yardstick has not been extended to the appellant/petitioner and he has been reverted to his original post only on the ground that there is no sanctioned post of Head Constable/Driver.

12. At this juncture, on the side of the respondents, an inert attempt has been made by way of contending that subsequently, the petitioner has been given promotion and now he has been permitted to retire on superannuation.

13. The learned counsel appearing for the

appellant/petitioner has contended that due to the impugned order dated 30.6.2010, the appellant/petitioner has lost monetary benefits and on that score also, the impugned order is liable to be quashed.

14. It has already been pointed out that promotions have been given to the persons mentioned supra when vacancies have arisen, but the same treatment has not been extended to the appellant/petitioner.

15. Considering the aforesaid factual circumstances, this Court is of the view that the yardstick applied to the persons mentioned supra can also be applied to the appellant/petitioner.

16. The learned Single Judge, without considering the case of promotion given to Kaliappan and Karuppiyah, has erroneously dismissed the writ petition. In view of the discussions made earlier, this Court is of the view that the impugned order passed by the learned Single Judge is liable to be set aside and the writ appeal is liable to be allowed.

In fine, this Writ Appeal is allowed without cost. The order dated 17.2.2011 passed in Writ Petition No.17749 of 2010 by the learned Single Judge is set aside and the petition filed in Writ Petition No.17749 of 2010 is allowed without cost and the order dated 30.6.2010 in Na.Ka.No.A1/14276/2010 Maa.Aa.No.286/2010 passed by the second respondent is quashed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Inspector General of Police
Railways, Chennai 8

2. The Superintendent of Police
Railways, Chennai

Copy to:
The Section Officer,
VR.Section, High Court, Madras.

+1 cc to Mr.P.Rajendran, advocate, sr.49542

+1 cc to Govt.Pleader, sr.49779.

vgi(co)

krd 14/9

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