



W.P.No.24102 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.24102 of 2012

and

M.P.No. 1 of 2013

R. Madhusudhanan

Vs

...Petitioner

1. Tamilnadu State Transport,
Corporation (Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 600 043.
2. The General Manager,
Tamilnadu State Transport
Corporation (Coimbatore) Limited,
Erode Region, Chennimalai Road,
Erode.
3. S.Shanmugam
4. A.Kailasam
5. G.Monoharan
6. V. Matheshwaran

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7. A.Subramaniam

8. T.Karunanidhi

.....Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 06.08.2008 passed by the second respondent in proceedings No. 2395/P4/PD1/TNSTC/CBE/ED/2008 and order dated 09.06.2011 passed by the first respondent in Pa.No.1/L13/MCOP/TNSTC/Ko/E.Ma.2011 quash the same and consequently direct the first and second respondents to give the petitioner third review with effect from 01.11.2006 and to place him in the seniority list of Selection Grade Assistants in the appropriate place and promote the petitioner as Superintendent with effect from 06.08.2008 or from the date on which the next vacancies arose prior to 30.06.2010, with all monetary and other consequential benefits including the revised terminal benefits together with interest.

For Petitioner : Mr.Krishnaswamy

For R1 & R2 : Mr.Murali Vinodh

For R3 : No appearance

For R4 to R8 : No appearance



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ORDER

This writ petition is filed seeking for issuance of Certiorarified Mandamus to quash the proceedings No. 2395/P4/PD1/TNSTC/CBE/ED/2008 dated 06.08.2008 passed by the second respondent and order in Pa.No.1/L13/MCOP/TNSTC/Ko/E.Ma.2011 dated 09.06.2011 passed by the first respondent and to direct the first and second respondents to give the petitioner third review with effect from 01.11.2006 and to place him in the seniority list of Selection Grade Assistants in the appropriate place and promote the petitioner as Superintendent with effect from 06.08.2008 or from the date on which the next vacancies arose prior to 30.06.2010, with all monetary and other consequential benefits including the revised terminal benefits together with interest.

2. The case of the petitioner is that he joined the services of the first respondent Corporation as Junior Assistant in the year 1982 and subsequently the first respondent corporation was bifurcated and a new corporation with a



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name Jeeva Transport Corporation, Erode was formed. The petitioner became the employee of the said new corporation with effect from 01.04.1983 with continuity of service and with the same conditions of service. As per the Longevity, Pay Scheme, an employee is entitled to first review on completion of 6 years of service, second review on completion of 14 years of service and third review on completion of 24 years of service respectively, with a higher designation and higher scale of pay on each review.

3. The petitioner after completion of 6 years of service was entitled to first review with effect from 01.02.1988. However, without any notice and also without assigning any reason first review was postponed by 6 months and he was actually given the first review only with effect from 01.08.1988 (i.e) 6 months after the due and eligible date. The illegal postponement of his first review automatically resulted in postponement of his second and third reviews also. Therefore, instead of giving second review with effect from 01.05.1996, the petitioner was given second review only with effect from 01.11.1996 that is after 6 months from the due date. This resulted in juniors getting their second



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review from the same date as given to the petitioner (i.e) from 01.11.1996. The petitioner and the third to eighth respondents were designated as Assistants after first review and Senior Assistants after the second review respectively.

4. The learned counsel appearing for the petitioner would submit that though the petitioner got the second review belatedly only from 01.11.1996 and though the above mentioned juniors were also given second review from the same date (i.e) from 01.11.1996, the petitioner was shown as senior to them in the seniority list for Senior Assistant. The review committee was convened on 22.11.2006 to consider seven of his juniors with regard to third review. Accordingly, those seven persons were given third review with effect from 01.11.2006. Though the petitioner was also entitled to third review from the said date, the second respondent did not consider the name of the petitioner for third review on the ground that a disciplinary action was pending against the petitioner. The petitioner was issued a charge memo with regard to alleged correction in the attendance register and an enquiry was ordered into the charges, the Enquiry Officer submitted his report as early on 08.09.2006



holding that the petitioner was not guilty of the charges and that the petitioner was an innocent. However, final orders were passed dropping the charges leveled against the petitioner only on 28.11.2006. Therefore, the petitioner was granted third review only with effect from 01.02.2007.

