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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2017

CORAM:

THE HONOURABLE MR.HULUVADI G.RAMESH,
ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.A.(MD).Nos.1 and 105 of 2017 &
C.M.P.(MD).Nos.2 and 1036 of 2017

W.A.(MD)NO. 1 OF 2017:

The Managing Director,
Tamil Nadu State Transport Corporation
Tirunelveli Limited,
Kattabomman Nagar,
Tirunelveli.

: Appellant/ 3rd respondent

Vs.

1.The Principal Secretary to Government
and Chairman of STU,
Transport Department,
Fort St. George,
Chennai-600 009.

2.The Convener,
Career Planning Committee,
Tamil Nadu State Transport Corporation,
Tiruvalluvar House,
Pallavan Salai,
Chennai-600 002.

: Respondents/1st and 2nd Respondents

3.B.Selva Gomathi Kumar,

4.P.Polliah

5.R.Muthukrishnan

6.A.Anbu Abraham

7.S.Joseph Diaz

8.G.Ganesan

9.V.Aranvind

10.P.Thiruvambalam Pillai,

<https://hcservices.ecourts.gov.in/hcservices/>

The General Manager,

TNSTC Tirunelveli Region, Kanyakumari District.



11.K.Senathiapathy
The General Manager,
TNSTC Coimbatore,
Coimbatore District.

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12.M.A.Murugesan
The General Manager,
MTC,
Chennai.

: Respondents

(R4 impleaded vide Court order dated 07.02.2017 made in CMP(MD). No.1062/2017 in W.A.(MD).No.1 of 2017, R5 to R12 are impleaded vide Court order dated 13.03.2017 made in C.M.P.(MD).No.1833 of 2017)

W.A.(MD).No.105 of 2017

J.Titus

: Appellant/3rd party

Vs.

1.B.Selva Gomathi Kumar : 1st Respondent/Writ petitioner

2.The Principal Secretary to Government,
and Chairman of STU ,
Transport Department,
Fort St. George,
Chennai-600 009.

3.The Convener,
Career Planning Committee,
Tamilnadu State Transport Corporation,
Tiruvalluvar House,
Pallavan Salai,
Chennai-600 002.

4.The Managing Director,
Tamilnadu State Transport Corporation,
Tirunelveli Limited,
Kattabomman Nagar,
Tirunelveli District.

: 2 to 4 Respondents/Respondents 1 to 3

PRAYER: Writ Appeals are filed under Clause 15 of Letter Patent against the order dated 21.10.2016 made in W.P.No.20250 of 2016.

Prayer in WP(MD). 20250/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the Respondents particularly the 1st respondent to promote the petitioner as Selection Grade Assistant Manager SGAM with effect from 24.06.2000 from the Respondents Transport Corporation by consider the representation of petitioner dated 24.06.2016 or by otherwise also by implementing the Board of



Directors Meeting 141st in the Resolution No.79 dated 08.12.2000 and the approved of the same by the Finance Committee dated 20.12.2000 within the time limit fixed by this Court.

For Appellant in W.A. (MD) .No.1/2017: Mr.A.Jeyaram

For Appellant in W.A. (MD) .No.105/2017:Mr.M.Ajmal Khan

Senior Counsel for

M/s.Ajmal Associates

For Respondents in W.A. (MD) .No.1/2017

: Mr.V.Muruganantham for R1

Additional Government Pleader

Mr.K.Sathya Singh for R2 Mr.Pugal Gandhi for R4

Mr.Veera Kathiravan Senior Counsel for

Mr.S.Loganathan for R3

Mr.T.Jeen Joseph for R5 to R12

For Respondents in W.A. (MD) .No.105/2017

:Mr.Veera Kathiravan Senior Counsel for

Mr.S.Loganathan for R1

Mr.V.Muruganantham for R2

Additional Government Pleader

Mr.K.Sathya Singh for R3

MrA.Jayaram for R4

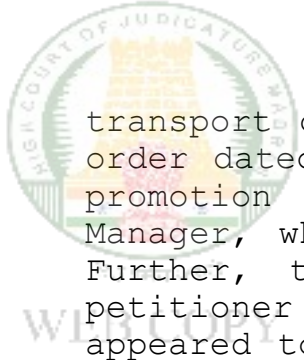
COMMON JUDGMENT

[Judgment of the Court was delivered by
The Hon'ble The Acting Chief Justice]

These appeals are directed against the order, dated 21.10.2016, in W.P.(MD).No.20250 of 2016, filed by the third respondent/first respondent respectively, praying for a direction to the official respondents to promote him as Selection Grade Assistant Manager (SGAM) with effect from 24.06.2000 by considering his representation, dated 24.06.2016 or otherwise by implementing decision taken by the Board of Directors in their 141st meeting held on 08.12.2000 vide resolution No.79 as approved by the Finance Committee, dated 20.12.2000.

2. Neither the appellant in W.A.(MD).No.105 of 2017, nor the other private respondents in these appeals were impleaded as respondents in the writ petition. The grievance of the writ petitioner was that though resolution No.79 was passed by the Board of Directors as early as in December 2000 and approved by the Finance Committee of the Transport Corporation in December 2000, till date the writ petitioner was not given promotion as Selection Grade Assistant Manager.

