

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 04.12.2018

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.10861 of 2016

K.Chandrasekar

.. Petitioner

Versus

1.The Principal Secretary to Government,
Home Department,
Secretariat,
Chennai-9.

2.The Transport Commissioner,
Ezhilagam Complex,
Chennai-5.

3.The Joint Transport Commissioner,
Ezhilagam Complex, Chennai-5.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the second respondent in his Letter No.05155/T2/2015 dated 18.12.2015 addressed to all Zonal Officers and Regional Transport Officers and quash the same and to promote the petitioner as Motor Vehicle Inspector Grade-I with effect from 11.10.1999 on par with junior and consequential promotion as Regional Transport Officer by recruitment by transfer and consequential further promotion with all consequential monetary benefits.

For Petitioner : Mr.P.Wilson,
Senior Counsel for
Mr.M.Kamalanathan

For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General assisted by
Mrs.P.Rajalakshmi,
Additional Government Pleader
for R1 to R3

ORDER

The petitioner has come up with this writ petition challenging the Letter No.05155/T2/2015 dated 18.12.2015 addressed by the second respondent to all Zonal Officers and Regional Transport Officers and seeking a direction to the

respondents to promote him as Motor Vehicle Inspectors Grade-I with effect from 11.10.1999 on par with his junior and consequential promotion as Regional Transport Officer by transfer and consequential further promotion with all monetary benefits.

2.The petitioner was appointed as a Motor Vehicle Inspector Grade II in the office of the Enforcement Wing, Deputy Transport Commissioner, Tirunelveli Zone on compassionate ground under Rule 10(a) (1) of the Tamil Nadu State and Subordinate Service Rules with effect from 17.06.1992 as his father died in harness. He also joined duty on 25.06.1992 and his service was regularised with effect from 16.07.1993 based on the G.O. (4D) No.85 Home (Transport II) Department dated 12.12.2006 after a period of fourteen years.

3.With this back ground, the learned senior counsel appearing for the petitioner submitted that after the petitioner joined the post of Motor Vehicle Inspectors Grade II on 25.06.1992, one Mr.S.K.M.Sivakumaran, was also appointed on compassionate grounds as a Motor Vehicle Inspectors Grade II on 28.12.1992. He was given the benefit of regularisation on the same day namely, 16.07.1993 along with the petitioner. When the seniority list was prepared for the post of Motor Vehicle Inspectors Grade I , the petitioner was shown at Sl.No.68, whereas the said S.K.M.Sivakumaran was shown at Sl.No.69 below the petitioner. He would further submit that the said S.K.M.Sivakumaran filed a Writ Petition in W.P. No.15889 of 2013 to place him above his juniors namely D.Venkatraman and K.R.Krishnamurthy in which the petitioner was also impleaded as one of the respondents. The said Writ Petition was allowed on 19.02.2014 directing the respondents 1 and 2 therein to prepare a seniority list of eligible Motor Vehicle Inspectors Grade-I and II, by placing the petitioner therein above the direct recruits. Aggrieved by the said order, W.A. Nos.302, 425 and 855 of 2014 were filed by the appellants therein and this Court, by order dated 28.05.2015, confirming the order dated 19.02.2014 passed by the learned Single Judge in the above writ petition, disposed of the Writ Appeals holding that the factors of long delay in the regularisation process and the issuance of Government Order in G.O. (2D) No.63, dated 25.03.1999 giving retrospective effect to the first respondent therein namely, S.K.M.Sivakumaran, cannot be lost sight of.