5. The learned counsel for the petitioner further submitted that the petitioner was exonerated from the charges, his name should have been considered for third review on par with his juniors and should have been given third review with effect from 01.11.2006. Instead of giving him the same, the petitioner name was considered by the next review committee (i.e) from 01.02.2007. After third review, the petitioner was designated as Selection Grade Assistant and the next cadre of promotion to the post of Senior Assistant is Superintendent (i.e) Senior Assistant is the feeder category for promotion to the post of Superintendent, as per the Common Service Rules.

6. The second respondent called the petitioner and eight other Selection Grade Assistants for interview for promotion to the post of Superintendent and



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the interview was held on 27.06.2008 and 28.06.2008. Out of the total 9 persons who were called for the said interview, two persons gave letters to the Corporation giving up and relinquishing their right to promotion to the post of Superintendent. After excluding the two persons who relinquished their promotion and also after excluding the petitioner from the zone of consideration, the second respondent promoted the other six persons namely the respondents 3 to 8 by an order dated 06.08.2008. The reason for not considering the petitioner name for promotion was that since the respondents 3 to 8 were given third review with effect from 01.11.2006 but the petitioner was given third review only with effect from 01.02.2007 and hence they were seniors in the position of Selection Grade Assistant. Further, when the post of Senior Assistant itself is a feeder and eligible category for promotion to the post of Superintendent and though the petitioner was senior to the respondents 3 to 8 in the post of Senior Assistant, the second respondent granted promotion to the respondents 3 to 8 by wrongly proceeding as if Selection Grade Assistant alone was the eligible feeder category for promotion to the post of Superintendent and also by taking the respondents 3 to 8 as seniors to the



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petitioner in the post of Selection Grade Assistant.

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7. The learned counsel for the petitioner would further submit that the petitioner's promotion was wrongly denied even after the respondents 3 to 8 were given promotion to the post of Superintendent. The respondents 1 and 2 did not grant promotion to the petitioner even though vacancies arose in the post of Superintendent. Thereafter some Senior Assistants filed W.P.No. 2171 of 2009, challenging the promotion to the post of Superintendent was pending in this Court. While denying promotion of the petitioner to the post of Superintendent even in the subsequent vacancies as stated above, the respondents 1 and 2 granted promotion to the post of Superintendent to the respondents 3 to 8 during the pendency of the above mentioned Writ Petition, however subject to the result of the said Writ Petition and the respondents 1 and 2 did not adopt the same course and procedure in the case of the petitioner. Ultimately, the petitioner retired from service on 30.06.2010 on attaining the age of superannuation without promotion to the post of Superintendent at all.



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8. The learned counsel for the petitioner would further submit that due to the illegal postponement of third review of the petitioner from 01.11.2006 to 01.02.2007, the petitioner lost his higher scale of pay and all other benefits for the period from 01.11.2006 to 31.01.2007. The above mentioned Writ Petition No.2171 of 2009 was dismissed by this Court by an order dated 01.11.2010 on the ground that the Petitioners therein who could become Junior Assistant/Clerk only after 6 years of service and on first review cannot compare themselves with the Respondents therein who were directly recruited Junior Assistants and hence the promotion given to the respondents therein could not be found fault with and hence the petitioners cannot claim promotion to the post of Superintendent.

