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W.P.(MD)No.6598 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.6598 of 2019

Govindan

... Petitioner

vs.

1.The Additional Chief Secretary to
Government of Tamil Nadu,
Transport Department (H-1),
Secretariat, Chennai-9.

2.The Director of Motor Vehicles,
Maintenance Department (Transport),
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in letter no.14649/H1/2013-26, dated 23.04.2018 and to quash the same as illegal and arbitrary and in consequences thereof, to direct the respondents to grant notional promotion to the petitioner as Automobile Engineer



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with effect from 28.02.1988 on par with his junior N.Sarangapani with attendant monetary benefit.

For Petitioner : Mr.P.Ganapathisubramanian
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition was filed for Certiorarified Mandamus, to quash the impugned letter, dated 23.04.2018 of the 1st respondent and in consequences thereof, to direct the respondents to grant notional promotion to the petitioner as Automobile Engineer with effect from 28.02.1988 on par with his junior N.Sarangapani with attendant monetary benefit.

2. The brief facts of the case are that the petitioner completed SSLC in the year 1958 and joined as Mechanical Transport Fitter in Indian Air Force on 10.01.1962. The petitioner undergone the training for Mechanical Transport



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Driver (for 6 months), Mechanical Transport Mechanical (for one year) and Mechanical Transport Fitter (for one year) and the training given by the Air Force Training center at Bangalore and Tambaram. The petitioner worked as Mechanical Transport Fitter in Indian Air Force till 11.11.1978. On 31.07.1978, the Wing Commander of Indian Air Force issued a certificate that Mechanical Transport Fitter is equivalent to Diploma in Mechanical Engineering for recruitment to the subordinate posts and civil services under the Central Government.

3. After completion of the services in Indian Air Force, the petitioner was selected to the post of General Foreman in Tamil Nadu Motor Vehicle Maintenance Department through Tamil Nadu Public Service Commission as per Order No. 6707/Q1/T9, dated 11.10.1979. The petitioner joined the service on 23.11.1979. As on date of appointment, the issue of educational qualification was pending.



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4. The petitioner is that the rigorous course and training conducted by the Indian Air Force is similar in almost all the aspects of the Diploma Mechanical Engineering course conducted by the State Government. The State Government after scrutinizing the entire materials and on subjective satisfaction relaxed the educational qualification vide G.O.Ms.No.654, dated 04.06.1980. Thereafter, the Government of Tamil Nadu vide in G.O.Ms.No.418, Personnel and Administrative Reforms (Per.R.) Department, dated 26.09.1990, treated the ex-service men having 15 years of service as Mechanical Transport Fitter will be treated as equivalent to possessing certificate of Diploma in Mechanical Engineering. Further, the petitioner passed the departmental test for the General Foreman on 16.05.1986 and the same was entered in my service register.

5. The contention of the petitioner is that as per Adhoc Rules, after completion of five years of service as general foreman, the petitioner is eligible to be promoted as Automatic Engineer and the petitioner has applied to the Director



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of Motor Vehicles Maintenance Department to include his name in the panel, but the same was rejected, vide letter, dated 26.10.1987, on the ground that the petitioner has not passed the departmental test within the prescribed time and the petitioner was not possessing required educational qualification. The petitioner submitted that the 2nd respondent failed to appreciate the fact that the petitioner has passed the departmental test on 17.05.1986 and the Government also relaxed the educational qualification, as per G.O.Ms.No.654, Transport Department, dated 04.06.1980.

6. Moreover, as per G.O.Ms.No.221, Personnel and Administrative Reforms (Personnel) Department, dated 10.05.1990, once relaxation is given exempting a person from possessing qualification, passing departmental /special test and other obligatory test prescribed for the post, it should be held valid for all future promotions where the same qualification is prescribed. The same issue was considered by the Hon'ble Division Bench in W.A.No.106 of 1979 and W.A. No.



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211 of 1986, wherein it was observed that for both the entry post and promotional post, a common qualification is prescribed, once it is exempted at the time of entry into service, it has been repeatedly held that it is available to the employee, when latter on promoted to superior post.

7. The petitioner compares himself with his junior Late N.Sarangapani, who was accorded promotion as Automobile Engineer as per G.O.Ms.No.120, Transport department, dated 19.02.1988. But the petitioner was promoted to the post of Automobile Engineer as per G.O.Ms.No.3227, dated 24.07.1990. Thereafter, the petitioner submitted a representation to the 1st respondent on 19.03.1991 to give promotion retrospectively from 26.02.1988 and the same was not considered. Hence, the petitioner preferred a writ of Mandamus before this Court in W.P.(MD)No.4370 of 2013 and this Court by an order, dated 01.04.2013 and dismissed the writ petition. Aggrieved over the same, the petitioner preferred writ appeal in W.A.(MD)No.43 of 2015 and the Hon'ble Division Bench of this



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Court, vide judgment, dated 28.02.2018, directed the 1st respondent to consider and pass orders. Hence, the impugned order came to be passed rejecting the claim of the petitioner. Aggrieved over the same, the present writ petition is filed.

