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W.P.No.16886



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.16886 of 2020

and

W.M.P.Nos.20950 and 20951 of 2020

N.Rajani

... Petitioner

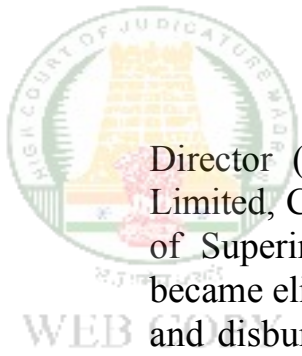
Vs.

1. The Chairman and Managing Director (Appellate Authority),
Tamil Nadu State Transport Corporation (CBE) Limited,
Coimbatore Region, Coimbatore – 43.

2. The General Manager (Disciplinary Authority),
Tamil Nadu State Transport Corporation (CBE) Limited,
Coimbatore Region, Coimbatore – 43.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing No. G3/ ONa. P/TNSTC/ 19 dated 29.11.2019 issued by the 1st respondent herein namely the Chairman and Managing Director (Appellate Authority) Tamil Nadu State Transport Corporation (CBE) Limited, Coimbatore quash the same as non- est in the eye of law and also the impugned order bearing No.1/G3/1978/TNSTC/13 dated 19.05.2018 issued by the General Manager (Disciplinary Authority), Tamil Nadu State Transport Corporation (CBE) Limited, Coimbatore, quash the same as non-est in the eye of law and to consequently direct the 1st respondent herein namely the Chairman and Managing Director (Appellate Authority) Tamil Nadu State Transport Corporation (CBE) Limited, Coimbatore Region, Coimbatore – 43, to include her name in the senior list dated 30.04.2013 of the Selection Grade Senior Assistants fit for promotion to the post of Superintendent as Sl.No.9 in between Lawrence (F-014965) and Mahalakshmi (K-014914) and to consequently direct the 1st respondent herein namely the Chairman and Managing



Director (Appellate Authority) Tamil Nadu State Transport Corporation (CBE) Limited, Coimbatore Region, Coimbatore – 43, to promote the petitioner to the post of Superintendent from 30.04.2013 onwards the date on which the petitioner became eligible and due for promotion to the above said post and to arrange to draw and disburse the pay, arrears of pay and resultant service, monetary and attendant benefits attached to the above said post of Superintendent.

For Petitioner : Mr.K.S.Govinda Prasad
For Respondents : Mr.A.Sundaravadhanan

ORDER

The petitioner herein, while challenging the proceedings bearing No.1/G3/1978/TNSTC/2013 dated 19.05.2018 issued by the Respondent No.2 and the orders bearing No.G3/ONa.P/TNSTC/19 dated 29.11.2019 issued by the Respondent No.1, rejecting the appeal on the ground of limitation and also sought for a consequential relief for promotion to the post of 'Superintendent' by duly including her name in the list of candidates eligible for promotion to the post of 'Superintendent' at Sl.No.9.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. The petitioner was initially appointed as 'Junior Assistant' on 09.06.1987 and thereafter, her services were regularized on 01.10.1988. The petitioner was promoted to the post of 'Selection Grade Senior Assistant', while she was working at Ukkadam-II Branch of the respondent Corporation. While so, the petitioner became



eligible for promotion to the post of 'Superintendent' during the panel year 2013-2014, for which the crucial date was 30.04.2013. Accordingly, a list of candidates eligible for promotion to the post of 'Superintendent' was prepared in the month of May, 2013. But according to petitioner, her name was not included in the said list and therefore, she approached the respondents by submitting a representation dated 04.06.2013. In the meanwhile, the petitioner was served a charge-memo, dated 13.05.2013 on 28.05.2013 and disciplinary proceedings were initiated against the petitioner. Thereafter, after having conducted an enquiry into the matter, the said disciplinary proceedings ended in imposing the punishment of *“stoppage of increment for a period of two years without cumulative effect with a further direction to the petitioner to be careful in her work in future”* through the impugned proceedings dated 19.05.2018. Aggrieved by the said order of punishment dated 19.05.2018, the petitioner filed an appeal before the Respondent No.1, but the said appeal was rejected by the Respondent No.1 by an order dated 29.11.2019, on the ground that the same was filed beyond the period of limitation.

3. According to learned counsel for the petitioner, as on the crucial date i.e., 30.04.2013, there was no charge that is pending against the petitioner and therefore, her name ought to have been included in the list of candidates eligible for promotion to the post of 'Superintendent' for the panel year 2013-2015, but erroneously her

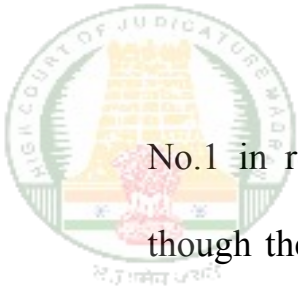


name was omitted to be included on the ground that, at a later point of time, a charge-memo was issued and disciplinary proceedings are initiated.

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4. In response to the notice issued by this Court, the Respondent No.2 filed a counter-affidavit contending that the name of the petitioner was infact duly included in the list of eligible candidates for promotion to the post of 'Superintendent' at Sl.No.9, but her case was not considered for promotion, as the disciplinary proceedings were pending against the petitioner. At the instance of this Court, the learned counsel appearing for the respondents also placed before this Court the said list of eligible candidates and the name of the petitioner herein was found at Sl.No.9, but in the remarks column, it is mentioned that a case is pending against the petitioner on the ground of negligence of work. Further, in the counter-affidavit, it is also stated that the petitioner has suffered as many as 34 minor punishments at different occasions during the period from 2013-2022, in addition to the punishment, which is the subject matter of this writ petition.

