



W.A. (MD) No.1271 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.09.2023

PRONOUNCED ON : 30.10.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.1271 of 2014
and
CMP(MD).No.1 of 2014

The Secretary to Government Cum
The Chairman of Tamil Nadu State Transport Undertaking
Transport (D) Department
Fort St.George
Chennai 600 009

...Appellant

Vs

S.Chandrasekar

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal and set aside the order of the learned Judge of this Court in WP(MD).No. 17180 of 2013 dated 13.08.2014 as null and void.

For Appellant : Mr.S.Shaji Bino
Special Government Pleader &
Mr.T.Amjadkhan
Government Advocate

For Respondent : Mr.P.Arunjayatram



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J U D G M E N T

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(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The respondent in the writ petition is the appellant. The respondent herein as petitioner had filed a writ of certiorarified mandamus to quash G.O.Ms.No. 210 Transport (D) dated 12.11.2013 and consequently direct the respondent to promote the petitioner as Manager in the Tamil Nadu State Transport undertaking from the date of promotion of his Juniors with all monetary and attendant benefits without reference to the departmental proceedings as per G.O.Ms(2D) No.22 Transport (D) Department dated 27.08.2012.

(A). The facts leading to filing of this appeal are as follows:

2(i)The writ petitioner originally joined in Cholan Roadways Corporation as Assistant Engineer in the year 1981 and he was promoted as Assistant Manager in the year 1986. He was further promoted as Deputy Manager in 1992 and he became the Senior Deputy Manager in the year 2009.

(ii)On the date of filing of the writ petition, he was holding the post of Senior Deputy Manager which is equivalent to the post of General Manager.

(iii)The petitioner had further contended that he was due to retire on 31.05.2015 and his next promotional post is the post of Manager which is



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equivalent to the post of Managing Director of the State Transport Undertaking.

The services of the petitioner are governed by a Common Service Rules.

(iv) He had further contended that the respondent namely the Secretary to Government who is the Chairman of the Board had issued G.O.Ms.No.79 Transport (D) Department dated 05.04.2013 wherein a panel for promotion from the post of Senior Deputy Manager to the post of Manager in the Technical Wing was published. However, the name of the petitioner was not included in the said G.O. Later by way of an amendment through G.O.Ms.No.89 Transport (D) Department dated 29.04.2013 his name was included in the seniority list at Sl.No.65 for promotional post of Manager in the Transport Undertaking. Though the petitioner's name was included in the panel, he was not promoted. By way of G.O.Ms.No.169 Transport (D) Department dated 30.08.2013, seven Juniors of the writ petitioner were appointed as Managers.

(v) The petitioner had further contended that he was issued with a charge memo on 01.07.2013 wherein the charges were framed as against the petitioner that he had incurred expenses against the Conduct Rules. He had further contended that during the relevant period he had served only for a short span of six months from 16.04.2009 to 20.10.2009.

(vi) The petitioner had further stated that the Department had passed G.O(Ms).No.210 Transport (D) Department dated 12.11.2013 deleting the name



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of the writ petitioner from the panel approved in G.O.(Ms).No.89, Transport (D) Department, dated 29.04.2013 on the ground that the Disciplinary Proceedings are pending as against him. Therefore, the petitioner was constrained to challenge G.O.(Ms).No.210 Transport (D) Department dated 12.11.2013.

(vii)He had further contended that as per Common Service Rules, there is no prohibition or any restriction for consideration of promotion during the pendency of any departmental proceedings. The only condition imposed as per Service Regulation is that a candidate/incumbent who suffered punishment is not entitled for consideration of promotion only during the currency of punishment.

3.In the counter affidavit, the Department had contended that the Managing Director of the Transport Corporation had informed Career Planning Committee vide letter dated 15.07.2013 about issuance of charge memo to 18 delinquent officers including the writ petitioner based on the instruction issued by the Government. In view of pendency of grave charges, the Career Planning Committee met on 14.08.2013 and after elaborate discussions, recommended the Government to cancel G.O.Ms.No.89, Transport (D) Department, dated 29.04.2013 and decided to exclude the name of the petitioner from the panel. Hence, they prayed to sustain the order passed by them.



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(B).Findings of writ Court:

4.The writ Court found that as far as the Service Regulation of the Transport Corporation Employees are concerned, there is no provision equivalent to Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Court had further found that the Department has not produced any Rules that declare that the pendency of the Disciplinary Proceedings would operate as a bar for promotion.

