

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 20939 of 2009

K. Sivalingam

... Petitioner

-vs-

The Managing Director,
State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai,
Chennai - 600 002.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondent to give promotion as Checking Inspector to the petitioner from the date of promotion given to his juniors and further to pay difference in wage payable to him.

For Petitioner : Mr.S.T.Varadarajulu

For Respondent : Mr.K.Kathiresan

Standing counsel

O R D E R

The prayer sought for in the Writ Petition is for a Writ of Mandamus directing the respondent to give promotion as Checking Inspector to the petitioner from the date of promotion given to his juniors and further to pay difference in wage payable to him.

2. The petitioner was appointed as a Conductor at the respondent Transport Corporation on 12.10.1978, however, his service was regularized only from 01.09.1980. As per the extant rule, a Conductor who had been regularized, has to successfully complete three reviews to be undertaken in this regard, by the employer at frequent interval i.e., after eight years of service.

3. In other words, within a period of 24 years, a Conductor who had been regularized in his service has to under go successfully three reviews and thereafter, only based on the seniority, after completing the third review, he would be eligible to get further promotion for the post of Checking Inspector, Traffic Manager, etc.,

4. In this context, it is the case of the petitioner that, after the date of appointment of the petitioner, i.e., on

12.10.1978, two other persons namely Jabber and Mani were appointed, but they also have been regularized only from the same date i.e., on 01.09.1980 along with the petitioner. Subsequently, the petitioner has completed third review by 01.08.2005, whereas, the other two completed the third review in 2003. Assuming, the other two completed the two reviews in 2003, since they are juniors to the petitioner and both had appointed in service after the petitioner and had regularized on the same day, at least on the day, the two referred above, who have been given promotion as Checking Inspector or Traffic Manager, the petitioner candidature also should have been considered for such promotion. However till the superannuation of the petitioner as he superannuated and retired on 31.01.2011, such a promotional avenue to the next higher category i.e., Traffic Manager or Checking Inspector was not considered and he was made to superannuate and retire on that day only as a Conductor. Therefore, seeking such promotion notionally from the date the other two have been given promotion and also for consequential pensionary benefits, the petitioner has filed this petition with the aforesaid prayer.

5. Heard Mr.S.T.Varadarajulu, learned counsel appearing for the petitioner who would submit that, the period criteria fixed by the respondent for getting promotion by successfully completing the third review within 24 years, has admittedly been completed by the petitioner in 2005 and therefore, he would be entitled for promotion to the next category namely Checking Inspector or Traffic Manager. However, the same has not been given to the petitioner, till he attained superannuation in 2011. He would further submit that, however insofar as other two candidates, Jabber and Mani are concerned, such a promotion was given on 04.10.2007 and 01.04.2008 respectively. However, though the petitioner had three years service till he attained superannuation in the year 2011, such a gesture of promotion was not shown to the petitioner and he was made only to retire as Conductor. Therefore, he was entitled to get promotion notionally. However, such a notional promotion shall be taken into account for a revision of pensionary benefits and accordingly he is entitled to get the revised pensionary benefits.

6. On the other hand, the learned Standing counsel appearing for the respondent would submit that, though the petitioner was appointed on 12.10.1978 and regularized on 01.09.1980, on the same date, other two persons referred to also were regularized, the petitioner, due to the leave on loss of pay taken for one year four months, was not considered for first review along with other two in the year 1985. Hence, he was considered for the first review only on 01.05.1986. Therefore, the other two have already surpassed the petitioner. Like that, the second review

was admitted in respect of other two in 1993, it was made to the petitioner only in 1994. Thereafter, insofar as the other two employees, third review also have been successfully completed in the year 2003, whereas, the petitioner, due to a punishment imposed against him, was not considered for third review and he was considered only on 01.08.2005. Therefore, during these 24 years, before completing the third review successfully, the petitioner had been surpassed by other two. Therefore, accordingly, based on their seniority on successful completion of third review, in these 24 years, they have been considered for further promotion and accordingly, they were given promotion in the year 2007 and 2008 and that turn did not come to the petitioner, as he has completed third review only belatedly. Hence the said promotion as has been sought for by the petitioner could not be given to him, for which he is not entitled to. Accordingly the present prayer sought for herein is liable to be rejected, he contended.

