

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.341 of 2015
and
M.P.Nos.1 and 3 of 2015

- 1.The Government of Tamil Nadu
rep. by the Principal Secretary to Government,
Home (Tr-II) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Principal Secretary/Transport Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005. Appellants

vs.

- 1.K.V.Karthalingan
- 2.P.Dharni
(R2 impleaded as per the order of this Court
dated 29.09.2015 passed in MP.No.2/2015) Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 30.06.2014 passed by a learned Single
Judge of this Court in WP.No.10668 of 2014.

Prayer in WP.No.10668 of 2014:Writ petition filed under Article
226 of the Constitution of India praying for the issuance of a
writ of certiorari calling for the records relating to the
impugned orders in i. G.O. (Ms) No.216 dt 4.3.2014 on the file
of the 1st respondent and ii. consequential order in R. No.
72604/T2/2011 dt 18.3.2014 passed by the 2nd respondent and
quash the same.

For Appellants : Mr.V.Ayyathurai, AAG assisted by
Mr.P.S.Sivashanmuga Sundaram, SGP

For R1 : Mr.P.Wilson, SC for Mr.R.Neelakandan

For R2 : No representation

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

This Writ Appeal has been preferred by the State against the order dated 30.06.2014 passed by a learned Single Judge of this Court in WP.No.10668 of 2014.

2.The background facts in a nutshell are as under:

2.1 The first respondent herein joined as Motor Vehicle Inspector Grade II in the Transport Department on 09.02.1995. He was promoted as Motor Vehicle Inspector Grade-I with effect from 09.06.1999.

2.2 The first respondent herein filed an Original Application in O.A.No.429/2002 before the Tamil Nadu Administrative Tribunal, Chennai, seeking a direction to the Government for accelerated promotion for meritorious service rendered by him to the post of Regional Transport Officer. This request was based on the recommendation made by the Regional Transport Officer, Trichy on 26.09.1997, which was rejected by the Government. The Tamil Nadu Administrative Tribunal, by order dated 10.07.2002, allowed the said Original Application and set aside the order of rejection and directed the Government to give the first respondent herein accelerated promotion to the post of Regional Transport Officer. As against the said order, the Government filed a writ petition in W.P.No.21562 of 2003, which was dismissed by a Division Bench of this Court, by order dated 13.10.2004. As against the said order of the Division Bench, a Special Leave Petition was preferred by the Government before the Hon'ble Supreme Court and the same was later on, withdrawn by the Government.

2.3 Thereafter, the Government issued G.O.(2D).No.111 Home (Tr-II) Department, dated 21.02.2007, temporarily promoting the first respondent herein as Regional Transport Officer with effect from 20.02.2005 under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. Pursuant to the same, the first respondent herein joined duty.

2.4 While the things stood so, the first respondent herein moved a Contempt Petition in Cont.Petr.No.1688 of 2011 alleging that the order of this Court dated 13.10.2004 passed in WP.No.21562 of 2003 has not been complied with, as his service was not regularised in the Regional Transport Officer cadre.

2.5 To avoid contempt proceedings, the Government issued G.O.(4D) No.91 Home (Tr.II) Department, dated 21.12.2011 including the name of the first respondent herein in the regular panel for the post of the Regional Transport Officer for the year 1995-96.

2.6 Aggrieved by the said G.O.(4D) No.91, Home (Tr.II) Department, dated 21.12.2011, the second respondent herein filed a Civil Appeal No.4832 of 2013 before the Hon'ble Supreme Court. By order dated 01.07.2013, the Apex Court has allowed the said Civil Appeal and set aside the order of the Division Bench passed in W.P.No.21562/2003 as well as the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.429/2002, wherein, the first respondent herein was directed to be given accelerated promotion.