9. From the above order, it very clear that even the Senior Assistants were eligible for promotion to the post of Superintendent. Further, as per the common service rules also, the post of Senior Assistant is the feeder category for promotion to the post of Superintendent. The petitioner made a series of



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representations to preponed third review of the petitioner with effect from 01.11.2006 and also to grant promotion to the post of Superintendent as per the seniority from the date on which the respondents 3 to 8 were given promotion to the post of Superintendent with all benefits. Though W.P.No. 2171 of 2009 another writ petition in W.P.No. 27469 of 2010 were pending, the respondents 1 and 2 have given promotions to 15 Selection Grade Assistants by order dated 07.12.2010 in vacancies arose after 06.08.2010 prior to 30.06.2010 subject to the result in those two Writ Petitions, the respondents 1 and 2 did not apply the same yardstick in the case of the petitioner. The petitioner should have given promotion at least in the vacancies which arose after 01.08.2008 and prior to 30.06.2010.

10. The petitioner filed W.P.No.9437 of 2011 praying for a direction to the respondents 1 and 2 to give third review of the petitioner with effect from 01.11.2006 and to place him in the seniority list of Selection Grade Assistant in the appropriate place and to promote him as Superintendent with effect from 01.06.2008 with all monetary benefits and consequential benefits including the



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revised terminal benefits together with Interest. This Court by order dated 11.04.2011 directed the second respondent to consider the representation submitted by the petitioner dated 24.06.2010 and pass orders on merits and in accordance with the law within a period of eight weeks. The petitioner gave a representation dated 14.05.2011 along with the copy of the order dated 11.04.2011 in W.P.No.9437/2011. However the first respondent by the impugned order dated 09.06.2011 rejected the request of the petitioner on the ground that his name was not in the seniority list of Selection Grade seniority list when the respondents 3 to 8 were called for and promoted and also on the ground that no one else other than respondents 3 to 8 were promoted to the post of Superintendent due to the pendency of W.P.No.2171 of 2009 till it was disposed of on 01.11.2010. Aggrieved by the order passed by the first respondent, the petitioner has come forward with the present writ petition.

11. The learned Counsel for the petitioner relied on the judgement of the Hon'ble Supreme Court of India reported in **1991 Supp (2) SCC 199** in the case of **C.O.Arumugam and other vs. State of Tamil Nadu and others, dated**



05.10.1989 and also relied on the judgement of the Hon'ble Supreme Court of India reported in **(1991) 4 SCC 109** in the case of ***Union of India and other vs. K.V.Jankiraman and others, dated 27.08.1991.***

12. The Counter affidavit is also filed by the second respondent on 15.02.2013 and the relevant paragraphs are extracted hereunder for better appreciation and understanding:-

“11. It is admitted that the petitioner was given 3rd review from 01.02.2007 and he was also re designated as Selection grade Assistant whereas the other 6 respondents received the review in due dates after completion of the qualifying service and they were given review from 01.11.2006 itself, 3 months earlier to the petitioner.

12. It is submitted that the prayer of the petitioner that only from the date of senior Assistant, the promotion to Superintendent cadre is to be given cannot be accepted. It is the reasonable and the time stood practice of the respondent Corporation to consider the highest cadre in the working group of administrative category in order to give promotion to the Supervisory group. In as much as higher category employees are available and those who have



not received the higher category due to the reason of their infirmities the claim of the petitioner to consider the lower category for considering promotion is not valid under the eyes of law much less any reasonableness. This procedure is adopted from time immemorial and the petitioner in order to suit his own whims and fancies makes his claim which deserves only dismissal. If the prayer of the petitioner is considered, it will have so many repercussions and the promotion procedure will get only a beating and it is prayed to dismiss the writ on this score alone.

