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W.A.No.1100 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM :

THE HONOURABLE MR. R. MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1100 of 2024 &
C.M.P.No.7906 of 2024

1.The Chairman,
Tamil Nadu State Transport Corporation,
Secretariat,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-1) Ltd.,
Head Office, No.82, Mettupalayam Road,
Coimbatore - 641 043.

... Appellants

Vs.

1.R.Poornachandran

2.The State of Tamil Nadu
Rep. by its Secretary to Government,
Transport Department,
Secretariat, Fort St.George,
Chennai - 600 009.

3.The General Manager,
Tamil Nadu State Corporation,
(Coimbatore Division-1) Ltd.,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-1) Ltd.,
Ootacamund, The Nilgiris.



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4.The Divisional Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-1) Ltd.,
Ootacamund, The Nilgiris.

5.The Branch Manager,
Tamil Nad State Transport Corporation,
(Coimbatore Division-1) Ltd.,
Kotagiri Branch,
Kotagiri.

... Respondents

(R2 to R5 given up in the writ appeal)

Writ Appeal filed under Clause 15 of the Letters Patent, against the order of the learned Judge dated 24.03.2023 in W.P.No.28681 of 2015.

For Appellants : Mr.T.Chandrasekaran

For Respondent : Dr.R.Gowri for R1

J U D G M E N T

[Judgment of the Court was delivered by The Hon'ble Acting Chief Justice)

The second and third respondents in the writ petition have filed this intra-court appeal challenging the order dated 24.03.2023, passed by the learned judge in W.P.No.28681 of 2015, whereby the appellants were directed to promote the first respondent/writ petitioner to the post of Senior Assistant Engineer with effect from 02.09.2007, with all consequential benefits.



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2. The necessary facts leading to the filing of this appeal would run thus:-

2.1. The first respondent joined the services of the appellant-Corporation on 28.10.1993 as Junior Engineer (Trainee), and his services were regularized with effect from 02.09.1995. He was promoted to the post of Assistant Engineer on 01.05.2003 after he obtained Heavy Vehicle Driving Licence on 27.03.2003. The first respondent's case was that after completing 12 years of service in the cadres of Junior Engineer and Assistant Engineer, put together, he became eligible for promotion to the next higher post of Senior Assistant Engineer on 02.09.2007. However, the appellants rejected his claim *vide* order dated 13.03.2012. Aggrieved by the same, the first respondent filed writ petition in WP No. 28681 of 2015.

2.2. The learned Judge, *vide* order dated 24.03.2023 impugned herein, allowed the writ petition and directed the appellants to promote the first respondent to the post of Senior Assistant Engineer from 02.09.2007, with all consequential benefits. For better appreciation, the relevant portion of the said order is extracted hereunder:-

"11. The argument raised by the learned counsel for the respondents that petitioner's promotion was postponed for the reason that the petitioner did not submit Heavy Vehicle Driving Licence, cannot stand to reason since it is admitted by both sides that petitioner obtained Heavy Vehicle Licence on 27.03.2003 itself. Hence, as per the statutory requirement, the petitioner was in possession of Heavy Vehicle Driving Licence on 27.03.2003 itself and he was eligible for promotion to the post of Senior Assistant Engineer from 02.09.2007.



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12. The second limb of argument of the learned counsel for the respondents that cumulative service of 12 years as Junior Engineer and Assistant Engineer Post cannot be taken for the promotion also does not merit acceptance, since in the case of one Murugesan and Kurunthachalam, they have been given promotion by taking only their cumulative service of 12 years of period of service as Junior Engineer and Assistant Engineer and therefore, there cannot be any discriminatory treatment among the same cadre of personnel while giving promotions.

13. It is pointed out in the impugned order that punishments have been imposed during the service of the petitioner and therefore, he was not conferred promotional post. However, there is no averments in the counter filed by the 3rd respondent as to the charge memo issued against the petitioner, the enquiry conducted and the punishment imposed. Therefore, when the counter is silent with regard to charges and penalty, this court is not inclined to accept the reason adduced in the impugned order for denying promotion to the petitioner. Accordingly, the said argument raised by the learned counsel for the respondents also fails.

14. In respect of petitioner;s claim for promotion and the direction passed by this court vide order dated 01.11.2011 in W.P.Nos.25112 to 25115 of 2011, is concerned, the petitioner is entitled to time bound promotion to the post of Senior Assistant Engineer on 02.09.2007 itself. However, the 3rd respondent rejected the petitioner;s claim stating that from the 6th pay commission implementation, time bound promotion was abolished i.e., from 01.01.2008. It is admitted that the petitioner is entitled to promotion on 02.09.2007 itself. Therefore the reason put forth by the 3rd respondent is untenable. While taking into consideration the argument of the petitioner counsel that by proceedings dated 23.05.2012, the 3rd respondent conferred promotion to R.Selvamani and A.Muruganandam, but the petitioner has been discriminated for promotion, who is entitled for promotion to the post of Senior Assistant Engineer on 02.09.2007, appear to be sound.