2.7 Pursuant to the order of the Hon'ble Supreme Court, the Government issued G.O.Ms.No.216 Home (Tr.II) Department, dated 04.03.2014, setting aside the orders in G.O.(2D) No.111, Home (Tr.II) Department, dated 21.02.2007 and G.O.Ms.No.91 Home (Tr.II) Department, dated 21.12.2011. Following the same, the first respondent herein was reverted as Motor Vehicle Inspector Grade-I vide the proceedings in R.No.72604/T2/2011 dated 18.03.2014 issued by the Transport Commissioner.

2.8 The first respondent herein did not join duty as Motor Vehicle Inspector Grade-I, however, he filed WP.No.10666 of 2014 challenging the aforesaid orders. The said writ petition was allowed by the learned Single Judge, by order dated 30.06.2014, against which, the State preferred the present writ appeal before this Court.

3. Heard Mr.V.Ayyadurai, learned Additional Advocate General assisted by Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for the appellants -State and Mr.P.Wilson, learned Senior counsel for Mr.R.Neelakandan, learned counsel for the first respondent herein and also perused the materials.

4. By the order impugned in this writ appeal, the learned Single Judge allowed the writ petition filed by the first respondent herein, in the following terms:

(i) The respondents (appellants herein) shall issue fresh order promoting the petitioner (first respondent herein) as Regional Transport Officer retrospectively with effect from 08.03.2006, on which date, his immediate junior was promoted as Regional Transport Officer;

(ii) The petitioner (first respondent herein) will be entitled for all service benefits, seniority and further promotion by treating that he has been working as Regional Transport Officer from 08.03.2006 onwards;

(iii) For the period from 08.03.2006 to 21.02.2007, the petitioner (first respondent

herein) shall not be entitled for any backwages or differential backwages for the post of Regional Transport Officer though, for the said period, his pay scale for the post of Regional Transport Officer shall be notionally calculated for the purpose of fixing his future scale of pay;

(iv) For the subsequent period i.e., from 22.02.2007 till 18.03.2014, since, the petitioner (first respondent herein) had actually worked as Regional Transport Officer and enjoyed the monetary benefits, there shall be no recovery of any amount already paid for this period;

(v) It is further directed that the petitioner (first respondent herein) shall be paid backwages for the period from 19.03.2014 till date; and

(vi) The respondents (appellants herein) shall pass consequential order within a period of four weeks from the date of receipt of a copy of this order."

5. Concededly, the first respondent herein joined as Motor Vehicle Inspector Grade-II in the year 1995 and was promoted as Motor Vehicle Inspector Grade-I in the year 1999. It is also not in dispute that he is having the requisite qualification and is fit for promotion to the next level.

6. It appears from the records that the first respondent herein was given accelerated promotion as Regional Transport Officer vide G.O. (2D) No.111 Home (Tr.II) Department, dated 21.02.2007. However, he was reverted to the post of Motor Vehicle Inspector Grade-I, pursuant to the order of the Hon'ble Supreme Court passed in Civil Appeal No.4832 of 2013 filed by the second respondent herein. Feeling aggrieved by the order in G.O.Ms.No.216 Home (Tr.II) Department, dated 04.03.2014 and the consequential reversion order dated 18.03.2014, the first respondent herein moved WP.No.10668 of 2014 before the learned Single Judge stating that even de hors the accelerated promotion given to him, which was annulled subsequently, pursuant to the order of the Hon'ble Supreme Court in Civil Appeal No.4832 of 2013, by the regular promotion policy, he has reached the stage of being promoted to the post of Regional Transport Officer. The said writ petition was allowed by the learned Single Judge on the ground that though the accelerated promotion given to the first respondent herein was cancelled as per the order of the Hon'ble Supreme Court, he is entitled to promotion as Regional Transport Officer with effect from

08.03.2006, the date on which, his immediate junior was promoted as Regional Transport Officer, by following the regular promotion policy.

7.It is the specific plea of the appellants herein that sanction was accorded by the Tamil Nadu Vigilance Commission to prosecute the first respondent herein for the alleged possession of accumulated assets disproportionate to the known source of income and a criminal case in CC No.1/2011 is pending on the file of the learned Special Judge/Chief Judicial Magistrate, Perambalur for the very same allegation of possessing assets disproportionate to known source of income against him. In such circumstances, he is not eligible for promotion as Regional Transport Officer, at this stage.

