

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.28286 of 2018 and WMP No.32995 of 2018

D.Laxman

.. Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to the Government,
Transport Department,
Secretariat, Chennai 600 009.
2. Tamil nadu State Transport Corporation,
rep. by the Managing Director, Salem District,
Salem .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records pertaining to the proceedings of the 2nd respondent in Ir.No.E2/19282/TNSTC(Salem)/2018 dated 17.10.2018 and to quash the same as illegal, incompetent and ultravires and consequently, direct the respondents to give retrospective promotion to the post of Deputy Manager to me with effect from 30.06.2014, the date of promotion to my juniors to the post of Deputy manager, and consequently give further promotions with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for M/s.R.Jayaprakash

For Respondents : Mr.D.Suriyanarayanan,
Additional government Pleader for R1
M/s.Rajeni Ramadoss, Standing Counsel
for R2

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to quash the order rejecting the prayer made by the petitioner to give him

promotion notionally from the date his immediate juniors were promoted, inasmuch as the petitioner ought to have been promoted on that day but for disqualification he could not be promoted and in the meanwhile such disqualification has been removed.

2. It appears that the petitioner has joined in the respondent Corporation as Assistant Engineer (Trainee) on 09.01.1987 and in course of time, he was promoted to the post of Assistant Manager with effect from 11.04.2007 and his promotion for Deputy Manager was due on 30.06.2015, but on that day due to pendency of a disciplinary proceeding, which is a disqualification pursuant to charge memo dated 14.10.2013, he was not considered for promotion. Thereafter, the petitioner was imposed with a punishment of stoppage of increment for three months without cumulative effect for the delinquency. The aforesaid is also a disqualification during the currency of such punishment as well as for check period one year immediately following the punishment. It appears that the petitioner was promoted after such disqualification with effect from 30.06.2015. The petitioner, however, had made an appeal to the Board, and the Board exonerated the petitioner from the punishment. Therefore, the petitioner's such disqualification for consideration of promotion being removed, the petitioner then made a representation to consider his case for promotion from the date he was qualified for the same inasmuch as the disqualification / punishment has since been removed, as there is no punishment in the eye of law, in other words, he having been exonerated on delinquency, he is entitled to promotion on the date of his juniors were promoted. In such premises, he approached this Court by WP No.19282 of 2018, which was disposed of by this Court vide order dated 27.07.2018 with an observation to consider and dispose of the petitioner's representation dated 08.12.2017. According to the petitioner, the petitioner should have been promoted on the date his juniors have been promoted, in view of the law laid down in the case of Union of India and Others Vs. K.V.Janakiraman and Others reported in (1991) 4 SCC 109. The petitioner as such come to this Court seeking the relief as sought for.

3. No reply affidavit has been filed by the respondents. However, as the dispute in this case revolves solely on question of law, on consent of the parties, this Court dispose of this writ petition at the stage of admission without any reply affidavit.

4. The learned counsel appearing for the petitioner submits that since the petitioner has been exonerated from the disciplinary proceedings, his case for promotion ought to have been considered on the date he was qualified to be promoted but could not be promoted on account of disciplinary proceedings and subsequent punishment imposed. The aforesaid is the settled

position of law laid down in the case of K.V.Janakiraman(supra). However, the learned counsel for the petitioner submits that in this case, having accorded him promotion from 30.06.2015 which is subsequent to the date his promotion of his juniors, the respondents be directed to accord promotion from the date his immediate juniors were promoted and with all consequential benefit to him accruing out of such promotion.

5. The learned counsel appearing for respondents however submits that the petitioner is not entitled to the relief sought for, inasmuch as he is guilty of delay and laches. According to him, he having challenged the punishment imposed after for about two years and thereafter made a representation and on such representation, when the punishment imposed was quashed but without any order with regard to delinquency, he could not have come to this Court at this stage for non grant of promotion to him from a retrospective date i.e the date when his immediate juniors were promoted. The case of K.V.Janakiraman (supra) therefore has no application, inasmuch as the petitioner promotion in this case was not kept in a sealed cover proceedings and hence, the writ petition filed is devoid of merit.

6. It is not in dispute that the petitioner was qualified to be considered for promotion on the date his juniors were promoted but for the disciplinary proceedings initiated against him / disqualification of him regarding punishment imposed, his case was not considered. However, the petitioner after being held guilty in the disciplinary proceeding at a belated stage made an appeal to the Board against the same. The Board in its own wisdom having entertained the same and wiped out the punishment imposed. In the case of K.Janakiraman (supra) it was held that when a Government servant comes within the zone of consideration for promotion and has all the qualifications to be considered for promotion but for continuance of disciplinary proceeding which is a disqualification, he cannot be promoted and to consider the case of the petitioner along with others keeping the said proceedings in respect of the candidate concerned in a sealed cover, ultimately, on termination of the disciplinary proceedings if it is found that he has been exonerated of the delinquency, he ought to be promoted from the date his immediate juniors were promoted if they found suitable for promotion. But such practice is not adopted in respect of the State Government employee in the State of Tamil Nadu. However, for that the petitioner cannot be denied the benefit of being considered for promotion on the date his juniors were promoted if he is exonerated of the charge and had all the qualification for being considered for promotion but could not be considered as he on the aforesaid date was under disqualification of being proceeded in a disciplinary proceeding. Therefore, this Court is of the view that the prayer

made by the petitioner appears to have substance and accordingly, the writ petition is allowed with a direction to the respondents to promote the petitioner from the date his immediate juniors were promoted to the post of Deputy Manager with all consequential service benefit except the monetary benefit as the petitioner was not holding the post from such date, with actual benefit from the date he joined. Such an exercise shall be done within a period of six weeks from the date of receipt of copy of this order. However, the juniors of the petitioner, who were already promoted should not be dislodged to accommodate the petitioner, if no post is available to accommodate the petitioner, but a supernumerary post be created for the petitioner which shall be exhausted on accrual of a real vacancy to accommodate the petitioner, subsequent to such promotion given notionally. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to the Government,
Transport Department,
Secretariat, Chennai 600 009.
2. The Managing Director,
Tamil nadu State Transport Corporation,
Salem District,
Salem

+lcc to Mr.R.Jayaprakash, Advocate sr.no.74631
+lcc to Government Pleader sr.no.74895
+lcc to M/s.S.Rajeni Ramadass, Advocate sr.no.76098

W.P.No.28286 of 2018

ssv(co)
nr 15/11/2018