



W.P.No.21206 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.21206 of 2019

G.B.Vadivelu

... Petitioner

Vs.

1. The Government of Tamilnadu
Rep. By its Secretary,
Transport Department,
Fort St. George,
Chennai – 600 109

2. The Director,
Motor Vehicles Maintenance Department,
Velachery Salai,
Chennai – 600 042

3. The General Manager,
Govt., Central Automobile Workshop
Velachery Salai,
Chennai – 600 042

4. K.S.Abubucker
Director (Retd)
Motor Vehicles Maintenance Department,
Velachery Salai, Chennai – 42
Presently residing at No.66/1,
Periyar Salai, MGR Nagar,
K.K.Nagar, Chennai - 78

... Respondents

Writ Petition filed under Article 226 of Constitution of India for
issuance of a Writ of Certiorarified Mandamus to call for the records of the



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2nd respondent in his proceedings in Na.Ka.No.A6/6214/2018 dated 11.06.2018 and quash the same and consequently direct the respondents herein to promote the petitioner in the panel year 2013- 2014 as Maistry/Supervisor/Foreman before 15.03.2014 with all monetary and other attendant benefits.

For Petitioner : Mr.K.Raja

For Respondents : Mr.T.M.Rajangam for R1 to R3
Government Advocate
Mr.R.Thomas for R4

ORDER

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.A6/6214/2018 dated 11.06.2018 and quash the same and consequently direct the respondents herein to promote the petitioner in the panel year 2013- 2014 as Maistry/Supervisor/Foreman before 15.03.2014 with all monetary and other attendant benefits.

2. The brief facts of the case is as follows:-

(i) The petitioner was initially appointed as Electrician Grade II and was given promotion as Electrician Grade I and finally attained



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superannuation on 30.04.2015 as Electrician Grade – I (Selection grade).

During his service, a charge memo was framed against the petitioner under Rule 17(b) Tamilnadu Government Servant's Conduct Rules, 1973 on 08.08.2013 by the 3rd respondent alleging that the petitioner had involved in 'Dharna' along with one N.Babusekaran (Special Grade Tinker) on 20.05.2013. The petitioner submitted his explanation on the ground that he had completed his work and met the said Babusekaran, President of Association, which is a routine affair and thereafter, he was let out from the charge memo vide proceedings dated 04.04.2018 by the 2nd respondent.

(ii) The next avenue of promotion is Maistry / Supervisor / Foreman in the panel year 2013- 2014 and the crucial date for preparation of panel is 15th March every year. Further, for the panel year of 2013 – 2014 a panel was published on 20.02.2015. Though there was a direction from the Government to prepare the panel for the year 2013-2014 immediately, deliberately and willfully after a period of two years, the panel was published on 20.02.2015 and after a delay of 3 months, promotion order was given on 12.05.2015, in which, the immediate junior to the petitioner, viz., Arulvanidhan was found and accordingly, he was given promotion as Maistry / Supervisor / Foreman on 12.05.2015.



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(iii) Subsequently, when the petitioner was let out from the charges, he has approached the respondents seeking promotion for the panel year 2013-2014 by preferring a representation dated 11.05.2018. Based on the said representation, the petitioner was given promotion in the panel year of 2013-2014 vide proceedings dated 23.05.2018 of the 2nd respondent and the same was cancelled subsequently on 11.06.2018 without notice to the petitioner, hence this petition.

3. The learned counsel for the petitioner would submit that preparation of panel every year under Rule 4(a) of Tamilnadu State and Subordinate Service Rules is mandatory and if the panel was drawn as on 15.03.2013 by scrupulously following Rule 4(a), the petitioner would have got promotion as Maistry / Supervisor / Foreman before framing charge memo dated 08.08.2013 or before attaining superannuation on 30.04.2015 and because of the malafide attitude of the 4th respondent, Rule 4(a) was also violated.

4. The learned counsel for the petitioner would also contend that already this Court had held that Rule 4(a) is mandatory and under such circumstances, the respondents ought to have given retrospective



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promotion to the petitioner for the panel year 2013-2014 in the post of Maistry / Supervisor / Foreman.

5. Lastly, the learned counsel for the petitioner relied on the following Judgments and submits that similarly placed persons as that of the petitioner were granted the relief of promotion and hence pleaded to consider the case of the petitioner in the same lines:

(i) Judgment of the Hon'ble Supreme Court in Civil Appeal No.192 of 2014 (Arising out of SLP(C) No.2008 of 2010) [Major General H.M.Singh Vs.Union of India & Another]

(ii) Judgment of Hon'ble Division Bench of this Court in W.A.No.594 of 2018 dated 19.03.2018 [Commissioner, Corporation of Chennai Vs. Muthuirulappan and another]

(iii) Order passed by this Court in W.P.No.7546 of 2015 [B.Raja Vs. The Director General of Police and another] dated 07.12.2021.