4.Learned senior counsel appearing for the petitioner further submitted that since the petitioner is factually senior to the said S.K.M.Sivakumaran, D.Venkatraman and K.R.Krishnamurthy, he is entitled to get the benefit of the orders dated 19.02.2014 and 28.05.2015 passed by this Court in W.P. No.15889 of 2013 and W.A. Nos.302, 425 & 855 of 2014. However, the petitioner was issued with two charge memos dated

03.09.2004 and 15.10.2007 and the same were dropped in pursuance of the order of the first respondent in G.O. (D) No.506 Home (Transport-II) Department, dated 02.05.2008 and in Proceedings No.4125/VA2/2007 dated 11.11.2009. Therefore, the learned senior counsel pleaded that when the said charges made against the petitioner were dropped, he should have been placed above the said S.K.M.Sivakumaran, but the same has not been done.

5.Learned senior counsel for the petitioner further submitted that when the petitioner moved a Writ Petition in W.P. No.25968 of 2011, this Court, by order dated 01.11.2012, while disposing of the said petition, has directed the first respondent therein to consider the grievance of the petitioner for promotion as per the representation of the petitioner dated 17.05.2010, 01.01.2011 and 29.09.2011. The said order was not properly considered by the respondents and by letter No.85772/Tr.II/2011-8, dated 25.03.2013, without citing any reason, the request of the petitioner to place him in the proper place in the seniority list has been rejected. Now the said S.K.M.Sivakumaran was promoted as a Regional Transport Officer with effect from 30.11.2010 and therefore, the petitioner ought to have been promoted as Regional Transport Officer on par with his junior S.K.M.Sivakumaran. In this regard, the petitioner has made representations dated 19.10.2015 and 26.11.2015, but the same are kept in a cold storage. In the mean while, a proposal has been made to fill up the temporary promotion for the post of Regional Transport Officer, but the name of the petitioner has not been shown. Aggrieved over the same, the petitioner is before this Court.

6.It is contended by the learned senior counsel appearing for the petitioner that when the said S.K.M.Sivakumaran came to this Court to fix his seniority from the date of regularisation namely, with effect from 16.07.1993 on the ground that the respondents have not properly fixed his

seniority, this Court in paragraph 30 of the above said order has given a finding as under:

'But, I am of the opinion, had the petitioner's seniority been fixed properly, he would have been promoted to the post of RTO in the year 2008 itself. But for no fault of him, his seniority was not fixed and he was promoted only in the year 2010. Therefore, considering this fact, I am of the opinion, the petitioner's claim cannot be rejected on the ground that he has not completed five years of service as RTO'.

7.Therefore, when this Court has accepted the claim of the petitioner's junior namely S.K.M.Sivakumaran, who was appointed on 28.12.1992, which is six months after the appointment of the

petitioner in the post of Motor Vehicle Inspectors Grade-II on compassionate ground, the benefit given to the said S.K.M.Sivakumaran, who is admittedly junior to the petitioner working in the same department, should be given to the petitioner also. Therefore, the learned senior counsel prays for allowing the writ petition.

8.Reiterating the averments made in the counter affidavit, the learned Additional Advocate General appearing for the respondents would submit that the petitioner was given promotion by order dated 11.03.2010 passed by the Principal Secretary/Transport Commissioner, Chennai, as per the Proceedings No.66094/T1/2009, after charges made against the petitioner under Rule 17 b of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were dropped by the Government and he was declared to have satisfactorily completed the period of probation on the Afternoon of 14.07.1995. In the said order, it has been specifically mentioned that in view of the guidelines, the name of the petitioner, now working at Regional Transport Office, Tirunelveli, has been included in the panel to the post of Motor Vehicle Inspectors Grade-I for the year 2009-10 by placing him above one S.Kannan in the promotion order published in the reference cited therein. The learned Additional Advocate General would further submit that the petitioner has accepted the said order dated 11.03.2010 showing that he should be placed above the said Kannan and that order has not been questioned or challenged by him. Without contesting that order whether it has been passed wrongly or not, the petitioner cannot maintain this writ petition.

9.Taking support from the procedure for preparation of approved list, learned Additional Advocate General further submitted that in cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded and on exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion and therefore, the request of the petitioner was rightly considered and an order dated 11.03.2010 was also passed rightly placing the petitioner above the said Kannan.

