



WEB COPY



WP.No.17467 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.08.2022

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

WP.No.17467 of 2018

R.Sakthivel

..

Petitioner

Versus

1.The Additional Chief Secretary to
Government,
Home (Transport-II) Department,
Secretariat, Chennai – 600 009.

2.The Transport Commissioner,
Chepauk,
Chennai – 600 005.

..

Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus to direct the first respondent to consider and pass orders on the petitioner's representation dated 12.03.2018 given to inclusion of name in G.O.(3D).No.74 Home (Transport-II) Department dated 19.12.2013 at Sl.No.8(A) in the light of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 within a stipulated time.



WEB COPY



WP.No.17467 of 2018

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.J.C.Durai Raj
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of Mandamus to direct the first respondent to consider and pass orders on the petitioner's representation dated 12.03.2018 given to inclusion of name in G.O.(3D).No.74 Home (Transport-II) Department dated 19.12.2013 at Sl.No.8(A) in the light of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 within a stipulated time.

2.The petitioner after having been selected by the Tamil Nadu Public Service Commission [TNPSC] through recruitment as Motor Vehicle Inspector Grade-2 for the year 1995-1996 by the Bulletin issued by the TNPSC on 16.04.1999 where his name was placed at Sl.No.15, had been given the posting as Motor Vehicle Inspector Grade-2 and he joined in the said post on 22.04.1998.



WP.No.17467 of 2018

3. Thereafter, he was promoted as Motor Vehicle Inspector Grade-1 on 06.09.2002. The Joint Transport Commissioner by letter dated 30.08.2013 had published a list of Motor Vehicle Inspector Grade-1 fit for promotion to the post of Regional Transport Officer for the year 2012-2013.

4. In the said list of the Joint Transport Commissioner dated 30.08.2013, the petitioner's name was included at Sl.No.21 placing him above one M.Singaravelu and J.K.Baskaran who were admittedly juniors to the petitioner.

5. Thereafter, the Government issued G.O.(3D) No.74 Home [Tr.II] Department dated 19.12.2013 wherein the Government published a list of Motor Vehicle Inspectors Grade-1 fit for promotion as Regional Transport Officers for the year 2012-2013. However, in the said list the juniors to the petitioners, namely, M.Singaravelu and J.K.Baskaran were included in Sl.Nos.9 and 10 respectively and the juniors were promoted in the said panel.



WP.No.17467 of 2018

WEB COPY

6. When this was questioned by the petitioner, it is stated that since there was a disciplinary proceedings at that time pending, his name was not included and subsequently in G.O.(2D).No.137 Home [Tr-II] Department dated 02.03.2016 the charges formulated against the petitioner was dropped and he was fully exonerated on the only disciplinary proceedings which was pending against him.

7. Since the charges framed against the petitioner in the only disciplinary proceedings were dropped and he has been exonerated from such charges, the petitioner would be entitled to get included in the promotion panel placing him above the juniors and therefore, in order to get such relief he filed a writ petition in W.P.No.20256 of 2016 wherein this Court passed an order on 16.06.2016 and a direction was issued that as the charges framed against the petitioner since had been dropped the petitioner's case should be considered in the light of the Government Orders within a period of three months.



WP.No.17467 of 2018

WEB COPY 8. Thereafter, in G.O.(D).No.633 Home [Transport-II] Department dated 15.07.2016, orders were issued promoting the petitioner as Regional Transport Officer on temporary basis without fixing his seniority and that was also subject to the outcome of Special Leave Petition filed by the Government against an order granted in favour of one S.K.M.Sivakumaran who was working as Deputy Transport Commissioner.

9. Only in this context the petitioner gave a representation on 12.03.2018 to consider his case to place him in the correct seniority in the promotion panel that was issued in G.O.(3D).No.74 where he should be placed above his two juniors, namely, M.Singaravelu and J.K.Baskaran and the said representation since has not been considered, he has approached this Court by filing the present writ petition.

10. Heard Mr.Ravi Shanmugam, learned counsel appearing for the petitioner who would submit that, by proceedings dated 30.08.2013 of the Joint Transport Commissioner, the name of the petitioner for panel in the



WP.No.17467 of 2018

year 2012-13 was included at Sl.No.21 placing him above M.Singaravelu

and J.K.Baskaran. Subsequently, when G.O.(3D).No.74 dated 19.12.2013

was issued, his name was not included because of the pendency of the

charges and subsequently by G.O.(2D).No.137 dated 02.03.2016 the

charges framed against the petitioner were dropped and he was fully

exonerated from the charges. Therefore, he become eligible to be considered

for promotion by including his name in the panel as per G.O.(3D).No.74

dated 19.12.2013 and in this regard, when a direction was issued by this

Court on 16.06.2016, pursuant to which when the respondents issued

G.O.(D).No.633 dated 15.07.2016 they should have given promotion to the

petitioner by placing him in correct seniority, however, they promoted the

petitioner on temporary basis without fixing his seniority. The Special Leave

Petition which was stated as one of the reason that the petitioner was

temporarily promoted is concerned, that was filed by one

S.K.M.Sivakumaran. The issue raised in the said SLP is between the direct

recruitment promotees and that is nothing to do with the petitioner's case

because the petitioner's juniors had been given promotion and they have

been given promotion by G.O.(3D).No.74 dated 19.12.2013 and on the said



WP.No.17467 of 2018

date itself the petitioner should have been given promotion placing him above his two juniors without which they have given promotion to the petitioner, that too on temporary basis by citing the pendency of the SLP which is nothing to do with the seniority issue raised by the petitioner. Therefore, the petitioner gave a representation on 12.03.2018 and since the same was not considered, the petitioner has approached this Court seeking direction as prayed for. Hence, the learned counsel for the petitioner would seek indulgence of this Court to that effect.

