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W.P.No.28681 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2023

PROUNOUNCED ON : 24.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Writ Petition No.28681 of 2015
and M.P.No.2 of 2015

R.Poornachandran

..Petitioner

VS

1.The Secretary to Government

Transport Department, Secretariat

Fort St.George, Chennai-600 009

2. The Chairman

The Tamil Nadu State Transport Corporation

Secretariat, Chennai-600 009

3. The Managing Director

The Tamil Nadu State Transport Corporation

(Coimbatore Division-I) Ltd.

Head Office, No.82 Mettupalayam Road

Coimbatore-641 242.

4. The General Manager,

The Tamil Nadu State Transport Corporation

(Coimbatore Division -I) Ltd., Coimbatore.



W.P.No.28681 of 2015

5.The Divisional Manager

The Tamil Nadu State Transport Corporation

(Coimbatore Division-I) Ltd.,

Ootacamund, The Nilgiris.

6.The Branch Manager

The Tamil Nadu State Transport Corporation

(Coimbatore Division-I) Ltd.,

Kotagiri Branch, Kotagiri

The Nilgiris

..Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to order passed by the 3rd respondent in /I/L2/NePe/25112-15/11/Tamil Nadu Government Transport Corporation /12 dated 13.03.2012 and quash the same and consequently direct the 2nd and 3rd respondents to promote the petitioner to the post of Senior Assistant Engineer from 02.09.2007 with all benefits and to pay arrears of salary.

For Petitioner : Dr.R.Gouri

For respondents : Mr.S.Ravichandran, AGP for R1
Mr.A.Sundaravadhanan for R3 and R4
No appearance for R5, R6, R2.



W.P.No.28681 of 2015

COMMON ORDER

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This writ petition is filed seeking to quash the order passed by the 3rd respondent-The Managing Director, The Tamil Nadu State Transport Corporation, Coimbatore Division and consequently seeks for a direction to promote the petitioner to the post of Senior Assistant Engineer from 02.09.2007.

2. It is averred in the writ petition that the petitioner joined service in the respondent Transport corporation as company trainee in 1993. His service was regularized as Junior Engineer with effect from 02.09.1995. In the year 1994 Cherran Transport was bifurcated and new transport corporation was formed and due to the bifurcation and subsequent merger, the petitioner's promotion was affected and the petitioner got his promotion to the post of Assistant Engineer on 01.05.2003 against his entitlement for promotion on 02.09.2001.

3. It is further averred by the petitioner that after completion of 12 years service as Junior Engineer/Assistant Engineer, the employees were



W.P.No.28681 of 2015

given the benefit of Senior Assistant Engineer's scale of pay. Since the petitioner became Junior Engineer on 02.09.1995, he was promoted to the post of Assistant Engineer in the year 2003, therefore, in the year 2007, he ought to have been given the Senior Assistant Engineer's scale of pay.

4. The petitioner made several representations to the respondents. Since the respondents did not extend the said benefit to him, the petitioner filed W.P.No.25115 of 2011 and as per the order of this court dated 01.11.2011, his representation was considered by the 3rd respondent, however, the 3rd respondent rejected the same, hence, filed this writ petition seeking for the above said relief.

5. The learned counsel for the petitioner would submit that the reasons for rejection of the representation of the petitioner that he was not having heavy vehicle driving licence and for the reasons of punishment imposed on him, he was not entitled for promotion and that as per the 6th pay commission, the said benefit cannot be extended to the petitioner is unreasonable.



W.P.No.28681 of 2015

WEB COPY

6. The learned counsel for the petitioner would submit that the petitioner had obtained Heavy Vehicle driving licence on 27.03.2003. So as per the statutory requirement, the writ petitioner is in possession of Heavy Vehicle Driving License.

7. The learned counsel also referred to promotion conferred to one R.Selvamani and A.Muruganantham, during 23.05.2012. However, citing the reason that time bound promotion was abolished on 01.01.2008, the respondents discriminated the petitioner's case who was entitled to time bound promotion to the post of Senior Assistant Engineer on 02.09.2007 itself.