8. The respondents have filed counter affidavit stating that the petitioner has reached his term for promotion to the post of Automobile Engineer in the year 1988. Since the petitioner was not having the requisite qualification, his immediate junior, namely N.Sarangapani (late), who had the required educational qualification was promoted with effect from 28.02.1988. However, the Government had sympathetically considered the petitioner's case and relaxed the educational qualification, vide order, dated 24.07.1990. Accordingly, the petitioner was promoted with effect from 30.07.1990. Hence, the petitioner requested to grant promotion retrospectively with effect from 26.02.1988 on par with his junior cannot be considered. Moreover, the petitioner is seeking retrospective promotion after a lapse of 31 years. Hence, the petitioner cannot be



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considered for promotion, more so, cannot be granted notional promotion. Therefore, the respondents prayed to dismiss the writ petition.

9. Heard Mr.P.Ganapathi Subramanian, learned Counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents and perused the records.

10. The petitioner as well as the respondents submitted that as on date of recruitment to the post of General Foreman in the respondent Department, the qualification prescribed for the promotion of Automobile Engineer is Diploma in Mechanical Engineering or Automobile Engineering. The contention of the petitioner is that he was serving in the Indian Army and the Indian Army has issued certificate wherein it is stated that the post of Mechanical Transport Fitter is equivalent to Diploma in Mechanical Engineering and the said certificate is eligible for recruitment to the subordinate post and service under Central



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Government. Hence the claim of the petitioner is that since it has been certified by the Indian Air Force, the respondents ought to have considered the petitioner for promotion when the said N.Sarangapani was considered. But the respondents claim that the certificate issued by the Indian Air Force cannot be accepted and it has to be issued either by any Educational Institution or by the Government. Hence, the respondents claim that the said certificate issued by the Indian Air Force cannot be acted on and the petitioner's claim was rejected.

11. However, the certificate issued by Indian Air Force was considered by the State Government for certain trades and the same is declared as equivalent to Diploma in Mechanical Engineering in G.O.Ms.No.418, Personnel and Administrative Reforms (Per.R) Department, dated 26.09.1990 and the relevant portion is extracted hereunder:

“The Government after careful consideration accept the views of the Director of Ex-serviceman. The Government accordingly direct that the following trades conducted by the Indian Air Force be recognized as



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equivalent to Diplomas in Mechanical Engineering awarded by the State Board of Technical Education and Training for appointment to the posts in State Government which require Diploma in Mechanical Engineering, subject to the weightage of 15 years of service in the three services viz. Army, Navy and A Force.

- 1. Engine Fitter.*
- 2. Mechanical Transport Fitter.*
- 3. Fitter Armourer.*
- 4. Mechanical Tool Setter and operator.”*

12. In the said G.O., it is categorically stated if a person has served in Army, Navy and Air Force for 15 years along with trades conducted by the Indian Air Force would be recognized as equivalent to Diploma in Mechanical Engineering awarded by the State Board of Technical Education and Training for the appointment of posts in the State Government. The contention of the petitioner is when the State Government has recognized through the said G.O., the promotion to the post of Automobile Engineer ought to be granted when the petitioner's immediate junior was granted promotion.



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13. However, the respondents submitted that such recognition was granted only in the year 1990. The petitioner was having the certificate in the year 1978. Since the G.O., would come into force from the date of issuance of the G.O., the petitioner can only claim from the date of issuance of the G.O. Hence the respondents have considered the petitioner's case from the date of issuance of the G.O., and granted promotion and the petitioner cannot claim any retrospective effect to grant retrospective promotion.

14. This Court is of the considered opinion that the claim of the respondents cannot be accepted, since once the equivalency is granted, it will have effect from the date of acquiring the educational qualification. The issue of effective date is considered by the Hon'ble Full Bench *in the case of Nadar Thanga Shubha Laxman, A Vs. The State of Tamil Nadu reported in 2014 (3) CTC 433*. It has been held that if any equivalency has to be declared, the same is dated back to the date of passing the degree. Therefore, if once equivalency is



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declared, then the petitioner's candidature shall be considered with the retrospective effect. In the present case, admittedly, the petitioner has obtained the qualification in the year 1978 itself. When the petitioner's turn to be considered for promotion arose in the year 1988 itself, the petitioner ought to have been granted promotion in the year 1988. In the counter affidavit, the respondents have stated that the petitioner's junior Late.N.Sarangapani was granted promotion as Automobile Engineer with effect from 28.02.1988. Therefore the petitioner is entitled to be considered from 28.02.1988 onwards.

15. Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered for promotion when his immediate junior was granted promotion i.e. from 28.02.1988 onwards. Since the petitioner has retired from service, the petitioner is entitled to notional promotion. Therefore, the impugned order is quashed. The respondents are directed to confer notional promotion to the petitioner from 28.02.1988. As far as the monetary benefits is concerned, the



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effect of the monetary benefits can be granted in the pensionary benefits. the said exercise shall be granted within six (6) weeks from the date of receipt of the copy of the order.

16. With the above said observation, the writ petition is allowed. No costs.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

- 1.The Additional Chief Secretary to
Government of Tamil Nadu,
Transport Department (H-1),
Secretariat, Chennai-9.
- 2.The Director of Motor Vehicles,
Maintenance Department (Transport),
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S.SRIMATHY, J

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