



W.P.(MD)No.14790 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.14790 of 2018

and

W.M.P(MD)No.13344 of 2018

M.Nageshwaran

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Commissioner,
Secretary to Government,
Transport Department,
Fort St. George,
Chennai – 9.

2.The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Kumbakonam Region,
No.27, New Railway Station Road,
Kumbakonam.

3.The General Manager,
Law Department,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Karaikudi Region,
Karaikudi.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the resolution No.371 dated 27.09.2010 passed by the Board of Directors of TNSTC(Kumbakonam) Ltd., and consequential impugned order passed by the third respondent in Reference No.Th.A.Po.Ka/sattam/Sa1/631 dated 17.02.2011 and to quash the same as illegal and arbitrary and consequently direct the respondents to extend the benefit of treating the writ petitioner as Junior Assistant from the date of the petitioner's original appointment as Clerk in the second respondent Corporation and accordingly direct the respondent to grant periodical review and pass necessary orders to give promotion to the petitioner as Superintendent after completion of 30 years of his service and to grant other attendant benefits including arrears of pay, increment, revision of pension and other retiral benefits.

For Petitioner : Mr.G.M.Xavier
For Respondents : Mr.D.Sivaraman

ORDER

This writ petition has been filed to quash the resolution No.371, dated 27.09.2010, passed by the Board of Directors of TNSTC(Kumbakonam) Ltd., and consequential impugned order passed by the third respondent in Reference No.Th.A.Po.Ka/sattam/Sa1/631 dated 17.02.2011, as illegal and arbitrary and consequently, direct the



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respondents to extend the benefit of treating the writ petitioner as Junior Assistant from the date of the petitioner's original appointment as Clerk in the second respondent Corporation and accordingly, direct the respondents to grant periodical review and pass necessary orders to give promotion to the petitioner as Superintendent after completion of 30 years of his service and to grant other attendant benefits including arrears of pay, increment, revision of pension and other retiral benefits.

2. The learned counsel appearing for the petitioner would submit that the petitioner joined the service as Clerk in the second respondent Corporation with effect from 18.12.1980. His services in the Post of Clerk was regularized with effect from 03.09.1982. Even at the time of joining, the petitioner possessed the qualification of graduation. Instead of appointing him as Junior Assistant, he was appointed as Clerk. Thereafter, he was re-designated as Junior Assistant with effect from 16.08.1985 based on his qualification. Subsequently, three review benefits were granted in favour of the petitioner. Thereafter, on attaining the age of superannuation, he retired from service on 19.01.2010.



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While being so, the employees who were appointed as Clerk initially and thereafter, re-designated, have filed a writ petition in W.P.No.15719 of 1999, seeking for a Mandamus, to direct the management to treat them as Junior Assistants from the date of original appointment as Clerk and the said writ petition was disposed of with a direction to consider the case within 30 days. Subsequently, R.A(Writ) No.24 of 2007 was filed, in which, the respondents are directed to extend the benefits to the applicants, which are granted to similarly placed persons. Based on the same, the petitioner and 21 others filed a writ petition in W.P(MD)No.1376 of 2009, seeking for identical relief, in which, this Court directed the second respondent to consider the representation, dated 27.01.2008, in the light of the order passed in R.A(Writ) No.24 of 2007. Subsequently, pursuant to the order, dated 25.11.2009, passed in W.P(MD)No.1376 of 2009, the second respondent passed the impugned resolution resolving to extend the benefit of re-designation as Junior Assistant only to the employees, who were on roll as on the date of passing resolution ie., on 27.09.2010. Subsequent to the resolution, one of the petitioners in W.P(MD)No.1376 of 2009, has made an application



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to extend the benefit of re-designation. However, the said application was rejected vide order dated 17.02.2011. The grievance of the petitioner is that the resolution was passed after eight months from the date of retirement of the petitioner, whereas already a direction was issued by this Court in favour of the petitioner and other writ petitioners. However, without considering the same, the impugned resolution was passed, which is not sustainable one and prays for allowing of this writ petition.

3. The learned Standing counsel appearing for the respondent Corporation would submit that the Corporation has complied with the order of this Court made in W.P(MD)No.1376 of 2009, dated 25.11.2009 and extended the benefit of re-designation of Junior Assistant to the employees, who are on rolls in the Corporation, giving monetary benefits from 01.10.2010 and a resolution was passed to that effect on 27.09.2010. However, the petitioner retired in the month of January, 2010 and hence, he has not been re-designated as Junior Assistant from the date of his appointment and there is no irregularity or infirmity in the



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resolution passed by the third respondent and hence, this writ petition is liable to be dismissed.

4. Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondents and perused the materials placed before this Court.

5. Admittedly, the petitioner entered into service as a Clerk in the year 1980 and subsequently, he was re-designated as Junior Assistant in the year 1985. Similarly placed persons like that of the petitioner were given the benefit of giving re-designation as Junior Assistant from the date of their appointment. All those facts are not in dispute. The only issue arises in this writ petition is since the petitioner was not in roll on the date of resolution ie., on 27.09.2010, the benefit was not extended to the petitioner. When similarly placed persons are given the benefit, the same cannot be rejected in respect of the petitioner on the ground that on the date of resolution he was not on roll. Therefore, the impugned resolution is not sustainable one and the same is arbitrary and the same is liable to be set aside.



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6. Accordingly, this writ petition is allowed and the impugned resolution passed by the third respondent, dated 27.09.2010, is hereby set aside. The respondents are directed to extend the benefit to the petitioner as that of the similarly placed persons, within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
NCC:Yes/No



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M.DHANDAPANI, J.

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