8. The learned counsel would further argue that there is no disciplinary proceedings pending against the petitioner and the petitioner has not suffered any major penalty of punishment. The learned counsel, therefore, submits that the petitioner's service and efficiency has to be taken into consideration for conferring promotion as Senior Assistant Engineer.



W.P.No.28681 of 2015

WEB COPY

9. On the other hand, the learned Standing counsel appearing for the 3rd and 4th respondent would submit that the petitioner was not entitled for promotion on completion of 10 years service as Assistant Engineer. Further after the implementation of 6th pay commission, the petitioner was awarded with special increment during the year 2013 for the completion of 10 years service. Therefore, citing the G.O. which was prevalent prior to the implementation of 6th pay commission cannot in any way helpful to the case of the petitioner and therefore, cumulative period of service of 10 years period cannot be taken into consideration for conferring promotion. The learned counsel would contend that the Heavy vehicle driving licence possession is a statutory necessity for the engineers for promotion.

10. Heard both sides and perused records.

11. The argument raised by the learned counsel for the respondents that petitioner's promotion was postponed for the reason that the petitioner did not submit Heavy Vehicle Driving License, cannot stand to reason since it is admitted by both sides that petitioner obtained Heavy Vehicle Licence on



W.P.No.28681 of 2015

27.03.2003 itself. Hence, as per the statutory requirement, the petitioner was in possession of Heavy Vehicle Driving License on 27.03.2003 itself and he was eligible for promotion to the post of Senior Assistant Engineer from 02.09.2007.

12. The second limb of argument of the learned counsel for the respondents that cumulative service of 12 years as Junior Engineer and Assistant Engineer Post cannot be taken for the promotion also does not merit acceptance, since in the case of one Murugesan and Kurunthachalam, they have been given promotion by taking only their cumulative service of 12 years of period of service as Junior Engineer and Assistant Engineer and therefore, there cannot be any discriminatory treatment among the same cadre of personnel while giving promotions.

13. It is pointed out in the impugned order that punishments have been imposed during the service of the petitioner and therefore, he was not conferred promotional post. However, there is no averments in the counter filed by the 3rd respondent as to the charge memo issued against the



W.P.No.28681 of 2015

petitioner, the enquiry conducted and the punishment imposed. Therefore, when the counter is silent with regard to charges and penalty, this court is not inclined to accept the reason adduced in the impugned order for denying promotion to the petitioner. Accordingly, the said argument raised by the learned counsel for the respondents also fails.

14. In respect of petitioner's claim for promotion and the direction passed by this court vide order dated 01.11.2011 in W.P.Nos.25112 to 25115 of 2011, is concerned, the petitioner is entitled to time bound promotion to the post of Senior Assistant Engineer on 02.09.2007 itself. However, the 3rd respondent rejected the petitioner's claim stating that from the 6th pay commission implementation, time bound promotion was abolished i.e., from 01.01.2008. It is admitted that the petitioner is entitled to promotion on 02.09.2007 itself. Therefore the reason put forth by the 3rd respondent is untenable. While taking into consideration the argument of the petitioner counsel that by proceedings dated 23.05.2012, the 3rd respondent conferred promotion to R.Selvamani and A.Muruganandam, but the petitioner has been discriminated for promotion, who is entitled for promotion to the post



W.P.No.28681 of 2015

of Senior Assistant Engineer on 02.09.2007, appear to be sound.

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15. Therefore, for the reasons stated above above, this court is of the considered view that the rejection of the claim of the petitioner for promotion is unjustified. The reasons stated in the impugned order has nothing to do with the next avenue of promotion to the post of Senior Assistant Engineer to which the petitioner is entitled to in all aspects. Accordingly, the impugned order dated 13.03.2012 is set aside. The 2nd and 3rd respondents are directed to pass necessary orders giving promotion to the petitioner to the post of Senior Assistant Engineer from 02.09.2007 with all consequential benefits.

16. This writ petition is allowed on the above terms. No costs. Consequently, M.P.No.2 of 2015 is closed.

24.03.2023

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Index:Yes/No

Speaking/Non-speaking order

Neutral citation:Yes/No



W.P.No.28681 of 2015

To

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W.P.No.28681 of 2015

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WEB COPY



W.P.No.28681 of 2015

J.NISHA BANU, J.

nvsri

W.P.No.28681 of 2015

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