8.As a riposte, the learned Senior Counsel for the first respondent herein contended that the first respondent herein was given accelerated promotion, which was ultimately, cancelled. However, he should have been promoted as Regional Transport Officer by following the regular promotion policy, when his immediate junior was promoted, but, with an intent to tarnish his image, he was subjected to disciplinary proceedings as well as criminal proceedings on false allegations and he was not given promotion based on his seniority. Even the Inquiry Officer found him not guilty of the charges and the Transport Commissioner recommended to the Government to drop the proceedings as against him and withdraw the prosecution lodged against him. However, the said request is pending with the Government. To buttress his contention, the learned Senior Counsel has also drawn the attention of this Court to the findings rendered by the Inquiry officer and the communication dated 22.03.2011 in R.No.13621/VB1/2009 sent by the Transport Commissioner to the Principal Secretary to the Government.

9.In the aforesaid first communication viz., report of the Inquiry Officer, the Inquiry Officer, after investigation, concluded that Rule 8(1)(b) of the Tamil Nadu Government Servants Conduct Rules, 1973 only provides for reporting the fact of the business / avocation of his spouse, if any, to the competent authority and that the said rule does not require to obtain prior permission. Further, the first respondent herein has reported the business activities of his wife and brother-in-law at the time of initial appointment into the Government service as well as at the time of furnishing his property statements and hence, the question of including their income in the income of the first respondent herein did not arise. That apart, the wife and brother-in-law of the first respondent herein have their own business activities even before the first respondent herein had entered into the Government service; the wife of the first respondent herein has her own independent source of income; she has also been maintaining independent

accounts of her assets and liabilities; and she is said to be an income tax assessee. Therefore, the first respondent herein has acted as a bona fide Government servant by way of intimating his property as well as business transactions of his wife and other family members to the competent authority initially while entering into service as well as in the property statements filed during the subsequent years in accordance with the relevant provisions of the Rules. As such, there is no prima facie case for according sanction of prosecution in the instant case.

10. In the aforesaid second communication, viz., the recommendation dated 22.03.2011 made by the Joint Commissioner to the Principal Secretary to Government, Home (Transport-II) Department, Chennai-2, based on the enquiry report, the Transport Commissioner has recommended to the Government to withdraw the prosecution initiated against the first respondent herein, the relevant portion of which reads as follows:

"In view of the position referred to above, it is stated that bases of charges against the individual in both the cases are one and the same, it is therefore, stated that the Government, as the Competent Authority, may consider the request of the petitioner for the withdrawal of the TDP case and prosecution."

11. Taking note of the contentions made on either side and on a perusal of the materials placed before us, we are of the view that the first respondent herein should have been promoted to the post of Regional Transport Officer in the usual course, when his immediate junior was given promotion, as he comes within the zone of consideration for promotion at the relevant point of time, whereas, unfortunately, he was subjected to departmental proceedings as well as criminal proceedings on the allegation of possession of assets disproportionate to known source of income, which is clearly an after-thought and with an intent to bring disrepute to his conduct. Further, on the crucial date of promotion, there was no case or investigation pending against the first respondent herein. Even otherwise, based on the report of the Inquiry Officer, the Transport Commissioner has even recommended to the Government to drop the proceedings against him and the same is still under consideration. When this Court posed a specific question as to why the recommendation of the Transport Commissioner is yet to be considered by the Government, the learned Additional Advocate General was unable to answer the same. In such circumstances, it is not open to the appellants to deny the genuine claim of the first respondent herein to get promotion to the post of Regional Transport Officer on par with his immediate junior, based on his seniority.

12.At this juncture, it is pertinent to point out that as against the order impugned in this writ appeal, the second respondent herein filed SLP.No.32315 of 2014, which was dismissed by the Hon'ble Supreme Court, by order dated 21.07.2017.