6. Per contra, the learned Government Advocate appearing for the respondents would submit that the Government vide G.O.(Ms) No.22 Transport (H1) Department dated 19.02.2014 gave final approval to fillup the remaining 473 posts in MVMD, which includes, 9 posts in the category



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of Maistry, immediately, on receipt of the said G.O., action was taken to fillup the Maistry posts and particulars of eligible persons were called for from all Unit Officers. Since some of the Unit Officers did not send the particulars properly, there was a delay in getting the correct particulars and preparing the panel and finally the panel for the post of Maistry for the year 2013-2014 was drawn on 20.02.2015 and served to all the concerned, with a request to send their objections, if any with regard to the panel and after replying to all the objections received in respect of the panel promotion orders were issued on 12.05.2015. Therefore, there is no willful delay in drawing the panel for the year 2013-2014 by the 2nd respondent.

7. The learned Government Advocate appearing for the respondents also submitted that the petitioner's name could not be considered in the panel in view of the reason that charges pending against him under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules at the time of preparation of panel and therefore, the petitioner's name was not included in the panel, as per Rules in force. Further, the promotion was effected only on 12.05.2015 and at that point of time, he was retired from service and not in Government service. There is no rule provision to include his name in the panel for the post of Maistry from the year 2013-



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2014 and his turn would not have come for actual promotion and therefore, restoration of scrutiny would not arise in the case, thereby pleaded to dismiss the petition.

8. Heard the learned counsels on either side and perused the documents placed on record carefully.

9. It is not in dispute that the petitioner was appointed as Electrician and he obtained Selection Grade Electrician Grade I and retired on superannuation on 30.04.2015 subject to the condition that the disciplinary proceedings pending against the petitioner shall be continued under Rule 9 of Tamilnadu Pension Rules.

10. It is pertinent to point out that the petitioner was issued with the charge memo under Rule 17(b) of Tamilnadu Civil Service (D&A) Rules on '08.08.2013' on the ground that the petitioner had staged a dharna on 20.05.2013 along with one N.Babusekaran, (Special Grade Tinner) in the outside entrance gate of the Directorate. After conducting appropriate enquiry on being notice issued to the petitioner, the charges were dropped.



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While the charges were pending against the petitioner, he was permitted to retire on condition that the disciplinary proceedings pending against the petitioner shall be continued. In fact, the further action initiated under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules was dropped by the 2nd respondent vide Proceedings No.A1/589/2014 dated '04.04.2018'.

11. Now, the question to be considered is whether the writ petitioner is entitled for retrospective promotion or not?

12. It is true that the consideration for promotion is a fundamental right of an employee. In the case on hand, the admitted case of the respondents shows that a final proposal was drawn on 20.02.2015 for giving promotion since the petitioner was facing charges, the petitioner's name was not considered for promotion. It is to be noted that vacancy occurred as early as on 19.02.2014 and at that time, charge memo was pending against the petitioner, subsequently, the charges were dropped after his retirement, in the year 2018, therefore, he should be considered for promotion at that time. The matter was kept pending with the Government, the fact that the Government took considerable time for approving the proposal should not cause prejudice to the petitioner.



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Similarly the fact that the petitioner was superannuated by the time the orders were passed pursuant to the proposal by the Government also should not stand in the way of giving him notional promotion, **as per Judgment of Hon'ble Division Bench of this Court in N.Easwaramurthy Vs. The Government of Tamilnadu rep. By its Secretary and others]**.

13. As such, the reasons assinged by the learned Government pleader based on the averments in the counter affidavit attributing the delay on the part of the Government in passing approval orders and the consequential promotional orders, are regarded only as a technical plea and applying the principles laid down by the **Hon'ble Apex Court in Major General H.M.Singh's case (cited supra)**, the delay would be fatal to the respondents.

14. Considering the fact that the promotion panel for the post of Maistry for the year 2013-2014 was finally drawn on 20.02.2015 and the petitioner was not included in the said panel, in view of charge memo dated 08.08.2013 [on the ground that the petitioner staged Dharna on 20.05.2013] was pending against him and taking note of the fact that an



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enquiry officer was appointed only on 09.04.2015 for the charge memo dated 08.08.2013 and pending charge memo, the petitioner was superannuated on 30.04.2015 and the charge memo dated 08.08.2013 was also dropped in the year 2018 and applying the principles laid down by this Court as well as the Hon'ble Apex Court cited supra, this Court is of the view that the petitioner is entitled for promotion to the post of Maistry / Supervisor / Foreman with effect from 20.02.2015, which is the date on which, the final panel for promotion for the year 2013-2014 was drawn.

15. In view of the above observations, the impugned order in Na.Ka.No.A6/6214/2018 dated 11.06.2018 is set aside. Consequently, the 2nd respondent is directed to issue orders granting notional promotion to the petitioner herein to the post of Maistry / Supervisor / Foreman with effect from 20.02.2015 and thereby release all the monetary benefits for the said post till the date of his retirement and pensionary benefits, after his retirement, if any. The 2nd respondent shall endeavour to pass such orders at the earliest, in any event, within a period of four weeks (04) from the date of receipt of copy of this order.

Accordingly, the Writ Petition is allowed. No costs.

14.12.2023

Index : Yes/No; Internet : Yes/No
Speaking /Non-Speaking Order
ssd

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V.BHAVANI SUBBAROYAN, J.,

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