



WP No.19437 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

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P.Rangasamy

... Petitioner

-Vs-

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Transport Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Managing Director
State Express Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai – 600 002.
3. The General Manager (Administration)
State Express Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai – 600 002.

... Respondents



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PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Superintendent by migration from Miscellaneous Group to Working Group as Miscellaneous Group Administrative Employee for promotion to the post of Superintendent based on G.O.Ms.No. 79 Transport (C1) Department dated 30.06.2015 as per Seniority of the petitioner in Miscellaneous Group and to promote the petitioner to the post of Superintendent on par with his junior with all consequential and other attendant benefits by considering the representation submitted by the petitioner dated 13.07.2015, 04.08.2016, 09.03.2017 and 01.06.2017 within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr. J.Jayamalan
for Mr. G.Sankaran

For Respondents : Mr.K. Kathiresan

ORDER

Writ Petition has been filed in the nature of Mandamus seeking a direction to the respondents particularly the third respondent, the General Manager (Administration), State Express Transport Corporation Ltd., at Chennai, to consider the petitioner for promotion to the post of



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Superintendent by migration from Miscellaneous Group to Working Group as Miscellaneous Group Administrative Employee for promotion to the post of Superintendent. The petitioner places reliance on G.O.Ms.No. 79 Transport (C1) Department dated 30.60.2015.

2. The petitioner had been initially appointed as Store Keeper on 06.04.1982 in the erstwhile Thiruvallur Transport Corporation (TTC) now renamed as State Express Transport Corporation. The service of the petitioner had been regularised with effect from 01.09.1986 by an order dated 01.12.1989 in order no.61907/A2/T.Po.Ka/88. After regularising the service of the petitioner, a seniority list was also prepared and the petitioner was placed at Serial No.7.

3. In the respondent organisation or corporation, there are two separate groups of employees, one termed as working class and the other as Miscellaneous class. The petitioner had all the time thought that he fell under Miscellaneous class. The one distinction between the two classes of workers was that there was a promotional avenue available for those in the



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working class and there was no corresponding promotional avenue for those who belonged to Miscellaneous class.

4. There was a settlement under Section 12(3) of the Industrial Disputes Act 1947 and it was then decided that promotion would be granted on a proportional basis. This would mean that for every two employees of the working class who are promoted to Superintendent or to the next higher grade of office, one from the Miscellaneous class would be so considered. For this, a comprehensive list of both classes was then prepared.

5. The petitioner's name did not find place in that particular list. It is for that reason that the Writ Petition has been filed seeking to place the petitioner in the Miscellaneous Group so that when the time comes and the opportunity arises, the petitioner can be promoted as Superintendent.

6. In the counter affidavit, the respondents have justified not choosing the petitioner under the Miscellaneous Group by stating that he



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was initially appointed as Store Keeper in the Canteen and therefore, could not be categorised as being either under the working category or Miscellaneous Category. It is contended that the petitioner belongs to what the respondents term as Contingent category.

7. I hold that no employee can kept as a spare. No employee could be kept aside and stated that his service would be called for only when the need arise. He may be allotted work when the need arises. But he would be a full time employee or an employee on daily wages.

8. The service of the petitioner had been regularised with effect from 1986 by an order dated 01.12.1989. The petitioner had been absorbed into the service of the respondents. It is not important whether he falls or does not fall under the Miscellaneous category. He was claimed not to be entitled for promotion since he was definitely not under the working category. There cannot be a separate sub class formed by the respondents to putting a group of employees merely because they worked as Store Keepers as contingent category. This statement as stated in the counter



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affidavit is rejected by me. The petitioner should have been accommodated in the Miscellaneous category and his seniority should have been fixed accordingly.

9. The learned counsel for the respondents stated that the petitioner had been appointed as Store Keeper and there were no guidelines that the post of Store Keeper would fall under the Miscellaneous Group.

10. The one primary condition of any service is that when a promotion avenue opens up every employee should be treated on par with those similarly placed who are considered for promotion. The petitioner's service having been regularised, he should have been treated on par with those who had been similarly regularised.

11. The grievance of the petitioner further multiplied since his juniors, had been promoted. This cannot be permitted.

12. I will have to necessarily interfere with the refusal of the



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respondents to consider the petitioner's claim to be placed in the Miscellaneous Group and later to be considered for promotion as and when the opportunity arises.

13. It is contended on behalf of the petitioner that by a letter dated 08.10.2003, the petitioner, who was working as Store Keeper, had been transferred to work in the Disciplinary Action Section. He was then was posted to PRO Section. This effectively means that the petitioner has not been stagnated in the Canteen and his services has been utilised in various Departments, atleast in the above two departments. Therefore, there is no justification in excluding the petitioner from being categorised or being included in the Miscellaneous category.

14. The learned counsel for the petitioner placed reliance on the Judgment of the Hon'ble Supreme Court which also dealt with a class of employees, who did not have promotional avenue open to them.

15. In *(2004) 9 SCC 65 [State of Tripura and others Vs.*



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K.K.Roy), the Hon'ble Supreme Court has held as follows:-
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*“5. The matter came up for consideration again in **Dr. Ms. O.Z. Hussain Vs. Union of India [1990 (Supp) SCC 688]** wherein this Court in no uncertain terms laid down the law stating:*

“...Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers...”



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6. *It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of appointment, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is*



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granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to herein before, it was expected that the Appellant should have followed the said principle.”

16. The Hon'ble Supreme Court had stated that it is the Constitutional obligation on the part of the State to create promotional avenue for every employee. Even if there are no promotional avenue, pay protection has to be extended. It would create from anomalous situation if juniors are promoted. The Court will have to necessarily come to the rescue



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of the petitioner.

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17. The petitioner is directed to be included in the Miscellaneous category and considered for promotion and he should be included in the Miscellaneous category right from the date on which his service was regularised and his seniority in the Miscellaneous Group should be refixed and if promotion opportunity had opened up, he should be considered for promotion.

18. It is informed that he had retired on attaining the age of superannuation. If he had been entitled for promotion, then consequent to his retirement, notional promotion may be granted to him and the benefits worked accordingly. The said proceedings may be issued within a period of four months from the date of receipt of a copy of this order.

19. The Writ Petition is allowed. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

1. The Principal Secretary to Government
The State of Tamil Nadu
Transport Department,
Secretariat, Fort St. George,
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2. The Managing Director
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C.V.KARTHIKEYAN, J.,

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