

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.38836 of 2016

A.Muthu

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Principal Secretary to Government,
Home (Transport-II) Department,
Secretariat,
Chennai-600 009.

2.The Principal Secretary/Transport Commissioner,
Chepauk, Chennai-600 005.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the respondents to consider the petitioner's representation dated 29.08.2016 to promote him to the post of Deputy Transport Commissioner from the date on which his junior S.K.M.Sivakumaran was promoted as Deputy Transport Commissioner by relaxing the service rules in favour of the petitioner as relaxed in favour of his junior Thiru.S.K.M.Sivakumaran and to grant him all consequential service and monetary benefits within a reasonable time.

For Petitioners : Mr.A.Ganesan

For Respondents : Mr.C.Jagadish, Spl. GP.

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a writ of Mandamus, directing the respondents to consider the petitioner's representation dated 29.08.2016 to promote him to the post of Deputy Transport Commissioner from the date on which his junior S.K.M.Sivakumaran was promoted as Deputy Transport Commissioner by relaxing the service rules in favour of the petitioner as relaxed in favour of his junior Thiru.S.K.M.Sivakumaran and to grant him all consequential service and monetary benefits within a reasonable time.

2. In the affidavit filed in support of the writ petition it has been averred by the petitioner as follows—

2-1. The petitioner was appointed as Motor Vehicles Inspector Grade-II in Transport Department on compassionate grounds on 24.08.1987. His service was regularized by the 1st respondent in that post with effect from 16.07.1993. Then, he was further promoted as Motor Vehicles Inspector, Grade-I, on 11.03.1998. Regarding promotion to the post of Regional Transport Officer, the 1st respondent included the petitioner's name in the temporary list drawn for promotion to the post of Regional Transport Officer for the year 2006-2007 and assigned Sl.No.5 to him and approved the same in G.O.(2D).No.197, Home (Transport-II) Department, dated 28.03.2008. All the persons included in the said list were promoted as Regional Transport Officer on the same day i.e., 28.03.2008 itself except the petitioner. The petitioner was denied promotion. On 31.03.2008, he was issued with a charge memo under Rule 17(b) of the T.N.C.S.(D&A) Rules in R.No.5671/VA2/2008, dated 27.03.2008 issued by the 2nd respondent. The respondents denied promotion to the petitioner after approval of his name in the panel for promotion to the post of Regional Transport Officer for the panel year 2006-2007. Aggrieved by the same, the petitioner had filed a writ petition in W.P.No.28378 of 2012 and this Court by order dated 18.07.2014 directed the respondents to consider his case and promote him as Regional Transport Officer along with others and place him in the appropriate place when his colleagues/juniors have been promoted as Regional Transport Officer with effect from 28.03.2008 and to grant all other benefits. As the said order was not complied with by the respondent, the petitioner had filed a contempt petition in Cont.P.No.1577 of 2016. While so, the 1st respondent issued orders in G.O.(D).No.653, Home (Transport-II) Department, dated 21.07.2016 stating that the Government has decided to implement the orders of this Court and accordingly, the petitioner was promoted as Regional Transport Officer. Thereafter, he was posted at Kancheepuram; as such, the petitioner is now working as Regional Transport Officer in Kancheepuram.

2-2. In the meanwhile, the 2nd respondent has drawn the inter se seniority list among the Motor Vehicles Inspectors Grade-II appointed on compassionate grounds and the Motor Vehicles Inspectors Grade-II directly recruited through TNPSC from 20.05.1981 to 16.07.1993 and in this regard, he issued proceedings in R.No.T1/56052/2006 (E.O.No.360/2013) dated 07.08.2013. In the said seniority list, the names of the Motor Vehicles Inspectors who were appointed on compassionate grounds have been placed below the names of Motor Vehicles Inspectors directly recruited through the TNPSC. Consequently, the petitioner was assigned seniority No.66 and his junior Thiru.S.K.M.Sivakumaran, another compassionate ground appointee

similarly place to that of the petitioner, was assigned Sl.No.69 in the post of Motor Vehicles Inspector Grade-II in the list. In the post of Motor Vehicles Inspectors Grade-I, the petitioner was assigned seniority as Sl.No.61 and his junior S.K.M.Sivakumaran was assigned seniority as Sl.No.63.

2-3. Aggrieved over the seniority list issued by the 2nd respondent in his proceedings in R.No.T1/56051/2006 (E.O.No.360/2013) dated 07.08.2013, the petitioner's junior S.K.M.Sivakumaran had filed a writ petition in W.P.no.15889 of 2013 before this Court and this Court by order dated 19.02.2014 allowed the said writ petition and directed the respondents to prepare a seniority list of eligible Motor Vehicles Inspectors Grade-I and Grade-II by placing the petitioner therein above the direct recruits and promote him as Deputy Transport Commissioner on that basis. When the respondent and certain directly recruited Motor Vehicles Inspectors filed appeal in W.A.Nos.302, 425 & 855 of 2014, the Division Bench of this Court dismissed the said appeals by order dated 28.05.2015. Thereafter, an SLP was filed before the Hon'ble Supreme Court in Civil Appeal Nos.22717-22719 of 2016 and this Hon'ble Supreme Court has passed an interim order stating that any benefit accruing to the respondents therein pursuant to the impugned judgment during the pendency of the SLP shall be subject to the result of the SLP. It is stated by the petitioner that thereafter, the respondents did not prepare and approve the seniority list; but promoted the said S.K.M.Sivakumaran, who is a junior to the petitioner herein, as Deputy Transport Commissioner vide G.O.(D).No.328, Home (Tr.II) Department, dated 20.04.2016 and posted him at Thanjavur, in the absence of any seniority list, as per the orders of this Court in W.P.No.15889/2013, dated 19.02.2014.

2-4. According to the petitioner, he is much senior to the said S.K.M.Sivakumaran and the respondents should have promoted the petitioner as Deputy Transport Commissioner before promoting his junior. Further, no disciplinary action is pending against the petitioner and he is not having any currency of punishment imposed on him by the authorities. In this regard, the petitioner has given a representation to the respondents on 29.08.2016 seeking to promote him to the post of Deputy Transport Commissioner by relaxing Rule 3 of the Tamil Nadu Transport Service Rules, similarly relaxed in favour of his junior S.K.M.Sivakumar. But, the petitioner's representation was not considered by the respondents. Hence, the petitioner has come forward with the present writ petition.

3. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4. Considering the limited scope of the prayer sought for by the petitioner in this writ petition and taking note of the

submissions made on either side, without expressing any opinion on the merits of the claim made by the petitioner, this Court directs the 2nd respondent to consider the petitioner's representation dated 29.08.2016 with regard to his promotion to the post of Deputy Transport Commissioner, and to pass appropriate orders on merits in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Principal Secretary to Government,
State of Tamil Nadu
Home (Transport-II) Department,
Secretariat,
Chennai-600 009.

2.The Principal Secretary/Transport Commissioner,
Chepauk, Chennai-600 005.

+lcc to Mr.C. Prakasam, Advocate, S.R.No.63663

Pk(CO)
md(08/12/2016)

W.P.No.38836 of 2016

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