

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Appeal No.1844 of 2019
and
C.M.P.Nos.12492 and 14516 of 2019

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.
- ... Appellants

Vs.

1. K.Chandrasekar
No.4/382, 4th Main Cross Street,
South Bala Backia Nagar, Tirunelveli-1.
Now Motor Vehicle Inspector Grade-I,
O/o The Regional Transport Officer,
Chennai (Central).
2. Tr.S.K.M.Sivakumaran
Joint Transport Commissioner,
Chennai Enforcement,
No.1, Bharathidasan Colony, Ist Floor,
K.K.Nagar, Chennai-78.

(Second respondent impleaded,
Vide Order of Court, dated 25.09.2020
in C.M.P.No.10652 of 2020 in
W.A.No.1844 of 2019)

.. Respondents

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Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge, in Writ Petition No.10861 of 2018, dated 04.12.2016, on the file of this Court.

WP.No.10861 of 2016: Petition 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 Officres and Regional Transport officers and quash the same and to promote the petitioner as motor vehicle Inspector Grade-I w.e. Of 11/10/1999 on par with his junior and consequential promotion as Regional Transport Officer by recruitment by transfer and consequential further promotion with all consequential monetary benefits.

For appellants : Mr.S.R.Rajagopal, Additional Advocate General assisted by Mrs.A.Srijeyanthi, Spl.G.P.

For respondent : Mr.P.Wilson, Senior Counsel for Mr.D.Sivaraman for R-1
Ms.L.Parvin Banu for M/s.Row and Reddy for R-2

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The Writ Appeal is heard through video-conferencing.

2. This Writ Appeal has been filed as against the order dated 04.12.2018 in Writ Petition No.10861 of 2016 passed by the learned Single Judge of this Court, in directing the appellants/State to place the respondent herein (writ petitioner - K.Chandrasekar) on par with the second respondent-S.K.M.Sivakumaran, who had been impleaded in this appeal, (vide order dated 25.09.2020 in C.M.P.No.10652 of 2020 in W.A.No.1844 of 20190 and directing to promote the first respondent-writ petitioner on par with his junior-S.K.M.Sivakumarn, within a period of eight weeks.

3. The first respondent-writ petitioner was appointed by the second appellant-Transport Commissioner, as Motor Vehicle Inspector -- Grade-II on compassionate grounds on 17.06.1992 under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. The first respondent-writ petitioner joined duty on 25.06.1992. One of the conditions prescribed for regulation in the said appointment is that the first respondent-writ petitioner had to qualify himself to the said post through the Tamil Nadu Public Service Commission (TNPSC).

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4. While so, by virtue of G.O.Ms.No.156, Labour and Employment Department, dated 16.07.1993, orders were issued for regularisation of those who have been appointed on compassionate grounds without appearing in the examination conducted by the TNPSC. Though the first respondent-writ petitioner is covered by the said G.O., his services were not regularised immediately. The reason for not regularising him is that, since he is an appointee on compassionate grounds, it is mandatory on his part to produce Indigent Certificate from the Tahsildar concerned. The first respondent-writ petitioner was not an indigent person and holds 27.2 hectares of lands. Hence, the first respondent-writ petitioner was granted two more chances for appearance of examination as Motor Vehicles Inspector -- Grade-II conducted by the TNPSC, vide G.O.(1D).No.683, Home (Transport-2) Department, dated 03.08.1999. As against the said order, the first respondent-writ petitioner had filed Original Application (O.A). No.4994 of 1999 before the Tamil Nadu Administrative Tribunal and obtained an order dated 03.12.2001 in his favour, pursuant to which, the Government had regularised the temporary service with effect from 16.07.1993, vide G.O.(4D).No.85, Home (Transport.II) Department, dated 12.12.2006.

5. Further, the first respondent/writ petitioner had been inflicted with two departmental disciplinary proceedings, but subsequently, both the charges in the said departmental proceedings were dropped, consequent upon which, his probation in the cadre of Motor Vehicles Inspector Grade-II was declared on 13.01.2010 with retrospective effect from 14.07.1995, by the proceedings of the first/second appellants, dated 13.01.2010. The first respondent/writ petitioner's name was included in the panel of the year 2009-2010 for the post of Motor Vehicles Inspector Grade-I, by placing him above one S.Kannan, Motor Vehicles Inspector - Grade-I and promoted as Motor Vehicle Inspector Grade-I.

