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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.21371 OF 2021

S.Parthiban

... Petitioner

.Vs.

1. The State of Tamilnadu
Rep. by its Secretary,
Transport Department,
Secretariat,
Chennai - 600 009.
2. The Managing Director,
The Tamil Nadu State Transport
Corporation (kbn) Limited,
No.27, Railway Station New Road,
Kumbakonam Division,
Kumbakonam.

... Respondents

PRAYER:-

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the second respondent in TNSTC/Legal/L2/12367/18/21 dated 15.7.2021 and quash the said order and consequently, direct the respondents to grant the petitioner's promotion based on the longevity of service scheme and to grant the promotion of Driving Instructor on completion of 21 years of the petitioner's service and subsequent promotions of Traffic Instructor on completion of 26 years and finally to the post of Traffic Manager on completion of 32 years retrospectively and to direct the respondents to pay the differential wages for the period of employment and also to revise the terminal benefits and pensionary benefits by giving effect of the promotions granted and to direct the respondents to pay arrears of the pension and other terminal benefits in view of the revision effected and to revise the pension accordingly.



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For Petitioner : Mr.P.Paramasiva Doss
For Respondent-1 : Mr.T.Arunkumar
Additional Government Pleader
For Respondent-2 : Mr.D.Venkatachalam

O R D E R

The petitioner was working as Driver in the respondent Transport Corporation from 19.1.1981. During the year 2003 in the job rocket issue, a criminal case has been registered against the petitioner and 52 others in Cr.No.25 of 2033 under Sec.120(B) r/w 109 I.P.C. and 7, 8, 9, 13(1) (a) r/w 13(2) of Prevention of Corruption Act and the same was pending before the Chief Judicial Magistrate (Special Judge), Kumbakonam in Spl. Case No.1 of 2009. However, on the date of superannuation, the petitioner was allowed to retire from service. On 17.5.2021, the petitioner submitted representation to the respondent, seeking promotion as Driving Instructor and further promotion as Traffic Inspector and finally promotion to the post of Traffic Manager, on par with his juniors, based on the longevity of service scheme. However, the request of the petitioner was rejected by the respondent vide impugned order dated 15.7.2021. Challenging the impugned order, the petitioner has preferred the present writ petition before this Court.

2. According to the petitioner, there was no charge memo issued to the petitioner and the aforesaid criminal case is pending for more than 17 years, Further, the respondent has not proceeded with departmental proceedings by framing charges or placing the petitioner under suspension and the petitioner was permitted to retire from service on superannuation. Therefore, the impugned order of the respondent is liable to be quashed.

3. According to the learned counsel appearing for the second respondent Corporation, one Thiru A.Rajendran, Special Grade Assistant has filed W.P.(MD) No.1410 of 2018 and Thiru S.Kumaraguru, Senior Assistant has filed W.P.(MD) No.1611 of 2018 before the Madurai bench of this Court seeking promotion. Madurai Bench of this Court by its order dated 22.2.2018 while dismissing the writ petition has observed as follows:

"3. Considering the pendency of the criminal case involving the official duties of the petitioner, this Court cannot grant the reliefs as sought for. Pendency of a criminal case would clearly be a bar for consideration of the case of



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promotion. Since no right has been made out, this Court cannot grant any relief to the petitioner.

4. The petitioner pointed out that one Kalimuthu who was also implicated in the very same criminal case, has been granted promotion.

5. The learned standing counsel appearing for the respondent Corporation pointed out that the said Kalimuthu has turned a new leaf by becoming an approver. In any event, there cannot be a claim of equality in illegality. That apart, the said Kalimuthu is senior to the petitioner. Therefore, taking into all the circumstances, this Court has to necessarily reject this writ petition.

6. Accordingly, this writ petition stands dismissed. No costs.'

4. In the instant case, the petitioner was involved in the criminal case in Cr.No.25 of 2003 under Sec. 120(B), 420 r/w 109 I.P.C. and Sec.7, 8, 9, 13(1) (a) r/w 13(2) of Prevention of Corruption Act, 1988 before the Chief Judicial Magistrate (Special Judge), Kumbakonam in Spl. Case No.1 of 2009. The petitioner and others also filed Crl.O.P.(Md) Nos.6569 and 1182 of 2010 to discharge them from the criminal case filed by the DVAC, Thanjavur. The aforesaid Crl.O.Ps were dismissed by this Court with imposing cost to the petitioners.

5. Considering the aforesaid statement made in the counter affidavit which are not disputed by the counsel appearing for the petitioner, it is clear that the respondent has rightly rejected the claim of the petitioner on the ground that the aforesaid criminal case is pending before the concerned criminal court. The petitioner is not in a position to place any material to show that the criminal case, ended in acquittal nor the petitioner discharged from the criminal case.

6. Consequently, the writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

1. The Chief Judicial Magistrate (Special Judge),
Kumbakonam.
2. The Secretary,
The State of Tamil Nadu,
Transport Department,
Secretariat,
Chennai - 600 009.
3. The Managing Director,
The Tamil Nadu State Transport
Corporation (kbn) Limited,
No.27, Railway Station New Road,
Kumbakonam Division,
Kumbakonam.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No35679

+1cc to the Government Pleader, S.R.No.36605

W.P.NO.21371 OF 2021

KK(CO)
PBS/06/07/2022