5. The writ Court relied upon a judgment of the Hon'ble Supreme Court reported in *[2014(8) Scale 216] equivalent to (2014) 7 SCC 260 (Dev Prakash Tewari Vs. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and others)* to arrive at a finding that the Service Regulations of the Transport Corporation does not contain any express provision, which would operate as a bar for claiming promotion to the higher post on the ground of pendency of disciplinary proceedings. The writ Court further found that the respondent department has no authority to delete the name of the petitioner from the panel on the ground of initiation of disciplinary proceedings at a later point of time.

6.Based upon the above said findings, the writ Court was pleased to allow the writ petition and set aside the order of deletion of the name of the writ petitioner from the panel and directed the department to consider the claim of the petitioner for promotion to the post of Manager without reference to the



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pending disciplinary proceedings. This order is under challenge in the present writ appeal.

(C).Submissions of the Counsels:

7.The learned counsel appearing for the appellant had contended that the Transport Department had issued G.O(2D) No.22, Transport (D) Department, dated 27.08.2012 wherein the Government had directed the Managing Director of the Transport Corporation to initiate departmental proceedings as against the accused officer. The name of the writ petitioner is reflected in Sl.No.11. Thereafter on 05.04.2013 under G.O(MD).No.79 Transport (D) Department dated 05.04.2013, the Transport Department had published 8th panel for promotion of Senior Deputy Manager to Manager cadre in Technical Wing. The name of the writ petitioner was not included in the said panel.

8.Oblivious of the fact of the initiation of the departmental proceedings, the name of the writ petitioner was subsequently included through G.O.Ms.No. 89 Transport (D) Department dated 29.04.2013. The pendency of the disciplinary proceedings was brought to the notice of the Transport Department on 15.07.2013 and therefore G.O(Ms).No.210 Transport (D) Department, dated 12.11.2013 was issued deleting the name of the writ petitioner from the panel. Therefore, the writ Court was not right in arriving at a finding that the Transport



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Department does not have any power to stop the promotion citing pendency of the disciplinary proceedings.

9.The learned counsel for the official respondent had further contended that the judgment of the Hon'ble Supreme Court referred to by the writ Court reported in *[2014(8) Scale 216] equivalent to (2014) 7 SCC 260 (Dev Prakash Tewari Vs. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and others)* relates to continuation of the disciplinary proceedings after the employee had reached superannuation. The said judgment is not applicable to the facts of the present case.

10.The learned counsel had further relied upon G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18th October 1993 to impress upon the Court that the State Government Order is applicable to the Public Sector Undertaking/Corporation/Boards also. He had further contended that as per State Government Order, the pendency of departmental proceedings would be a bar for considering of a candidate for promotion. Hence, he prayed for allowing the writ appeal.

11.Per contra, the learned counsel appearing for the respondent had contended that the writ Court has arrived at a specific finding that there are no Rules in the Common Service Rules applicable to the writ petitioner which are equivalent to Rule17(b) of the Tamil Nadu Civil Services (Discipline and



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Appeal) Rules. There is no specific bar under the Common Service Rules for effecting promotion citing pendency of the disciplinary proceedings. When there is no legal impediment for inclusion of the name of the writ petitioner in the panel, the Government on its own cannot delete the name. Hence, he prayed for sustaining the order passed by the writ Court.

12. We have carefully considered the submissions made on either side and perused the material records.

(D).Discussion:

13. The Transport Department of the Government had issued G.O(2D) No. 22, Transport (D) Department, dated 27.08.2012 wherein the Managing Director of the Transport Corporation has been directed to initiate departmental disciplinary proceedings as against 18 officers. The name of the writ petitioner figures as Sl.No.11. Pursuant to the said direction, the Managing Director has also issued a charge memo on 01.07.2013 calling upon the delinquent to submit his explanation within a period of seven days.

14. A perusal of the charge memo indicates that the petitioner is alleged to have un-authorizedly spent a sum of Rs.32,88,937/- towards food and transport expenses of politicians and relatives of a Minister. The Transport Department by way of G.O.Ms.No.79 Transport (D) Department dated 05.04.2013 has



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published 8th panel for promotion of Senior Deputy Manager to the Manager in the Technical Wing. In view of the disciplinary proceedings initiated as against the writ petitioner on 27.08.2012, his name was not included in the said panel. However, the writ petitioner had managed to include his name in the panel by issuance of G.O.Ms.No.89 Transport (D) Department dated 29.04.2013. Later the Managing Director had addressed a letter on 15.07.2013 informing the Transport Department about the charge memo issued by him on 01.07.2013. Based upon this communication, the Transport Department had woken up and issued G.O.Ms.No.210 dated 12.11.2013 deleting the name of the petitioner from the panel. These facts are not in dispute.