11.The learned counsel for the petitioner in fact had brought to the notice of this Court about the recent development where the Government issued G.O.(2D).No.186 Home [Transport-II] Department dated 09.08.2021 where the junior to the petitioner one Mr.D.A.Parvendan who was also similarly placed where his name was omitted to be included in the panel because of the pendency of the charge, subsequently the charge has been dropped or he has been exonerated, he made a plea like one of the plea made by the petitioner herein, that plea having been considered the Government issued G.O.(2D).No.186 dated 09.08.2021 where his name was included in



WP.No.17467 of 2018

the list fit for promotion to the post of Regional Transport Office and placing him below the said M.Singaravelu and above the said J.K.Baskaran by giving Sl.No.9A and similar gesture since has not been given to the petitioner, a suitable direction can be issued to that effect.

12.Heard the learned Additional Government Pleader appearing for the respondents who would submit that, at the time of considering the promotion panel by issuing G.O.(3D).No.74 since there was charge pending against the petitioner his name was not included and subsequently the charges framed against the petitioner was dropped and he was exonerated, thereafter a direction was given by this Court in the earlier round of litigation on 16.06.2016, pursuant to which he was given promotion on temporary basis and since there was a Special Leave Petition filed by one S.K.M.Sivakumaran was pending, that also relates to the seniority issue between the direct recruits and promotees and that would have some repercussion in the seniority to be fixed for the people like the petitioner subject to the outcome of the said SLP, such temporary promotion was given to the petitioner and his plea to place him above the two juniors claimed by



WP.No.17467 of 2018

him could not be considered. Therefore, the petitioner may not be entitled to seek for any such consideration as of now pursuant to the representation he has given on 12.03.2018.

13.I have considered the said submissions made by the learned counsel for the parties and perused the materials placed before this Court.

14.While issuing communication or letter dated 30.08.2013 having the list of Motor Vehicle Inspectors Grade-1 fit for promotion to the post of Regional Transport Officer for the year 2012-2013 is concerned, the petitioner's name was included in Sl.No.21 placing him above M.Singaravelu and J.K.Baskaran. Subsequently, G.O.(3D).No.74 dated 19.12.2013 was issued and his name was not found because there was a charge pending against him.

15.Subsequently, the charge was dropped by issuance of G.O.(2D).No.137 dated 02.03.2016.



WP.No.17467 of 2018

16. After the charge was dropped and the petitioner had been exonerated, he shall be entitled to get such promotion on par with his juniors and accordingly, his name should be included in G.O.(3D).No.74 dated 19.12.2013, i.e. in the correct place by giving a serial number placing him above the juniors. When such plea was raised, a direction was issued by this Court on 16.06.2016. When that being so, while passing orders in G.O.(D).No.633 dated 15.07.2016, the respondents ought to have given promotion to the petitioner on regular basis by fixing his seniority also placing him above the said M.Singaravelu and J.K.Baskaran who are admittedly juniors to the petitioner. However, only temporary promotion was given and therefore, the seniority had not been fixed.

17. Insofar as the pendency of the SLP is concerned, it is not the issue directly covering the seniority issue of the petitioner along with his batch mates like juniors of the petitioner as he has mentioned and therefore, when the juniors are given promotion and the petitioner's name already found at SL.No.21 in the letter dated 30.08.2013 of the Joint Transport Commissioner, the same seniority shall be maintained at the time of issuance



WP.No.17467 of 2018

of G.O.(3D).No.74, because of the pendency of the charge that could not be made possible. However, after the charge was dropped and he was exonerated from the charges, the same exercise should have been undertaken while passing the order in G.O.(D).No.633 dated 15.07.2016.

18.Moreover, when similarly placed person like the petitioner, though initially was suffered, when he made a request, his request having been considered the Government issued G.O.(2D).No.186 dated 09.08.2021 where Sl.No.9A was created and his seniority was fixed in between M.Singaravelu and J.K.Baskaran as the said claimant, namely, D.A.Parvendan admittedly was junior to M.Singaravelu and senior to J.K.Baskaran.

19.The same benefit shall be extended to the petitioner for which the petitioner is entitled to. Hence, this Court is inclined to dispose of this writ petition with the following order:

- 1) That there shall be a direction to the respondents to place the petitioner in the seniority list of Motor Vehicle Inspectors Grade-1 fit for promotion for the year 2012-



WP.No.17467 of 2018

2013 as issued in G.O.(3D).No.74 dated 19.12.2013 above on M.Singaravelu and J.K.Baskaran, who were placed at Sl.Nos.9 and 10 in the said G.O. Therefore, the petitioner's name should be placed by creating Sl.No.8A and accordingly, the date on which the juniors were promoted the petitioner's promotion shall be reckoned as Regional Transport Officer and accordingly, he shall be entitled to get all service benefits.

- 2) The needful as indicated above shall be undertaken by the respondents within a period of six weeks from the date of receipt of a copy of this order.

20. With the above direction, this writ petition stands disposed of.

However, there shall be no order as to costs.

10.08.2022

Internet : Yes
Index : Yes/No
cse



WEB COPY



WP.No.17467 of 2018

To

- 1.The Additional Chief Secretary to
Government,
Home (Transport-II) Department,
Secretariat, Chennai – 600 009.
- 2.The Transport Commissioner,
Chepauk,
Chennai – 600 005.



WEB COPY



WP.No.17467 of 2018

R.SURESH KUMAR, J.,

cse

WP.No.17467 of 2018

10.08.2022