6. While so, one of the compassionate appointee, namely S.K.M.Sivakumaran had filed a Writ Petition in W.P.No.15889 of 2013 praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent therein, bearing No.T1/56052/2006 (EO.No.360/2013), dated 07.08.2013 and to quash the same and consequently direct the first and second respondents therein (respondents 1 and 2 herein) to prepare a seniority list of eligible Motor Vehicle Inspector Grade-I, based on the petitioner therein's (S.K.M.Sivakumarn's) seniority in Motor Vehicle Inspector Grade-II, by placing the writ petitioner therein, namely S.K.M.Sivakumaran above the direct recruits, respondents 4 and 5

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therein, namely D.Venkatraman and K.R.Krishnamurthy and promote the said S.K.M.Sivakumaran as Deputy Transport Commissioner on that basis and till then, not to make promotion to the post of Deputy Transport Commissioner. In fact, the first respondent-writ petitioner herein was also a party-respondent No.11 in the said Writ Petition in W.P.No.15889 of 2013. This Court, by order dated 19.02.2014, while allowing the said Writ Petition in W.P.No.15889 of 2013, directed the respondents 1 and 2 therein to prepare a seniority list of eligible Motor Vehicle Inspector - Grade-I and II, by placing the petitioner therein (S.K.M.Sivakumaran) above the direct recruits, i.e., respondents 4 and 5 therein, namely D.Venkatraman and K.R.Krishnamurthy (who were appointed by direct recruitment on 26.07.1993) and promote the petitioner therein, namely S.K.M.Sivakumaran as Deputy Transport Commissioner on that basis.

7. Now, the present writ petitioner, namely K.Chandrasekar, who is senior to the second respondent herein (S.K.M.Sivakumaran), has to be placed above him in the seniority list. In fact, the said S.K.M.Sivakumaran was appointed after the appointment of the first respondent-writ petitioner-K.Chandrasekar, and hence, he is also equally entitled to the benefit of the order passed by this Court in the said W.P.No.15889 of 2013, which was also confirmed by a Division Bench of this Court in Writ Appeal Nos.302, 425 and 855 of 2014 by judgment dated 28.05.2015. It is to be noted that the present Writ Petitioner-K.Chandrasekar has also completed his probation, which was declared by proceedings of the first/second appellants herein, dated 13.01.2010, with retrospective effect from 14.07.1995.

8. It is stated by the learned Senior Counsel appearing for the first respondent-writ petitioner that the first respondent-writ petitioner had also passed all the prescribed departmental tests prior to 14.07.1995 itself and thus, the present writ petitioner is fully qualified to be promoted to the post of Motor Vehicle Inspector-Grade-I as per the Tamil Nadu Transport Subordinate Service Rules and eligible to be appointed by recruitment by transfer of the Regional Transport Officer as per the Tamil Nadu State and Subordinate Service Rules. Hence, as the first respondent-writ petitioner has not been promoted as stated above, he has filed the present Writ Petition in W.P.No.10861 of 2016 praying to issue a Writ of Certiorarified Mandamus to call for the records of the second appellant-Transport Commissioner, Chennai in his Letter No.05155/T2/2015, dated 18.12.2015 addressed to all Zonal Officers and Regional Transport Officers and to quash the same and to promote the writ petitioner-K.Chandrasekar as Motor Vehicle Inspector Grade-I

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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. As discussed above, the learned Single Judge, in W.P.No.10861 of 2016, by the impugned order dated 04.12.2018, after considering the facts and submissions made on either side, allowed the said W.P., observing as follows:

"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."

9. Heard both sides and perused the materials available on record.

10. It is stated by the learned counsel appearing on either side that the order passed in W.P.No.15889 of 2013, dated 19.02.2014, as discussed above, is equally applicable to the present writ petitioner-K.Chandrasekar also. Further, the charges framed against him were also dropped by the appellants. In fact, the learned counsel appearing for the second respondent-S.K.M.Sivakumaran who had been impleaded in this Writ Petition, submitted that the second respondent-S.K.M.Sivakumaran has no objection in placing the first respondent-petitioner-K.Chandrasekar on par with him (second respondent herein).

11. Accordingly, the Writ Appeal is dismissed. The impugned order dated 04.12.2018 passed by the learned Single Judge in W.P.No.10861 of 2016, is confirmed. The letter of the second appellant in Letter No.05155/T2/2015 dated 18.12.2015, addressed to all Zonal Officers and Regional Transport Officers stands quashed, insofar as the first respondent-writ petitioner alone is concerned. The appellants herein are directed to promote the first respondent-writ petitioner-K.Chandrasekar as Motor Vehicle Inspector Grade-I with effect from 11.10.1999 on par with his junior S.K.M.Sivakumaran and consequential promotion as Regional Transport Officer by recruitment by transfer, shall also be granted and consequential further promotion shall also be granted, with all consequential monetary benefits. The above exercise shall be completed by the appellants herein within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, C.M.Ps. are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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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.

+1cc to M/s.Row& Reddy, Advocate SR.33337
+2cc to Mr.R.Siva Raam, Advocate SR.33164
+1cc to the Government Pleader SR.33083

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SAI (CO)
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