17. In as much as the respondent has clearly stated in the paragraph supra that the allegation that the respondents 3 to 8 were given promotion during the pendency of writ petition cannot hold water. Incidentally the W.P.No.2171/2009 was also disposed by the Hon'ble High Court favoring the Corporation by its order dated 01.11.2010. But the year of writ petition is 2009, the respondents 3 to 8 were given promotion during 2008 itself. The allegation that, same procedure was not adopted in the case of petitioner is not true because the petitioner did not become qualified to receive the promotion. This procedure of giving promotion is resorted by the respondent only when all the conditions are fulfilled by the incumbents, but if only the writ is pending which is filed by other parties. The action of the respondent is just and legal and very much reasonable. On the



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similar fashion there is no law or a settlement to claim by the petitioner that any person including the petitioner shall only be given promotion before their retirement even though they do not qualify to receive the promotion. Hence, the prayer of the petitioner has to fail and it is prayed for the same.

23. It is submitted that, the pendency of the W.P.No.2171/2009 may be one of the reasons along with other situations prevailing at the time of promotion. It is submitted that, no mandamus may be issued for the purpose of promotion because as per common service rule No:60 in chapter No.VII Page No.76 seniority may be one of the factors but it is not the only factor for promotion.”

13. The learned counsel appearing for the second respondent/Transport Corporation submitted the copy of the seniority list dated 26.12.2012 that is after third review, the name of the petitioner was placed at serial No. 9 and even in the seniority list dated 09.06.2011, the petitioner was placed at serial No. 9.



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14. Heard both sides and perused the materials available on record.

15. In the instant case, the petitioner first review was due on 01.02.1988 but it was postponed and was given effect only from 01.08.1988 after delay of six months and the second review was due on 01.05.1996, but he was given second review with effect from 01.11.1996 that is after six months from the due date and the third review was to be given with effect from 01.11.2006 but in the case of the petitioner, it was granted only from 01.02.2007 hence all the three reviews were given to the petitioner belatedly.

16. The petitioner as well as the respondents 3 to 8 were designated as Assistant after first review and Senior Assistant after the second review respectively. Though the second review was given to the petitioner belatedly on 01.11.1996, the juniors were also given the review on the same day but the petitioner was shown as senior to them in the seniority list for Senior Assistant. **The petitioner was issued with the charge memo in regard to the alleged correction in the attendance register and an enquiry was ordered into the**



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charges, the Enquiry Officer submitted his report as early on 08.09.2006 holding that the petitioner was not guilty of the charges and he is innocent.

However, final orders were passed dropping the charges leveled against the petitioner only on 28.11.2006. Therefore, the petitioner was granted third review only with effect from 01.02.2007 whereas the respondents 3 to 8 were given review with effect from 01.11.2006. Once the petitioner was exonerated from the charges, his name should have been considered for third review on par with his juniors with effect from 01.11.2006 and it is pertinent to note that the enquiry officer has submitted his report on 08.09.2006 holding that the petitioner was not guilty of the charges and the charges are not proved which is prior to the third review given to the respondents with effect from 01.11.2006 (i.e.) two months before the third review. The petitioner was given a designation of Selection Grade Assistant after the third review and the next cadre of promotion to the post of Senior Assistant is Superintendent. That is, Senior Assistant is the feeder category for promotion to the post of Superintendent, as per the Common Service Rules.



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17. The interview was held for promotion to the post of Superintendent for the petitioner and eight other selection Grade Assistants, totally 9 persons, out of which two persons have gave letters to the corporation giving up and relinquishing their right to promotion to the post of Superintendent. However, after excluding the two persons, the second respondent also excluded the name of the petitioner from the zone of consideration and promoted the other six persons namely the respondents 3 to 8 by an order dated 06.08.2008 and the reason for not considering the petitioner name for promotion was that since the respondents 3 to 8 were given third review with effect from 01.11.2006 and the petitioner was given third review only with effect from 01.02.2007. Hence they were seniors in the position of Selection Grade Assistant and this reasoning by the second respondent is unsustainable because the third review was delayed by the second respondent even though the petitioner was exonerated on 08.09.2006 before the third review which was given to the respondents 3 to 8 with effect from 01.11.2006 and in the case of the



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petitioner, the final order dropping the charges was issued belatedly only on 28.11.2006 which resulted in granting the third review only with effect from 01.02.2007. The petitioner is not at fault for the delay in granting the third review and it is because of the lethargic attitude of the second respondent in passing the final orders after delay of nearly three months that is from the enquiry report dated 08.09.2006 to final order dated 28.11.2006, because of this delay the petitioner was given third review with effect from 01.02.2007 and the respondent 3 to 8 were given with effect from 01.11.2006 and they were considered as senior to the petitioner and was also given promotion to the post of superintendents pending W.P.No.2171 of 2009 and 27469 of 2010 and the same was not done in the case of the petitioner which in violation of the Article 14 of the constitution of India.

