

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.12.2017

CORAM

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

W.A.No.1546 of 2017
and
CMP.Nos.20281 and 20282 of 2017

P.Suresh Appellant
vs.

1.The Government of Tamil Nadu
rep. by Additional Chief Secretary/
Secretary to Government,
Home (Transport-II) Department,
Fort St. George, Secretariat,
Chennai -9.

2.The Principal Secretary-cum-
Transport Commissioner,
State Transport Authority,
Ezhilagam, Chepauk,
Chennai -5.

3.A.A.Muthu Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 27.10.2017 passed by a learned Single
Judge of this Court in W.P.No.15166 of 2017.

WP.No.15166/2017:Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari to
call for the records relating to the proceedings of the first
respondent in G.O.(D) No.739, Home (Transport-II) Dept, dated
09.06.2017 and quash the same and pass such further orders.

For Appellant : Mr.A.L.Somayaji, SC for
Mr.A.V.Radhakrishnan

For R1 & R2 : Mr.P.S.Sivashanmuga Sundaram, SGP
For R3 : Mr.S.N.Ravichandran

JUDGMENT

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

Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader takes notice for the respondents 1 and 2.

2.By consent, the writ appeal is taken up for final disposal at the time of admission itself.

3.The unsuccessful writ petitioner is the appellant herein. He has come up with the present writ appeal, as against the order dated 27.10.2017, dismissing the writ petition in WP.No.15166 of 2017 filed by him.

4.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

5.The facts necessary for the disposal of this writ appeal, may be summarised as below:

5.1 The petitioner viz., P.Suresh was appointed as Motor Vehicle Inspector Grade-II on 09.08.1993 through the direct recruitment conducted by the Tamil Nadu Public Service Commission (TNPSC), whereas, the third respondent viz., A.A.Muthu was appointed temporarily as Motor Vehicle Inspector Grade-II under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules on compassionate ground, on 24.08.1987 and his service was regularised with effect from 16.07.1993.

5.2 While so, one S.K.M.Sivakumaran filed a writ petition in WP.No.15889 of 2013 challenging the seniority list published by the second respondent vide his proceedings dated 07.08.2013, wherein, the name of the petitioner was shown at Sl.No.9, whereas, the third respondent and other appointees, whose services were regularised with effect from 16.07.1993, were placed at Sl.Nos.66 to 70, below the direct recruits. The said writ petition was allowed by order dated 19.02.2014, against which, WA.Nos.302, 425 and 855 of 2014 were filed, which were dismissed by a Division Bench of this Court by judgment dated 28.05.2015. Aggrieved by the same, the Government and 1989 direct recruits, who are the batch-mates of the petitioner, preferred SLP (Civil) Nos.28670 and 22717 to 22719 of 2015, which is pending before the Hon'ble Supreme Court, without there being any order of interim stay.

5.3 Pursuant to the order dated 19.02.2014 passed in WP.No.15889 of 2013, which was confirmed by the Division Bench by judgment dated 28.05.2015 passed in WA.Nos.302, 425 and 855 of 2014, the said S.K.M.Sivakumaran got promotion to the post of Regional Transport Officer and further promotion to the post of

Deputy Transport Commissioner.

5.4 According to the parties, no permanent panel has been drawn for promotion to the post of Regional Transport Officer since 2007 and all those promotions have been made only on the basis of such temporary list, from which, the petitioner has been promoted as Regional Transport Officer on 29.03.2008, whereas the third respondent has been promoted as Regional Transport Officer on 17.08.2016. The next avenue of promotion for Regional Transport Officer is to the post of Deputy Transport Commissioner.

5.5 In the meanwhile, the third respondent was issued with a charge memo dated 27.03.2008 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in a Vigilance and Anti-Corruption case, which proceedings ultimately, ended with a punishment of stoppage of increment for three months without cumulative effect, whereas, the petitioner neither suffered any disciplinary proceedings at any point of time, nor received any adverse remarks. However, without considering the petitioner for promotion to the post of Deputy Transport Commissioner, the first respondent, vide G.O.(D) No.739, Home (Transport-II) Department, dated 09.06.2017, by exercising the powers conferred under Section 58 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 relaxing the Explanation III to Section 7 of the Tamil Nadu Government Servant (Conditions of Service) Act 2016 and Rule 3 of the Tamil Nadu Transport Service in favour of the third respondent, temporarily promoted the third respondent as Deputy Transport Commissioner under Section 47 of the Act, subject to the outcome of the Special Leave Petition pending before the Hon'ble Apex Court. Challenging the said G.O, the petitioner filed WP.No.15166 of 2017, which was dismissed by the learned Single Judge, by the order impugned herein. Hence, this writ appeal by the petitioner.

6.Mr.A.L.Somayaji, learned senior counsel for the petitioner submitted that the petitioner is senior to the third respondent and he is fully qualified for promotion to the post of Deputy Transport Commissioner, whereas the third respondent is junior to the petitioner and he suffered with the punishment of stoppage of increment for three months without cumulative effect. However, the first respondent, without considering the name of the petitioner for promotion, has given promotion to the third respondent to the post of Deputy Transport Commissioner, out of way, by relaxing the relevant rules, during the check period. Such approach of the first respondent, which was confirmed by the learned Single Judge, is arbitrary and unsustainable in law.

7.Reiterating the same contentions as were placed before the learned Single Judge, the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent submitted that considering the facts and circumstances of the case and upon perusal of the entire materials, the learned Single Judge has rightly passed the order impugned herein, which warrants no interference by this Court.

8.Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

9.It is not in dispute that the petitioner has rendered unblemished service and is fully qualified for promotion to the post of Deputy Transport Commissioner. It is equally not in dispute that the third respondent faced the disciplinary proceedings, which ended with the punishment of stoppage of increment for three months without cumulative effect and he was temporarily given promotion to the post of Deputy Transport Commissioner by relaxing the relevant rules during the check period.

10.Having regard to the above said admitted position and taking note of the grievance of the petitioner, we direct the official respondents to consider the claim of the petitioner and give him promotion to the post of Deputy Transport Commissioner in any one of the existing vacancies forthwith.

11.As regards the fixation of seniority, the petitioner P.Suresh as well as the third respondent A.A.Muthu shall submit a detailed representation to the authority concerned within a period of one month from the date of receipt of a copy of this judgment. On such representations being submitted, the authority concerned shall consider the same and take a decision on merits and in accordance with law, within a period of two months thereafter.

12.The writ appeal is disposed of as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)
//True Copy//
Sub Assistant Registrar

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To

1.The Government of Tamil Nadu
rep. by Additional Chief Secretary/
Secretary to Government,
Home (Transport-II) Department,
Fort St. George, Secretariat,
Chennai -9.

2.The Principal Secretary-cum-
Transport Commissioner,
State Transport Authority,
Ezhilagam, Chempauk,
Chennai -5.

+1 cc to the Govt pleader sr 87389

+1 cc to Mr.S.N.Ravichandran Advocate sr 86782

+4 ccs to Mr.A.V.Radhakrishnan Advocate sr 86199 & 86722

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