5. Though a reply affidavit is filed in support of the contents of the counter-affidavit, the petitioner has not denied of having suffered punishments on 34 occasions, as narrated in the counter-affidavit. Though an elaborate affidavit is filed in support of the writ petition, while challenging the impugned proceedings, the contest is mainly against the orders dated 29.11.2019 passed by the Respondent



No.1 in rejecting the appeal filed by the petitioner on the ground of limitation, though the petitioner has explained the reasons for delay sufficiently in the appeal filed by the petitioner. The stand of the respondent Corporation that the case of the petitioner was not considered for promotion as the disciplinary proceedings were pending and the petitioner has suffered various punishments is concerned, the same does not appear to be in conformity with the service regulations governing the promotions.

6. The Regulation 60(a) of the Regulations reads as under:-

“60. Promotions to posts in the Supervisory Groups and Managerial Cadre.

(a) Promotions to any category of post in the Managerial cadre or a supervisory group shall be with reference to availability of vacancies and based on merit, ability and regularity of attendance, past performance and general suitability.

Note-1: Seniority will also be one of the factors to be taken into consideration, but not the only factor. There shall be no time based review in any category of post in the Supervisory Groups or Managerial Cadre.

Note-2: The competent authority should exercise



the discretion vested with it judiciously and it should not be guided merely by the number of punishment received by one individual, but should examine the lapses for which the punishment were imposed and then decide his fitness for promotion.”

7. From the above noted two paragraphs, in specific Note-2, it is evident that the competent authority is under obligation to exercise its discretion judiciously and it should not be guided merely by the number of punishments received by one individual, but should examine the lapses for which the punishments were imposed and then decide the fitness of a candidate for promotion. But, in the instant case, though the petitioner is stated to have suffered number of punishments, the case of the petitioner was not at all considered for promotion to the post of 'Superintendent' on the ground that, she suffered various punishments and disciplinary proceedings are pending against the petitioner. Such an action of the respondent is contrary to Note-2 of Regulation 60(a) of the Service Regulations of the respondent Corporation. Therefore, to that extent, the action of the respondent is liable to be declared as illegal and arbitrary.

8. Then, coming to the aspect of rejecting the appeal filed by the petitioner on



the ground of limitation is concerned, a perusal of the said order dated 29.11.2019 indicates that the same is cryptic in nature. It is not as if the appellate authority shall not consider the appeal filed beyond the period of limitation. When the petitioner has made an attempt to explain the reasons for delay in the appeal filed by her against the proceedings, dated 19.05.2018, it is obligatory on the part of the Respondent No.1 to consider the said appeal as well as the reasons for the delay in filing the said appeal and then, on proper application of mind, is under obligation to pass orders consciously. But, in the instant case, the Respondent No.1 does not appear to have considered the reasons for delay explained by the petitioner, while filing the appeal and rejected the appeal by passing a cryptic order on the ground of limitation. Therefore, the said order, dated 29.11.2019 passed by the Respondent No.1 cannot be sustained under law.

9. Further, as rightly contended by learned counsel for the petitioner, the crucial date for promotion to the post of 'Superintendent' during the panel year 2013-2014 was 13.04.2013. Admittedly, there was neither any charge-memo nor there was any punishment that was suffered by the petitioner as on the crucial date. The eligibility or otherwise of the petitioner is to be considered with reference to the said crucial date alone, while preparing the panel for promotion to the post of 'Superintendent' for the panel year 2013-2014. Once the panel is prepared and the



name of the petitioner is included in the said panel by taking into consideration the crucial date and in case, if the turn of the petitioner comes before the initiation of disciplinary proceedings, the petitioner is entitled for such promotion.

10. In the instant case, the panel itself was prepared in the month of May, 2013 and by which date, admittedly a charge-memo was served on the petitioner and disciplinary proceedings were pending. In terms of Note-2 of Regulation 60(a) of the Service Regulations, the competent authority is under obligation to consider the claim of the petitioner for promotion irrespective of the pendency of the disciplinary proceedings or the punishment suffered by the petitioner.

11. In the light of the above, this Court is of the considered view that it would be appropriate to dispose of the writ petition by duly setting aside the order bearing No. /ஜி3/ஒநபி/தஅபோக/19 dated 29.11.2019 passed by the Respondent No.2 and remitting the matter back to the Respondent No.1 for re-considering the appeal filed by the petitioner on merits by duly taking into consideration the reasons furnished by the petitioner for filing the appeal belatedly and to pass orders thereon in accordance with law on merits. Further, the respondents are directed to consider the case of the petitioner for promotion to the post of 'Superintendent' by duly taking into consideration the Note-2 of Regulation 60(a) of the Service Regulations for the



panel year 2013-2014 or subsequent thereto and pass appropriate orders thereon and communicate the same to the petitioner. The orders, as directed above, shall be passed by the respective authorities as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition is disposed of. Consequently, the connected miscellaneous petitions, if any shall stand closed. No costs.

18.07.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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