18. The petitioner retired from service on 30.06.2010 as Selection Grade Assistant on attaining the age of superannuation. It is because of the postponement of the third review between 01.11.2006 to 01.02.2007. The



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petitioner lost his higher scale of pay and all other benefits for the said period from 01.11.2006 to 31.01.2007. Further he was also denied promotion whereas the juniors, respondents 3 to 8 were promoted to the post of Superintendents with effect from 02.06.2008 thereafter the W.P.No. 2171 of 2009 was also dismissed by this Court on 01.11.2010 on the ground that the Petitioners therein who could become Junior Assistant/Clerk only after 6 years of service and on first review cannot compare themselves with the Respondents therein who were directly recruited as Junior Assistant and hence the promotion given to the respondents therein could not be found fault with and hence the petitioners cannot claim promotion to the post of Superintendent and **from the order it is clear that even the Senior Assistants were eligible for the promotion to the post of Superintendents. Hence the contention that the zone of consideration is only to the Selection Grade Senior Assistants for promotion to the post of Superintendent is untenable in law.**

19. The learned Counsel for the petitioner relied on the judgement of the



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Hon'ble Supreme Court of India reported in **1991 Supp (2) SCC 199** in the case of **C.O.Arumugam and other vs. State of Tamil Nadu and others**, dated **05.10.1989** in which it has held that:-

“Service law- Seniority and promotion – Promotion – Pending disciplinary or criminal proceedings – Inclusion in panel, held can be deferred till conclusion of the proceedings – If exonerated or acquitted they must be considered for promotion – After that if found suitable promotion to be given- such promotion to be retrospective from date on which juniors promoted – T.N. State and Subordinate Services Rules- Rules 39(d) and 4 – Constitution of India, Article 14 and 16(1).

5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be post-poned only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary



proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

9. Thiru G.P. Purushothaman, respondent 5, appears to be an exception to the preceding norm. It is said that there was then charge-sheet filed against him in the pending enquiry when the panel was prepared. His exclusion for promotion could not therefore be inappropriate. We may, however, observe that if he is exonerated in the pending enquiry, he be considered for promotion from the date on which his junior was promoted and if found suitable he be given promotion with all consequential benefits, but subject to seniority to be determined in C.A. Nos. 3815 and 3816 of 1988 pending in this Court. We may also observe that the departmental enquiry pending against him may be expedited.”

20. The learned Counsel for the petitioner also relied on the judgement of the Hon'ble Supreme Court of India reported in **(1991) 4 SCC 109** in the



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case of ***Union of India and other vs. K.V.Jankiraman and others***, dated

27.08.1991 in which it has held as follows:-

“Consideration of case of an employee for promotion, selection grade, crossing of efficiency bar or higher scale of pay cannot be withheld merely on ground of pendency of any preliminary inquiry/criminal investigation against him.

In case of complete exoneration of the employee from all charges and notional promotion to be given from the date his juniors promoted- Arrears of salary may be granted from the date of notional promotion having regard to the circumstances of the case.

If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly justified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefits of seniority and fixation of pay on a notional



basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/court proceedings.

