



W.P.No.1198 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.1198 of 2020

D.Murugesan

.... Petitioner

-Vs-

1.The Additional Chief Secretary to Government
Transport Department, Secretariat
Chennai 600 009.

2.M/s.Tamil Nadu State Transport Corporation
(Kum) Limited, rep.by its Managing Director
Railway Station New Road, Kumbakonam.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to deemed to promote the petitioner as Traffic Inspector and consequently refix the pension and pay the consequential benefits by considering the petitioner's representation dated 26.04.2019.

For Petitioner : Mr.D.Soundar Raj

For Respondents : Mr.K.Tippusultan,
Government Advocate – for R1

Mr.Sathya Gandhi,
Standing Counsel – for R2



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ORDER

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The prayer sought for herein is for a Writ of Mandamus directing the respondents to promote the petitioner as Traffic Inspector and consequently refix the pension and pay the consequential benefits by considering the petitioner's representation dated 26.04.2019.

2. The petitioner was appointed as a driver on 14.10.1981 on permanent basis at the respondent Corporation. He was first promoted as Senior Driver and again promoted as Selection Grade Driver. In that capacity, the petitioner was working for several years and after having put in more than 34 years of service, he attained superannuation on 29.02.2016, where, without prejudice to the pendency of the criminal proceedings against the petitioner, he was permitted to retire.

3. In the meanwhile, a charge memo was issued against the petitioner on 01.10.2004 and that was also pending even at the time the petitioner retired from service. Also, the petitioner, in view of the pendency of the charge memo, was not considered for grant of yearly increment of 3rd, 4th and 5th review and was not considered for further promotion to the post of Driving Instructor and Traffic Inspector between 2004 and 2016. The petitioner was also kept under



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suspension for some period between 01.10.2004 and 04.07.2006.

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4. In that circumstances, since the petitioner retired from service on 29.02.2016 his grievance is that his retirement benefits should have been paid to him including the pension and also his further promotion to the post of Driving Instructor and Traffic Inspector should have been considered at least notionally and accordingly the retirement and service benefits including the pensionary benefits should be revised and paid to him. In order to redress this grievance, the petitioner has given a representation on 26.04.2019 to the respondents and the same since was not considered, the petitioner approached this Court by filing the present writ petition.

5. Heard Mr.D.Soundar Raj, learned counsel for the petitioner who after having reiterated the aforesaid facts would submit that, as against the charge memo dated 01.10.2004 the petitioner filed a writ petition in W.P.No.18581 of 2018, which was allowed by this Court by an order dated 11.04.2019 and a direction was given to settle the terminal benefits payable to the petitioner. Accordingly to some extent the benefits having been calculated, was paid to the petitioner and they have not considered the promotion to the petitioner and correspondingly further revision of pensionary benefits have also not been done.



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6. Learned counsel for the petitioner would further submit that, after filing this writ petition, the respondents, as against the order passed in the writ petition in W.P.No.18581 of 2018 in favour of the petitioner, filed a Review Application in R.A.No.141 of 2021 and that was also allowed by order dated 11.04.2021, as against which though the petitioner preferred an intra Court appeal in W.A.No.44 of 2022, when the matter came up before the Division Bench the petitioner decided to withdraw the said writ appeal. Though the matter stood thus, the learned counsel for the petitioner contends that since the petitioner was permitted to retire without any demur on 29.02.2016 even though the charge memo now restored by virtue of the order passed by the writ court in Review Application, that would not stand in the way of getting the benefits including terminal benefits to the petitioner. Hence, the learned counsel for the petitioner seeks the indulgence of this Court to issue appropriate directions to the respondents by way of a Mandamus.

7. However, Mr.M.V.Sathya Gandhi learned Standing Counsel appearing for the second respondent, by relying upon the averments made in the counter affidavit would submit that, pursuant to the order passed by the writ court dated 11.04.2019, service benefits payable to the petitioner have been calculated and was paid. However, insofar as that portion of the order with respect to the



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charge memo which was set aside is concerned, the Corporation preferred a Review Application which was allowed on 11.04.2021 and as against which though intra court appeal was filed by the petitioner the same was withdrawn and therefore the order passed in the Review Application stands. Thereby, the charge memo framed in the year 2004 against the petitioner has got restored, where a direction has been given by this Court that the charge memo can be proceeded against the petitioner by conducting disciplinary proceedings in the manner known to law. When that being so, unless and until the disciplinary proceedings pursuant to the charge memo which has now been restored by the order of this Court in the Review Application, is completed one way or the other, the further benefits as claimed by the petitioner in his representation cannot be considered.

8. I have considered the rival submissions made by the learned counsel for both sides and have perused the materials placed on record.

9. Though the petitioner initially succeeded in his writ petition to get the charge memo framed against the petitioner quashed, subsequently in the Review Application in R.A.No.141 of 2021, the respondent Corporation succeeded as against the said order. Though intra court appeal was filed by the petitioner, that was since withdrawn, the order passed in the Review application stands now.



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Thereby, the respondent Corporation, though permitted the petitioner to retire in 2016 on his superannuation, by virtue of the judicial order, is empowered to proceed with the disciplinary proceedings on the basis of the charge memo issued in 2004 and complete the same on merits and in accordance with law. Unless and until the disciplinary proceedings is completed and a verdict is given, the petitioner cannot seek for any further benefits.

10. Therefore, considering these above factual matrix and having regard to the submissions made by the learned counsel appearing for both sides, this Court is inclined to dispose of this writ petition with the following order.

- That the second respondent is hereby directed to complete the disciplinary proceedings pursuant to the charge memo dated 01.10.2004 which has got restored by the order dated 11.04.2021 passed in the Review Application No.141 of 2021 within a period of three months from the date of receipt of a copy of this order.
- The petitioner shall cooperate for such completion of the disciplinary proceedings without seeking any unnecessary adjournments.



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- Once the disciplinary proceedings is completed, a final order to that effect shall be passed by the disciplinary authority. Depending upon the outcome of the disciplinary proceedings, the plea raised by the petitioner with regard to the notional promotion to the post of Driving Instructor as well as Traffic Inspector and other pay benefits shall be considered by the second respondent.

11. With the above directions, this writ petition is disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
KST

To

1.The Additional Chief Secretary to Government
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2.The Managing Director
M/s.Tamil Nadu State Transport Corporation
(Kum) Limited, Railway Station New Road,
Kumbakonam.



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R. SURESH KUMAR, J.

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