



W.P.(MD)No.2435 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2435 of 2020

and

W.M.P(MD)No.2079 of 2020

M.Kathiresan

... Petitioner

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Madurai-625 016.
 2. The General Manager,,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Dindigul.
 3. The Financial Advisor,,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Madurai-625 016..
 4. The Administrator,,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Thiruvalluvar House, Setc Ltd., No.2,
Pallavan Salai, Chennai-002.
- ... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the 2nd respondent pertaining to the impugned order passed in Ref.Admn/P1/1269 dated 30.8.2019 quash the same and consequently direct the respondents to restore the withdrawal of the order dated 07.04.2016 passed by the 2nd respondent in ref in Ref.Admn/P1/1185-1 promoting the petitioner to the post of Superintendent with all monetary benefits including the attendant service benefits from the date 25.01.2016.

For Petitioner	: Mr.K.Gokul
For Respondents	: Mr.S.Senthil Kumaraiah, Standing Counsel

ORDER

This writ petition has been filed challenging the impugned order passed by the second respondent in Ref.Admn/P1/1269, dated 30.8.2019 and consequently, to direct the respondents to restore the withdrawal order, dated 07.04.2016, passed by the 2nd respondent in Ref.Admn/P1/1185-1 and to promote the petitioner to the post of Superintendent with all monetary benefits including all attendant service benefits from 25.01.2016.



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2. The case of the petitioner is that the petitioner was appointed as a Conductor on 29.03.1982 and his service was regularized with effect from 25.03.1985. Since the petitioner possessed under graduate degree, he was appointed and re-designated as Junior Assistant in the administrative side of the respondent Corporation with effect from 10.04.1989. Subsequently, he was designated as Senior Assistant on 01.05.2002 and further, promoted as Selection Grade Assistant with effect from 01.05.2009.

3. The grievance of the petitioner is that one K.Anandan, who was directly appointed as Junior Assistant with effect from 14.05.1983, was promoted as Superintendent with effect from 23.10.2017. The Common Service Rules provides for promotion to the post of Superintendent if the employee concerned reached the level of Senior Assistant after completing 14 years of service. According to the petitioner, he completed 14 years of service from the date of appointment as Junior Assistant. But, he was not promoted as Superintendent on the ground that there was no vacancy.



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4. While so, the Government of Tamilnadu issued G.O.Ms.79 Transport (C1) Department, dated 30.06.2015, to provide promotion to the post of Superintendent in all transport corporation by following the ratio of 1:2 of the employees working in miscellaneous group and working group. Pursuant to the same, some of the working group employees, who could not get promotion to the post of Superintendent filed W.P.Nos.2021 to 2023 of 2013 and 1768 of 2016 before the principal bench and obtained an order of interim stay, on 21.01.2016. While so, the petitioner was promoted to the post of Superintendent on 28.01.2016. However, citing the interim stay of the above said G.O., granted by this Court, the second respondent withdrew the promotion of the petitioner vide order, dated 07.04.2016 and reverted back him to the post of Selection Grade Senior Assistant. Subsequently, the interim stay granted in W.P.No.2021 of 2016 (batch) was modified vide order, dated 11.07.2016, to the effect that any promotion given shall be subject to the result of the writ petition. Subsequently, the petitioner made several representations to give promotion to him. Since the same was not considered, he filed a writ petition in W.P(MD)No.15216 of 2015 seeking for a Mandamus directing the respondents to promote him



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to the post of Superintendent and pay him the arrears of monetary benefits from 23.10.2007 along with eligible interest by considering the petitioner's representation, dated 07.07.2015. The said writ petition was disposed of by this Court by issuing a direction to consider the petitioner's representation and pass orders on merits and also in the light of the order passed by this Court in W.P.Nos.2021 to 2023 of 2013 and 1768 of 2016, dated 11.07.2016, after affording opportunity to the petitioner. Pursuant to which, the second respondent passed the impugned order stating that when the application came up for consideration, the petitioner retired from service due to superannuation and hence, the request of the petitioner was not considered. Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

5. The learned counsel appearing for the petitioner would submit that admittedly, one K.Anandan, who was junior to the petitioner was promoted as Superintendent in the year 2017. Hence, the rejection of the petitioner's request is not sustainable one and therefore, prayed for allowing of this writ petition.



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6. The learned standing counsel appearing for the respondents would submit that the petitioner was given promotion by following G.O.Ms.No.79 dated 30.06.2015. Subsequently, the second respondent came to know that the said G.O., was stayed pursuant to the interim order granted by this Court in W.P.No.2021 of 2016 etc., batch and therefore, the promotion given to the petitioner was withdrawn. Subsequently, the petitioner retired from service in the year 28.01.2017 and as soon as the writ petitions are disposed of, based on the order passed in the said writ petitions, appropriate orders will be passed in favour of the petitioner.

7. Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondents and perused the materials placed before this Court.

8. Admittedly, the petitioner was appointed as a Conductor on 29.03.1982 and subsequently, he was promoted in the administrative wing and designated and appointed as Junior Assistant and thereafter, he acquired various level of promotions and lastly designated as Selection Grade Senior Assistant, which is the feeder category to the post of



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Superintendent and the petitioner was given promotion by adopting the ratio laid down in G.O.Ms.No.79, dated 30.06.2015. However, the said promotion was given during the pendency of W.P.No.2021 of 2016 etc., batch, in which the G.O.Ms.N.79 dated 30.06.2015 was put under challenge.

9. It is also admitted that the above said G.O., was stayed by this Court and subsequently, the said interim order was modified to the effect that promotion shall be given to all the eligible employees subject to the outcome of W.P.No.2021 of 2016 etc., batch. Based on which, the petitioner made representations. Since the same were not considered, while he was in service, the petitioner has filed W.P(MD)No.15216 of 2015. Pursuant to the order passed in the said writ petition, the second respondent has passed the impugned order rejecting the request of the petitioner stating that the petitioner retired from service when his application came up for consideration and hence, he is not entitled to get promotion.



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10. Admittedly, in view of the modified order passed by this Court in W.P.No.2021 of 2016 etc., batch, dated 11.07.2016, even after retirement, the petitioner is entitled to get notional promotion from the date of eligibility till retirement, after the disposal of the writ petition in W.P.No.2021 of 2016 etc., batch., however the impugned order is subject to the result of the said writ petitions.

11. Therefore, the second respondent is directed to consider the claim of the petitioner even for notional promotion from the date of eligibility till the date of retirement.

12. This writ petition is disposed of in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

13.12.2022

PM
Index: Yes/No



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WEB COPY To:

The General Manager,,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Dindigul.



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M.DHANDAPANI,J.

pm

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