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W.P. No.40073 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.40073 of 2015
and M.P.Nos.1 & 2 of 2015

M.Balakrishnan

... Petitioner

Vs.

1.The Government of Tamil Nadu represented by
The Secretary to the Government,
Transport Department (H1), Fort St. George,
Chennai- 600 009.

2.The Director (I/C)
Motor Vehicle Maintenance Department,
Chennai-600 042

3.K.S.Abubucker

4.M.Palani Rajan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorari, directing to call for

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the records relating in the impugned panel in G.O.Ms.No.134, dated 23.11.2015 passed by the 1st respondent quash the same and consequently direct the respondent to include the petitioner's name in the panel 2013-2014 and promote the petitioner as Materials Manager, Chennai Directorate or Regional Deputy Director, Madurai, reckoning his seniority with all consequential service and other attendant benefits on par with his juniors including arrears of pay thereof.

For Petitioner : M/s.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.P.Ganesan
Additional Government Pleader for R1
Mr.N.Sathish Babu for R4

ORDER

This writ petition has been filed questioning the order issued by the Government in G.O.Ms.No.134 Transport Department, dated 23.11.2015 whereby the name of the 4th respondent was included in the regular panel fit for appointment as Materials Manager by promotion in the Motor Vehicles Maintenance Department for the year 2013-2014.

2.While preparing the impugned panel, the case of the petitioner herein was not considered on the ground that a disciplinary case is pending against the petitioner.



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3.It is the case of the petitioner that the crucial date for the purpose of preparation of the panel for the year 2013-2014 is 15.09.2013 and by which date there were no disciplinary proceedings pending against the petitioner and the so called disciplinary proceedings pending against the petitioner is only by virtue of a charge memo dated 06.06.2014 issued against the petitioner. Therefore, it is contended that the action of the respondents in not considering the case of the petitioner for inclusion in the panel for promotion to the post of Materials Manager for the panel year 2013-14 is arbitrary and illegal. It is also further contended that the so called disciplinary proceedings that were initiated against the petitioner by issuing charge memo on 06.06.2014 were also came to be dropped by the Government by issuing G.O.D.No.12 Transport H1 Department dated 23.02.2018 and as such the petitioner is entitled for inclusion of his name in the panel for the year 2013-2014 for promotion to the post of Materials Manager and also for consequential promotion on par with the 4th respondent, who is the junior to the petitioner in the cadre of Automobile Engineer.



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4.The respondents 1 and 4 filed their respective counter affidavits.

There is no much dispute on the factual aspects. The disciplinary proceedings that are stated to be pending against the petitioner as on the date of impugned order are only the disciplinary proceedings that were initiated by charge memo dated 06.06.2014. It is also not in dispute that the crucial date for the panel year 2013-2014 is 15.09.2013. Thus, it is evident that there are no disciplinary proceedings pending against the petitioner as on the crucial date. If that be the case, the very action of the respondent is not considering the case of the petitioner for inclusion in the panel for the year 2013-2014 on the face of it is arbitrary and illegal.

5.Be that as it may, the so called disciplinary proceedings that are pending as on the date of issuance of impugned order were also dropped subsequently by the Government by issuing G.O.D.No.12 dated 23.02.2008 and thereafter, the case of the petitioner was also considered for promotion to the post of Regional Deputy Director just before the superannuation of the



petitioner from service. Hence, it is now contended that the petitioner is entitled for promotion to the post of Materials Manager on par with the 4th respondent who was admittedly Junior to the petitioner.

6. As seen from the counter affidavit filed by the 1st respondent, the 4th respondent herein is admittedly junior to the petitioner in the cadre of Automobile Engineer and he was promoted to the post of Materials Manager by G.O.Ms.No.135 Transport (H1) Department dated 23.11.2015 during the panel year 2013-14. While withholding the case of the petitioner from being considered for promotion to the said post on the ground of pendency of disciplinary proceedings. As already noted above the so called disciplinary proceedings were already dropped and there were no disciplinary proceedings pending as on the crucial date pending against the petitioner. The action of the respondents in not including the name of the petitioner in the panel for promotion to the post of Materials Manager during the panel year 2013-2014 is liable to be declared as illegal and arbitrary. Further, by virtue of dropping of the charges against the petitioner by Government Order



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dated 23.02.2018 the entitlement of the petitioner for promotion on par with 4th respondent cannot be denied. As the petitioner has already retired from service on attaining the age of superannuation as early as in the year 2018 and this Court has come to the conclusion that the petitioner was arbitrarily denied the benefit of promotion to the post of Materials Manager for the panel year 2013-2014, this Court is of the considered view that appropriate direction has to be issued for extending the benefit of notional promotion to the petitioner on par with the 4th respondent.

7.Though, it is contended in the counter affidavit filed by the 1st respondent stating that there was nil panel prepared during the year 2010-2011, 2011-2012 and 2013-2014 for the post of Materials Manager and as well as for the post of Regional Deputy Director the same cannot be accepted for the simple reason that the 4th respondent was already promoted to the post of Materials Manager for the panel year 2013-2014 who is admittedly junior to the petitioner.



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8. In the circumstances, this Court has no hesitation to come to the conclusion that the petitioner was deprived of his promotion to the post of Materials Manager in an arbitrary manner. Accordingly, the writ petition is **allowed** directing the respondents to extend the benefit of promotion to the petitioner to the post of Materials Manager on par with the 4th respondent from the panel year 2013-2014 and extend all the consequential benefit to the petitioner as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Speaking Order : Yes/No



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