13.In such view of the matter, we are in complete agreement with the finding rendered by the learned Single Judge that the first respondent herein is entitled to promotion as Regional Transport Officer. Accordingly, he shall be given promotion to the post of Regional Transport Officer and his seniority be fixed below the name of R.P.Senthilkumar and above the name of K.Pattappasamy.

14.At this stage, learned Senior counsel for the first respondent herein submitted that the first respondent herein has already submitted a representation to the Government seeking regularization of his service in the cadre of Regional Transport Officer by placing him below the name of R.P.Senthilkumar and above the name of K.Pattappasamy based on his seniority.

15.In view of the above submission made by the learned Senior Counsel for the first respondent herein, the appellants are directed to consider the said representation of the first respondent herein and post him on duty and place him below the name of R.P.Senthilkumar and above the name of K.Pattappasamy, based on his seniority.

16.Having regard to the facts and circumstances of the case, it is made clear that the period during which the first respondent herein was not working, shall be treated as leave without pay. However, it is also made clear that the said period shall be reckoned for other purposes. The entire exercise, as directed above, shall be completed within a period of one month from the date of receipt of a copy of this judgment.

17.Accordingly, the order of the learned Single Judge is modified and the writ appeal stands disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/--
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
Government of Tamil Nadu
Home (Tr-II) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Principal Secretary/Transport Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai - 600 005.

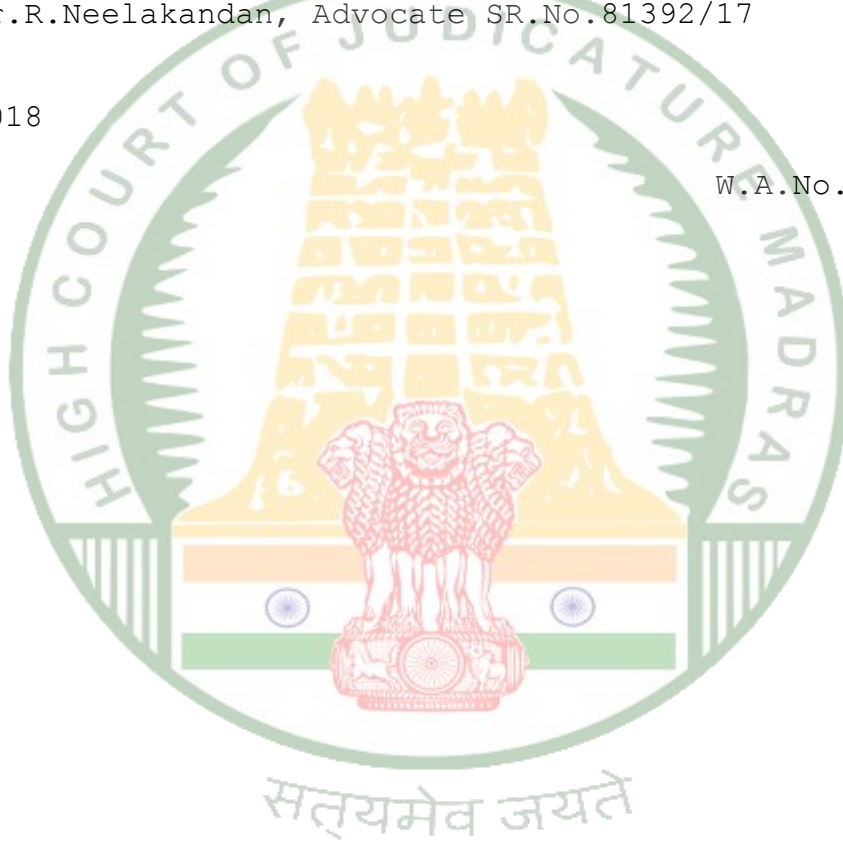
+1cc to Government Pleader Sr.No.81526/17

+1cc to Mr.R.Neelakandan, Advocate SR.No.81392/17

SR(CO)

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