



WP.No.34889/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.34889/2016 & WMP.No.30044/2016

R.Senthilkumar

... Petitioner

Versus

1.The Commissioner

Backward Classes and Minerals
Welfare Department, Ezhilagam
Chepauk, Chennai 600 005.

2.The District Backward Classes & Minorities

Welfare Officer, Dharmapuri District,
Dharmapuri.

3.C.Vetrivel

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records relating to the order dated 25.07.2016 made in Na.Ka.No.3991/2015/Y2 on the file of the 2nd respondent herein and quash the same and consequently promote the petitioner as Driver by placing the petitioner in Serial No.39 instead of Serial No.47 in the seniority list issued



WP.No.34889/2016

by the 2nd respondent in Na.Ka.No.11122/2015/Y1 dated 01.10.2015.

WEB COPY

For Petitioner	:	Mr.C.Munusamy
For RR 1 & 2	:	Mr.S.Ravikumar, Spl.GP
For R3	:	Mr.S.Velmurugan

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to an order dated 25.07.2016 in Na.Ka.No.3991/2015/Y2 on the file of the 2nd respondent, District Backward Classes and Minorities Welfare Officer at Dharmapuri District and to quash the same and consequently, to promote the petitioner as Driver by placing the petitioner in Sl.No.39 instead of Sl.No.47 in the seniority list issued by the said 2nd respondent in Na.Ka.No.11122/2015/Y1 dated 01.10.2015.
- (2) In the affidavit filed in support of the writ petition, it had been stated that the petitioner and also the 3rd respondent, had both been appointed as Cook in the Hostel run by the Backward Classes and Minorities Welfare Department, by an order dated 20.04.2013 by the District Backward Classes and Minorities Welfare Officer/2nd



WEB COPY



WP.No.34889/2016

respondent herein in proceedings No.Na.Ka.7299/2013/Y1. It had been very specifically contended that both the petitioner and the 3rd respondent had joined duty on 01.06.2013. However, when subsequent promotion opened up to the post of Driver and since both had applied for the said post and both were declared eligible for appointment as Driver, after passing necessary tests as is required, conducted by the Motor Vehicles Department, the 3rd respondent was however appointed as the Driver overlooking the petitioner herein. The 3rd respondent was so appointed only because it was contended that he had joined duty on 31.05.2013 in the Afternoon and whereas, the petitioner had joined duty on 01.06.2013 in the Forenoon. This aspect, during the course of arguments, was seriously disputed by the learned counsel for the petitioner herein. The original Service Register was therefore called for by this Court. It was then observed that the date of joining of the 3rd respondent was actually 01.06.2013 which had been subsequently struck off and another date has been inserted namely, 31.05.2013 AN. It was evident that this was a subsequent alteration made in the Service Register of the 3rd



WP.No.34889/2016

respondent, which alteration had enabled him to be promoted as Driver on 25.07.2016. That order promoting the 3rd respondent as Driver, is impugned in the present writ petition.

- (3) It had been stated that the respondents had also corrected the Date of Birth of the 3rd respondent as 06.03.1981 instead of the actual Date of Birth which was 03.06.1981. By this, they made the 3rd respondent to have been born nearly three months before he was actually born. This was also significant because the petitioner was born on 29.05.1981. If the date of joining is the same, namely, 01.06.2013, then the seniority will have to be decided by the Date of Birth and because of the correction in the Date of Birth of the 3rd respondent, from 03.06.1981 to 06.03.1981, the 3rd respondent was considered senior to the petitioner herein. Thus, there were two corrections made. One, in the date of joining which was predated to 31.05.2013 AN and the Date of Birth which was altered from 03.06.1981 to 06.03.1981. Both these corrections were found to have been subsequently done on verification of the original records. It is therefore seen that if the petitioner and the 3rd respondent were to be considered as having



WP.No.34889/2016

joined only on 01.06.2013, then when the promotional aspect came up for consideration, the petitioner's Date of Birth being 29.05.1981, would make him senior to the 3rd respondent who was actually born only on 03.06.1981. These facts are evident on a perusal of the records.

- (4) After this was pointed out, a further order had been passed on 11.08.2023 by the 2nd respondent in Na.Ka.No.3991/2015/Y2 by which the 3rd respondent was reverted back as Cook and the petitioner was appointed as Driver, thereby granting the petitioner, the necessary relief which he had sought in the writ petition.
- (5) But the issue which still has to be addressed is the issue of the actual date of promotion to the post of Driver for the purposes of calculating salary receivable for pension and for other monetary benefits. This would only have to go back to the date on which the 3rd respondent was wrongfully promoted, namely, 25.07.2016.
- (6) It is therefore, directed that the petitioner should be deemed to have been promoted as Driver on 25.07.2016 since he was senior in age to the 3rd respondent having been born on 29.05.1981 while the 3rd



WP.No.34889/2016

respondent was actually born on 03.06.1981, though the Date of Birth was subsequently corrected to 06.03.1981. The date of joining is also the same, though the date of joining of the 3rd respondent was wrongfully corrected to 31.05.2013 AN.

- (7) The further issue which will have to be therefore considered is the salary to be paid to the petitioner. He had been the victim of wrongful correction made to the advantage of the 3rd respondent. Therefore, the petitioner should not suffer owing to this particular nefarious act of correcting not only the date of joining of the 3rd respondent but also the Date of Birth of the 3rd respondent. The 3rd respondent had been reverted back as Cook and it is the duty of the respondents 1 and 2 to initiate necessary proceedings as deemed fit, against the official who was responsible for such corrections. But the petitioner should not suffer owing to that.
- (8) Therefore, it is held that the petitioner is entitled for salary from 25.07.2016 in the post of Driver, from that particular date. Necessary proceedings in this regard should be issued.



WP.No.34889/2016

WEB COPY

- (9) Though the learned counsel for the petitioner made a vociferous argument for interest, since substantial relief had been granted to the petitioner herein, I would not grant the interest portion of the relief sought by the petitioner herein, but direct that the salary should be paid from 25.07.2016 by taking into consideration that the petitioner had been promoted as Driver on 25.07.2016.
- (10) It is contended by the learned Special Government Pleader that the petitioner will have to pass necessary tests as determined by the Motor Vehicles Department. The learned counsel for the petitioner contended that such tests were actually conducted on 09.08.2023 before the order dated 11.08.2023 passed by the 2nd respondent. That is an issue which the respondents will have to examine and it is not for this Court to determine whether the petitioner had passed the test or not passed the test. That is purely within the jurisdiction of the respondents 1 and 2 to conduct such tests if it is required and as a matter of fact, if every Driver is to be put to such test at regular intervals it may also to be followed in the case of the petitioner herein.



WP.No.34889/2016

WEB COPY

(11) The writ petition stands **allowed** and the order of the 2nd respondent dated 25.07.2016 is quashed. Necessary proceedings to be issued refixing the pay structure of the petitioner within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2023

AP

Internet : Yes

To

1.The Commissioner

Backward Classes and Minerals
Welfare Department, Ezhilagam
Chepauk, Chennai 600 005.

2.The District Backward Classes & Minorities

Welfare Officer, Dharmapuri District,
Dharmapuri.



WEB COPY



WP.No.34889/2016

C.V.KARTHIKEYAN, J.,

AP

WP.No.34889/2016

28.08.2023