7. I have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

8. In order to explain the various dates, as to when the petitioner and other two who have been compared now were appointed and regularized as well as, the dates of the third review, they successfully completed, the respondent has filed a chart, referring the same, the learned counsel for the respondent has heavily relied upon the date on which, the third review, the petitioner has completed.

9. On perusal, it discloses that, the other two completed the first review in February and May 1985, whereas, the petitioner completed in May 1986. The reason being that, one year and four months he had taken the leave on loss of pay. Subsequently, the second review, though the others have completed in February and August 1993, the petitioner had completed it only in November 1994. Like that, in respect of third review, those two completed in May and November 2003 respectively, whereas, the petitioner had completed it only in August 2005. The reason being that, in between he had been suffered with a punishment.

10. Therefore, according to the respondent, the petitioner would be eligible to get promotion only after 01.08.2005, whereas, the other two were eligible to get promotion from 01.05.2003 and 01.11.2003 respectively.

11. In this context, the learned Standing counsel appearing for the respondent relied upon the following averments made in the counter affidavit, which reads as follows:

"6. I humbly submit that in this Corporation, promotion to the post of Checking Inspector is given based on Review Seniority as per the Common Service Rule and Government Letter 89/Cho/2001, dated 16.08.2001 promotion are considered for Selection Grade Senior Conductor who have obtained 24 years review.

7. I humbly submit that the petitioner has obtained 24 years review on 01.08.2005 where as Thiru.H.Jafar and Thiru.V.Mani have obtained 24 years review on 01.05.2003 and 01.11.2003 respectively and hence they were considered for promotion to the post of Checking Inspector during 04.10.2007, 01.04.2008 respectively."

12. By relying upon the same, the learned Standing counsel appearing for the respondent, would submit that, the other two, who have successfully completed the third review in 2003 were considered for promotion and accordingly promotion was given on 04.10.2007 and 01.04.2008 respectively. However, since the petitioner had admittedly completed the third review only in the month of August 2005, his turn did not come and therefore, he was not considered for promotion till he attained superannuation in 2011.

13. The said stand taken by the respondent denying such promotion to the petitioner cannot be accepted by this Court, as there can be no plausible reason for such denial of promotion available with the respondent.

14. Assuming that, the other two have surpassed the petitioner during 24 years and accordingly, they completed the third review in 2003 and the petitioner has completed the third review in 2005 and based on which, if those two have been given promotion in October 2007 and April 2008, correspondingly, the petitioner also would be entitled to get promotion atleast after 01.04.2008. However, though the petitioner had been in service till 31.01.2011, till such time, i.e., till his superannuation and retirement, such a promotion was not considered in the case of the petitioner, which is unjustifiable and therefore, the relief sought for by the petitioner to get such promotion atleast after 01.04.2008 or from 01.04.2008 is justifiable and to be accepted.

15. In that view of the matter, this Court feels that, the petitioner is entitled to get such promotion on or after 01.04.2008. Therefore this Court is inclined to dispose of the Writ Petition with the following orders:

"(i) That, there shall be a direction to the respondent to consider the petitioner for promotion to the post of Checking Inspector or Traffic Manager, as the case may be on or after 01.04.2008 notionally and based on which, his pay and service benefits can be revised. However, he is not entitled to get any revised pay from the period, he would be considered for promotion till his superannuation.

(ii) It is made clear that, based on such promotion notionally be given to the petitioner, his pay benefits can be revised notionally and his pensionary benefits also be revised, based on which, he shall be entitled to get revised pensionary benefits, for which, the arrears to be calculated and be paid to the petitioner and revised pension shall be continued to the petitioner.

(iii) The needful as indicated above shall be undertaken by the respondent within a period of eight weeks from the date of receipt of a copy of the order."

16. Accordingly, this Writ Petition is ordered. However, there shall be no order as to cost.

s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

vji
To

The Managing Director,
State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai,
Chennai - 600 002.

+1 CC to Mr.K. Kathiresan, Advocate sr 3731.

+1 CC to Mr.S.T. Varadharajulu, Advocate sr 3445.

W.P. No. 20939 of 2009

SRII (CO)
SP (09/07/2021)