



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P (MD) No. 3519 of 2017

and

W.M.P (MD) Nos. 2847 and 2848 of 2017

P.Manickam

... Petitioner

vs.

1) The Director,
Tamil Nadu Motor Vehicles
Maintenance Department,
Velachery,
Chennai-600 042.

2) The Regional Deputy Director,
Government Automobile Workshop,
Trichy-23.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, thereby call for the records of the 1st respondent's order in செ.மு.ஆணை எண் .A4/04680/2016 dated 18.11.2016 relating to the preparation of promotion panel for the year 2014-2015 and quash the same relating to deletion of the petitioner's name from the list of promotion panel 2014-2015 and further direct the 1st respondent to include the name of the petitioner in the list at once.

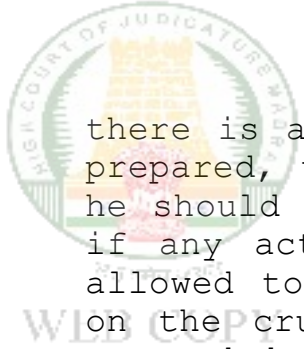
For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent's order in செ.மு.ஆணை எண் .A4/04680/2016, dated 18.11.2016, relating to the preparation of promotion panel for the year 2014-2015 and quash the same relating to deletion of the petitioner's name from the list of promotion panel 2014-2015 and to direct the 1st respondent to include the name of the petitioner in the list.

2.The petitioner submits that he has completed ITI Motor Mechanic Course and joined duty as Helper. During service, the petitioner was proceeded departmentally and imposed with the punishment of censure. According to the petitioner, he was in serial No.42 in the promotional panel for the year 2014-15 and that the punishment was imposed in the year 2016. Further, the entire disciplinary proceedings have been initiated in 2016 and



there is a delay and that on the crucial date when the panel was prepared, the petitioner was not facing any charges and therefore, he should be considered for promotion. He further submitted that if any act of the respondent like the present one on hand, is allowed to continue, persons who have not faced with any charges on the crucial date and subsequently for no fault of them were proceeded with departmentally, would face hardship and would be deprived any further promotion and it may affect their future prospects. The petitioner relied on a Division Bench judgment in K.Rajalakshmi vs. The Principal Secretary to Government, School Education Department, Chennai (W.A.No.983/15, W.P.Nos.21771/15 & 31633/14, dated 14.09.2016)

3. Even though the respondents have not filed counter affidavit, learned Special Government Pleader drew the attention of this Court to Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and Clauses (11) and (14) of Schedule-XI, Part-A(II) thereto, which are extracted hereunder:-

'7. (1) All first appointments to any class or category or grade in any State Service or Subordinate Service, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. All appointments made by transfer, from one class to another class and from one category to another category, in the same service carrying identical scale of pay shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the manner as specified in Schedule-XI by the appointing authority or any other authority empowered in the special rules in that behalf and shall be displayed in the notice board in the office of the appointing authority. The list shall also be communicated to all persons concerned by registered post whose names are found in the list as well as to persons senior to the junior most person included in the list whose names have not been included in the list. Where the candidates in such list are arranged in their order of preference, appointments to the service shall be made in such order.

(11) Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or



appointment.

(14) The punishment of 'Censure' imposed on a member of service within a period of one year preceding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years preceding the crucial date. In such cases the name of the member of service shall be considered for inclusion in the approved list.'

4. He would contend that it is true that the petitioner was not proceeded with when the panel was prepared, but he further admitted that his name was included in the list for promotion. But, however, on the crucial date for promotion, the petitioner was imposed with the punishment. He further submits that the reliance placed by the petitioner to the Division Bench judgment, is not applicable to the facts of this case as the rule position has not been considered in the said case.

5. Clause 14 of Schedule-XI, Part-A(II) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, makes it clear that punishment of 'censure' imposed on a member of service within a period of one year preceding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years preceding the crucial date. That apart, Clause 14 of Schedule-XI, Part-A(II) is also very clear that any punishment including censure imposed on the member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given any promotion or appointment.

6. Though the arguments of the petitioner appear to be logical, as the petitioner did not face any charge or punishment on the empanelment date for promotion, but, as per the above provision, the petitioner is not entitled to promotion, unless and otherwise the Act is held to be bad in law. The reference to the decision in K. Rajalakshmi's case (supra) will not be applicable to the facts of this case, as the Division Bench (in which I am a party) have considered G.O. Ms. No. 22, P & AR (S) Department, dated 24.02.2014 and extended the benefits. But in this case, the rule position is very clear and hence the said decision is not applicable.

In the light of the above discussion, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar



To

1) The Director,
Tamil Nadu Motor Vehicles
Maintenance Department,
Velachery,
Chennai-600 042.

2) The Regional Deputy Director,
Government Automobile Workshop,
Trichy-23.

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate, SR No. 11785

+1 CC to M/s.THE SPECIAL GOVERNMENT PLEADER, SR No. 11603

NBI

PSM/SV-MMS/SAR3/28.04.2017/4P/5C

W.P(MD) No.3519 of 2017
28.02.2017