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W.P.No.11722 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.11722 of 2020
W.M.P.No.14412 of 2020

M.Sakthivel

...Petitioner

-Vs-

1. The Principal Secretary to Government,
Home (Transport II) Department,
Fort St. George, Chennai – 9.

2. The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai – 5.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the claim of the petitioner for promotion as Motor Vehicle Inspector (NT) by including his name in the panel for the year 2016-17 and grant him all consequential service and monetary benefits at par with his juniors and grant him such other further relief.

For Petitioner	: Mr.K.Venkataramani Senior Counsel For Mr.M.Muthappan
For Respondents	: Mr.V.Manoharan Additional Government Pleader



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ORDER

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The writ petition has been filed for direction directing the respondents to consider the claim of the petitioner for promotion to the post of Motor Vehicle Inspector (NT) by including his name in the panel for the year 2016-17 and grant him all consequential service and monetary benefits.

2. The petitioner was recruited and appointed as Junior Assistant by the Tamilnadu Public Service Commission in the Transport Department on 27.03.1995. Thereafter, he was promoted to the post of Assistant on 20.08.2004. Further he was promoted to the post of Superintend and he qualified to the post of Motor Vehicle Inspector(NT) in the panel of the year 2016-17. However, the petitioner name was not included and deferred on the ground that he was facing a disciplinary proceeding. The crucial date for the preparation of the panel for promotion is 15.03.2016. However the panel was published on 01.09.2016 and there was no disciplinary proceeding pending as against the petitioner, on the crucial date i.e., on 15.03.2016. For subsequent years also his name was deferred on the ground another disciplinary proceeding was pending.



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3. The charge as against the petitioner is that while he was serving as Assistant in the Regional Transport Office, Madurai (South), in the year 2008, he retained five registration certificates of five Mini buses without handing over them to the respective owners immediately on payment of tax. On enquiry, the Enquiry Officer found that the charges were not proved and the order has been issued in G.O.(2D)No. 351 Home (Transport II) Department dated 29.11.2017, thereby dropping further action on the charges issued to the petitioner and the disciplinary proceeding was concluded on 29.11.2017. Only because of the said disciplinary proceeding the petitioner name was deferred for inclusion in the panel for the year 2016 to 2017.

4. Further another set of charges made under section 17(B) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, served on the petitioner on 21.09.2016. Therefore the petitioner name was once deferred and not included in the panel for promotion to the post of Motor Vehicle Inspector(NT). In the second set of charge memo, an enquiry was conducted and the petitioner was imposed punishment of stoppage of increment for a period of one year without cumulative effect by an



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order dated 08.06.2018 passed by the second respondent. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and the confirmed the order of punishment imposed by the second respondent. In the currency of the punishment, the name of the petitioner was deferred in the subsequent panels for the year 2017-18 2018-19. It was challenged before this Court in W.P.No.18002 of 2019 and this Court by an order dated 31.01.2020 quashed the punishment. In view of the above order passed by this Court, the petitioner made a request to grant promotion to the post of Motor Vehicle Inspector (NT) for the panel year 2016-17. In view of the order of punishment was set aside by this Court, the petitioner is entitled for promotion in the panel for the year 2016 - 2017 to the post of Motor Vehicle Inspector (NT).

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the counter filed by the first respondent and on the submission made by the learned Additional Government Pleader appearing for the respondents revealed that while pendency of the



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charge, the name of the petitioner was deferred for promotion to the next higher post viz., Motor Vehicle Inspector (NT) for the panel year 2016-2017. The order of punishment was set aside by this Court only on 31.01.2020 in W.P.No.18002 of 2019. Further, the respondents preferred an appeal as against the order passed by the learned Single Judge of this Court and it is pending.

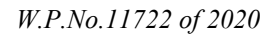
7. As per the Schedule XI of Part A of II in (9) of the Tamilnadu Government Servants (Conditions of Service) Act, 2016, the name of the Government Servant shall be deferred from the inclusion of the panel and the government servant shall not be promoted if there is any currency of punishment is live. Admittedly, the curcial date for preparation of panel for promotion is 15.03.2016. However, no panel was prepared for promotion to the post of Motor Vehicle Inspector (NT) for the year 2016-2017, as on 15.03.2016. The panel was prepared only on 01.09.2016. On that day, a charge was pending as against the petitioner and as such, the petitioner's name was not included in the panel. Now the punishment itself is set aside by this Court. Therefore, once the government servant exonerated from the charges, the claim of the



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government servant should be considered retrospectively and the government servant should be given promotion on par with his juniors with all consequential service and monetary benefits.

8. In fact, the second set of charge memo served on the petitioner only on 21.09.2016. The first set of charge memo dated 25.02.2013 was not proved and the petitioner was exonerated from the said charge. Therefore, there is no impediment in promoting the petitioner to the post of Motor Vehicle Inspector (NT) for the panel year 2016-2017. Further the Hon'ble Supreme Court of India in the case of ***Delhi Jal Board Vs. Mahinder Singh*** reported in (2000) 7 SCC 210 held that once a person's claim has been deferred based on a pending disciplinary proceedings, as if he is subsequently exonerated, merely because another charge memo came to be issued on that date, cannot be a ground to defer the claim of such individual for the previous panel year in which he has become eligible. Therefore, the claim of the petitioner for promotion to the post of Motor Vehicle Inspector (NT) for the year 2016-2017 should have been considered by the respondents.



10. With the above directions, the Writ Petition stands allowed.

01.10.2024

To

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2. The Principal Secretary/
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Chepauk, Chennai – 5.



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G.K.ILANTHIRAIYAN. J.

rts

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