3. The standing counsel appearing for the transport corporation submitted that the resolution would be implemented, but without any monetary benefits as time scale of pay has already been fixed in the resolution. In the light of the statement made on behalf of the

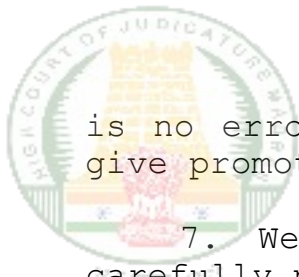


transport corporation, the Court dispose of the writ petition vide order dated 21.10.2016, directing the transport corporation to give promotion to the writ petitioner as Selection Grade Assistant Manager, while implementing resolution No.79, within a time frame. Further, the Court recorded the undertaking given by the writ petitioner in his representation, dated 24.06.2016. Though the above appeared to be the stand taken by the transport corporation before the learned Single Judge, they are also on appeal against the order in the writ petition.

4. It is submitted by the learned counsel for the appellant corporation that the corporation was unable to produce the relevant documents and bring to the notice of the Court about the punishment awarded to the writ petitioner as the same has not been stated in the affidavit filed in support of the writ petition. Further, it is stated that even as per the Board resolution, it is subject to the approval by the Government as well as the Finance Committee and passing of the IRT Examination by the writ petitioner, within the grace period. Further, it is submitted that based on the Finance Committee recommendation dated 06.04.2010, the writ petitioner has already been promoted as per his request with effect from the eligible due date i.e. on completion of 8 years from 24.06.2002 as the writ petitioner agreed to waive the monetary benefits and therefore, the prayer in the writ petition is infructuous.

5. The appellant in W.A.(MD).No.105 of 2017 is a third party to the writ petition who sought leave to prefer the appeal. The learned Senior Counsel appearing for the appellant contended that the writ petitioner has obtained order by concealing material facts and the order was passed in the writ petition at the admission stage. That the resolution which was passed by the Board was much prior to the merger of the corporation, which occurred during 2002 and the reason for the delay in effecting promotion to the writ petitioner is on account of the fact that he suffered disciplinary proceedings. Further it is submitted that even as per the resolution, it is subject to the approval of the Government and such approval has not been granted by the Government. It is further submitted that the writ petitioner has not disclosed the fact that he suffered a punishment of stoppage of increment for 6 months without cumulative effect on 21.06.2008 and the currency of such punishment comes to an end only on 30.09.2009 and this is the reason why he was not considered for promotion as per resolution No.79. Further, it is submitted that in view of the positive direction issued in the writ petition, the appellant's rights are affected as the appellant was not impleaded as party in the writ petition and did not have an opportunity to place before the Court the correct facts.

6. The learned Senior Counsel appearing for the writ petitioner submitted that as per resolution No.79 the Finance Committee has already approved the same and the writ petitioner has also passed IRT executive examination on 10.12.2001 and the appellant in W.A.(MD).No.105 of 2017 is far junior to the writ petitioner and there



is no error in the order passed in the writ petition directing to give promotion to the writ petitioner.

7. We have heard the learned counsel for the parties and carefully perused the materials placed on record.

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8. From the submissions made on either side, it is evident that ultimate authority which has to grant approval for promotion is the Government namely the first respondent/the second respondent. Resolution No.79 dated 08.12.2000 shows that it has been resolved that the proposal of the Managing Director to promote Assistant Manager to the cadre of Selection Grade Assistant Manager under Time Bound Promotion Scheme in the time scale of pay Rs.10,000-325-15200 has approved subject to the approval of the Government as recommended by the Finance Committee. The name of the writ petitioner finds place in the resolution in serial number 2. Further, it appears that since the writ petitioner was facing disciplinary action, promotion was deferred by the decision taken in the 197th Board meeting held on 20.09.2006 vide resolution number 123.

9. In the light of the fact that the Government is yet to take a decision in the matter it would be appropriate for the concerned authority to take a decision, since the appellant in W.A.(MD).No.105 of 2017 claims that his rights would be affected if the prayer sought for by the writ petitioner is conceded, likewise, newly impleaded respondents also have a request for a say in the matter. The Government should take a decision after affording opportunity not only to the writ petitioner/appellant and the private respondents herein, but any other persons who are likely to be aggrieved. Accordingly, the writ appeals are disposed of and the direction in the writ petition is modified to the following effect:-

The appellant in W.A.(MD).No.105 of 2017 and the writ petitioner, private respondents are directed to submit a representation to the Principal Secretary to Government and Chairman of STU, Transport Department, Fort St. George, Chennai, setting out their claim and on receipt of the representation, the said authority shall issue notice to the writ petitioner, appellant in W.A.(MD).No.105 of 2017, private respondents, and any other persons whose interest are likely to be affected, afford an opportunity of hearing to them and pass a reasoned order on merits and in accordance with law. The above exercise shall be carried out by the first respondent/second respondent, within a period of 12 weeks from the date of receipt on which all the representations received.

No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Co)

/True Copy/

Sub-Assistant Registrar



To

1. The Managing Director,
Tamil Nadu State Transport Corporation
Tirunelveli Limited,
Kattabomman Nagar, Tirunelveli.

2. The Principal Secretary to Government
and Chairman of STU,
Transport Department,
Fort St. George,
Chennai-600 009.

3. The Convener,
Career Planning Committee,
Tamil Nadu State Transport Corporation,
Tiruvalluvar House, Pallavan Salai, Chennai-600 002.

+1 cc to MR.K.SATHIYA SINGH, ADVOCATE, SR NO.14253
+1 CC TO MR K.SATHIYA SINGH, ADVOCATE, SR NO.14252
+1 CC TO MR.T.JEEN JOSEPH, ADVOCATE, SR NOM14192
+1 CC TO MR.PUHAZH GANDHI, ADVOCATE, SR NO.14522
+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.14400
+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.14399

jikr/ta

MAS/SV-MMS:23.03.2017:6P-10C

ORDER MADE IN
W.A. (MD) .Nos.1 and 105 of 2017 &
C.M.P. (MD) .Nos.2 and 1036 of 2017
13.03.2017