15.The only ground on which the writ Court has decided to set aside G.O.Ms.No.210 dated 12.11.2013 is that there is no specific bar under the Common Service Rules (which are applicable to the writ petitioner) to delete the name of an employee from the panel for promotion citing the pendency of the disciplinary proceedings.

16. Personnel and Administrative Reform (Personnel-S) Department has issued G.O.Ms.No.368, dated 18.10.1993 wherein instructions have been issued to all the Government Departments with regard to preparation of panel for appointment by promotion/recruitment by transfer.



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17. In the State Government Order, Instruction No.II. Preparation of Panels, Clause No.(5) is extracted as follows:

“(5) If specific charges are framed or charge sheet is filed in the criminal case before actual promotion, the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel. The instructions in para(3) above will apply in his case thereafter.”

18. The Government by its letter No.718/BPE/2000-1, dated 25.04.2000 has addressed a communication to the Chief Executive Officers of all State Public Sector Undertaking/Boards which is extracted as follows:

“I am directed to state that in the context of preparation of panel for appointment by promotion/recruitment by transfer, the chief executive officers of all State Public Sector Undertakings/Boards were requested in the Government letter first cited to follow the instructions contained in G.O.Ms.No.368, Personnel and Administrative Reforms (S) Department dated 18.10.1993 and Government Letter (MS).No.248 P & AR(S) dated 20.10.1997 scrupulously after placing the copies of the orders before the Board for adoption.

2. Government in the letter second cited have issued certain amendments to the letter (MS).No.248 P&AR(S) dated 20.10.1997. I am directed to request you to follow the instructions contained in the letter second cited also scrupulously.

3. This letter may be placed before the Board of Directors.”



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19. In the present case, the name of the petitioner was included in the panel on 29.04.2013. A charge memo was issued to the writ petitioner on 01.07.2013 under Common Service Rules annexed to the Discipline and Appeal Rule. Rule No.28(d),(g),(i) and (az) which are extracted as follows:

“28(d) Abuse or misuse of property of the corporation;

(g) Failure to exercise efficient control and supervision on the subordinate staff, which has adversely affected the efficiency of the Unit;

(i) Gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both;

(az) Any other act not specifically mentioned above but which is prima facie detrimental to the interests of the Corporation;”

20. A perusal of the misconduct captured in Rule 28 along with charge memo would indicate that the writ petitioner had incurred a sum of Rs.32,88,937/- un-authorizedly and the allegations are grave in nature. The allegations in the charge memo are equivalent to Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, the writ Court was not right in arriving at a finding that there are no Government Orders relating to Transport Employee to the effect that the pendency of the Disciplinary Proceedings would operate as bar for promotion.



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21. The writ Court had relied upon a decision of the Hon'ble Supreme Court reported in *[2014(8) Scale 216] equivalent to (2014) 7 SCC 260 (Dev Prakash Tewari Vs. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and others)* to arrive at a finding that there are no express provision in the Common Service Rules of the Transport Corporation which would operate as bar for claiming promotion to the higher post. The writ Court had further found that the respondent has no authority to delete the name of the petitioner from the panel on a later point of time. A perusal of the Supreme Court judgment reveals that the Hon'ble Supreme Court in the said case has held that the employer will not have any right to continue the disciplinary proceedings after retirement of the employee, unless the service rules provide for the same. The present writ petition has not been filed challenging the initiation of disciplinary proceedings. The prayer in the writ petition is only challenging the deletion of the name of the petitioner from the promotion panel citing the pendency of the disciplinary proceedings. Therefore, the said judgment is not applicable to the facts of the present case.

22. In view of the above said deliberations, we are of the considered opinion that the relevant Government Orders relating to the bar of promotion citing disciplinary proceedings are applicable to the Transport Corporation also. On issuance of charge memo, the name of the petitioner has been rightly deleted



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from the panel for promotion. The effect of G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18.10.1993 and the Government Letter No.718/BPE/2000-1, dated 25.04.2000 have not been brought to the notice of the writ Court. In such circumstances, the order of the writ Court is not legally sustainable and the same is set aside. Accordingly, the Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
30.10.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
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To

The Secretary to Government Cum
The Chairman of Tamil Nadu State Transport Undertaking
Transport (D) Department
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Chennai 600 009



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Judgment made in

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