34. In this case, the respondent-employee's case was considered for promotion by the DPC in August 1982. However, the result was kept in a sealed cover in view of the pending disciplinary proceedings against him. According to the employee, on October 11, 1985 the disciplinary proceedings ended in complete exoneration. Thereafter, a DPC was again constituted in March 1986 which, after consideration of the employee's case, recommended him for promotion w.e.f. July 26, 1986. This was obviously contrary even was to the instructions contained in the Memorandum. He was entitled to promotion from the date his immediate junior was promoted in or after August 1982 if he was in August 1982 found fit for promotion by the DPC. The Tribunal has, therefore, rightly directed the appellant to open the sealed cover and if the DPC in 1982 had found him fit for promotion, to give him the promotion from the date on which his immediate junior was promoted. However, while doing so, the Tribunal has also directed arrears of salary.



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41. In the Departmental Inquiry, he was exonerated of all the charges and by an order of June 6, 1985 he was appointed to officiate as Lower Division Clerk.

21. The impugned order was passed by the first respondent dated 09.06.2011, rejected the request of the petitioner on the sole ground that his name was not in the seniority list of Selection Grade Assistant seniority list when the respondents 3 to 8 were called for and promoted and also on the ground that no one else other than respondents 3 to 8 were promoted to the post of Superintendent due to the pendency of W.P.No.2171 of 2009 till it was disposed of on 01.11.2010.

22. The above reason give by the first respondent is unsustainable for the simple reason that feeder category for the promotion to the post of Superintendent as per the common service rules is a Senior Assistant and the petitioner was designated with Senior Assistant after the second review.



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23. From the above, it is crystal clear and evident that all the three reviews granted to the petitioner belatedly by the first and second respondents, no fault on the part of the petitioner. As a result, the petitioner did not get the opportunity of being promoted as Superintendent before his date of superannuation on 30.06.2010 and he retired only as Selection Grade Assistant whereas his juniors respondents 3 to 8 were promoted as Superintendents by order dated 06.08.2008, even though they are juniors to the petitioner. The denial of promotion to the petitioner is because of the delay caused in passing the final orders on 28.11.2006 dropping the charges leveled against the petitioner and the date on which the respondents 3 to 8 were granted third review with effect from 01.11.2006 and if the final order was passed with a reasonable time then the petitioner would have got the third review with effect from 01.11.2006 on par with the his juniors respondents 3 to 8.

24. It is pertinent to mention and note that the third review was



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granted to the respondents 3 to 8 with effect from 01.11.2006 and dropping the charges passed on 28.11.2006, hence because of the delay of 27 days caused by the second respondent, the petitioner lost his opportunity of being promoted as Superintendent. It is also very difficult for person in service to digest or to accept a junior being promoted to the senior level position as in the instant case, the petitioner being a Selection Grade Assistant reporting to the junior who is a superintendent/superior officer to the petitioner.

25. In view of the above factual matrix of this case, the proceedings No. 2395/P4/PD1/TNSTC/CBE/ED/2008, dated 06.08.2008 passed by the second respondent and order in Pa.No.1/L13/MCOP/TNSTC/Ko/E.Ma.2011 dated 09.06.2011 passed by the first respondent is liable to be quashed and the same is hereby quashed. The first and second respondents are directed to give the petitioner third review with effect from 01.11.2006 and to place him in the seniority list of Selection Grade Assistants in the appropriate place and promote the petitioner as Superintendent with effect from 06.08.2008 or from



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the date on which the next vacancies arose prior to 30.06.2010, with all monetary and other consequential benefits including the revised terminal benefits together with 5% interest and along with the employees contributions to Employees Provident Fund within a period of eight weeks from the date of receipt of a copy of this order.

26. In the result, the writ petition is allowed with the above observations and directions and consequently connected miscellaneous petition is closed. No cost.

28.03.2024

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Index:Yes/No

Speaking Order : Yes/No

Neutral case citation: Yes/No

To

1. Tamilnadu State Transport,
Corporation (Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 600 043.
2. The General Manager,
Tamilnadu State Transport

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Corporation (Coimbatore) Limited,
Erode Region, Chennimalai Road, Erode.

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