10.The learned Additional Advocate General also submitted that pursuant to the direction issued by this Court in W.P. No.25968 of 2011 dated 01.11.2011, the letter No.85772/Tr.II/2011-8, dated 25.03.2013 has also been issued by the respondents and the same has also not been challenged by the petitioner, for the reasons best known to him. Therefore, this is too late for the petitioner to come to this Court.

11. Admittedly, the petitioner and S.K.M.Sivakumaran were appointed on compassionate ground on 25.06.1992 and 28.12.1992 respectively. Their services were also regularised on the same day namely, 16.07.1993. Thereafter, when the respondents prepared the seniority list for the post of Motor Vehicle Inspectors Grade I, the petitioner was placed in Sl.No.68 and S.K.M.Sivakumaran was placed in Sl.No.69. Subsequently, the petitioner suffered two charge memos issued under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. These two charge memos issued against the petitioner were subsequently dropped in pursuance of the order of the first respondent in G.O. (D) No.506 Home (Transport-II) Department, dated 02.05.2008 and in Proceedings No.4125/VA2/2007 dated 11.11.2009. It is relevant to refer Schedule-XI of Tamil Nadu Government Servants (conditions of service) Act, 2016, which is given as under:

'(2) If the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court quashes the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for promotion or for appointment, if he is otherwise qualified'.

12. Even after dropping of the aforementioned two charges by the respondents, when they having not placed the petitioner in the appropriate place, the petitioner has approached this Court by filing a writ petition in W.P. No.25968 of 2011 dated 01.11.2012. This Court, after considering the counter affidavit filed by the respondents, directed the first respondent to consider the grievance of the petitioner for promotion as per the representation of the petitioner dated 17.05.2010, 01.01.2011 and 29.09.2011. No doubt, this direction has been considered by the Principal Secretary to Government in letter No.85772/Tr.II/2011-8, dated 25.03.2013, but, no reason whatsoever has been given. In the meanwhile, when the petitioner's junior S.K.M.Sivakumaran came to this Court with the writ petition in W.P. No.15889 of 2013 seeking issuance of a writ of certiorarified mandamus against the respondents to prepare a seniority list of eligible Motor Vehicle Inspectors Grade I based on his seniority by placing him above the direct recruits, respondents 4 and 5 therein and promote him as Deputy Transport Commissioner, this Court allowed the writ petition quashing the said order with a consequential direction directing the respondents 1 and 2 therein to prepare the seniority list of eligible Motor Vehicle Inspectors Grade I & II by placing S.K.M.Sivakumaran above the direct recruits. Therefore, the

order passed by this Court is in favour of S.K.M.Sivakumaran and the same will be equally applicable to the petitioner as well, for, when the seniority of the petitioner's junior was regularised, the seniority of the petitioner in the same department shall be considered.

13. There cannot be two rules in one department in the matters of promotion and seniority. When S.K.M.Sivakumaran has obtained an order to set right his seniority and the same has also been confirmed by the Division Bench in W.A. Nos.302, 425 & 855 of 2014 which is also subsequently acted upon by the respondents department on the basis of the order passed by

this Court regularising the seniority, the case of the petitioner could have been considered.

14. As the petitioner prays for placing him on par with the said S.K.M.Sivakumaran, the respondents are directed to promote the petitioner on par with his junior, within a period of eight weeks from the date of receipt of a copy of this order. Therefore, the writ petition is allowed. Consequently, connected W.M.Ps are closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Principal Secretary to Government,
Home Department,
Secretariat,
Chennai-9.

2.The Transport Commissioner,
Ezhilagam Complex,
Chennai-5.

3.The Joint Transport Commissioner,
Ezhilagam Complex, Chennai-5.

+3ccs to Mr.M.Kamalanathan, Advocate, S.R.No.83073

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rrs 14/12/2018