15. Therefore, for the reasons stated above above, this court is of the considered view that the rejection of the claim of the petitioner for promotion is unjustified. The reasons stated in the impugned order has nothing to do with the next avenue of promotion to the post of Senior Assistant Engineer to which the petitioner is entitled to in all aspects. Accordingly, the impugned order dated 13.03.2012 is set aside. The 2nd and 3rd respondents are directed to pass necessary orders giving promotion to the petitioner to the post of Senior Assistant Engineer from 02.09.2007 with all consequential benefits.

16. This writ petition is allowed on the above terms. No costs. Consequently, M.P.No.2 of 2015 is closed."

Challenging the above order, the Transport Corporation has filed the present appeal.



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3. The learned counsel for the appellants contends that the first respondent joined the appellant-Corporation on 28.10.1993 as Junior Engineer (Trainee) and his services were regularized from 02.09.1995. The eligible date for promotion to the post of Assistant Engineer was 02.09.2001. Since he had not obtained a Heavy Vehicle driving licence, he was not considered for the said promotional post. After obtaining Driving Licence on 27.03.2003, he was promoted as Assistant Engineer on 01.05.2003. The learned counsel further submits that considering his promotion to the post of Assistant Engineer on 01.05.2003 with the time-bound interval of 6 years, the first respondent was eligible for promotion as Senior Assistant Engineer on 01.05.2009. However, unfortunately, the time-bound promotions were abolished by the Government vide G.O.Ms.No.142, Transport (C1) Department dated 21.08.2008. Therefore, after 21.08.2008, no time-bound promotions could be given. The learned counsel also contends that after the implementation of the 6th Pay Commission, the first respondent was granted a special increment in 2013 for completing 10 years of service in lieu of promotion. Therefore, according to the learned counsel, seeking promotion by citing an earlier G.O., which was no longer applicable, is untenable. Without considering all these facts, the learned Judge allowed the writ petition by the order impugned herein, which will have to be set aside.



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4. *Per contra*, the learned counsel appearing for the first respondent submits that the first respondent obtained Heavy Vehicle Driving Licence on 27.03.2003 and was consequently promoted to the post of Assistant Engineer on 01.05.2003. Therefore, as on the due date of 02.09.2007, he fulfilled the statutory criterion. The G.O. dated 21.08.2008 abolishing time-bound promotions, has no application to the first respondent's case, as his entitlement for promotion, fell due on a date prior to 02.09.2007. The learned counsel further submits that two persons viz., Murugesan and Kurunthachalam were promoted as Senior Assistant Engineers by considering their cumulative service period of 12 years as Junior Engineer and Assistant Engineer; however, the said benefit was denied to the first respondent herein. The learned Judge, upon proper appreciation of the facts and circumstances of the case, rightly allowed the writ petition. Thus, according to the learned counsel, the order of the learned Judge does not require any interference by this Court.

5. In reply, the learned counsel appearing for the appellants submit that the said Murugesan and Kurunthachalam joined as Junior Engineers in 1988 and were subsequently promoted as Senior Assistant Engineers based on their 12 years of cumulative service in the cadres of Junior Engineer and Assistant



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Engineer. However, the first respondent joined the service in the year 1993, and hence, he cannot claim parity with them. Furthermore, the first respondent did not have the requisite qualification for promotion from Junior Engineer to Assistant Engineer, i.e., Heavy Vehicle Driving Licence. However, the learned Judge erred in held that the first respondent had the Heavy Vehicle Driving Licence on 27.03.2003 and he had the requisite qualification for the post of Senior Assistant Engineer. However, the fact remains that the Heavy Vehicle Driving Licence is required for the post of Assistant Engineer itself. Hence, the learned counsel prays to allow this appeal by setting aside the order impugned herein.

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is an undisputed fact that the first respondent joined the services of the appellant-Corporation on 28.10.1993 as Junior Engineer (Trainee) and his services were regularized with effect from 02.09.1995. The main contention of the learned counsel for the appellants is that the eligible date for promotion from the post of Junior Engineer to Assistant Engineer was 02.09.2001. However, as the first respondent did not obtain Heavy Vehicle Driving Licence as per the CSR condition, he was not considered for promotion to the post of Assistant Engineer on that date. After the first respondent obtained the Heavy Vehicle Driving Licence on 27.03.2003, he was promoted as Assistant Engineer on 01.05.2003. With the time-bound interval of six years, he became eligible for promotion to



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Senior Assistant Engineer only on 01.05.2009. However, the time-bound promotion scheme was stopped from 21.08.2008 *vide* G.O.Ms.No.142 and hence, the name of the first respondent was not considered for promotion.

8. However, this court is not inclined to accept the contentions so raised on the side of the appellants. On a perusal of G.O.(Ms)No.13, dated 14.01.2000, it is seen that Assistant Engineers who have completed six years of service or Junior Engineers who have completed twelve years of service, are entitled to promotions as Senior Assistant Engineer under the time-bound promotion scheme. For better understanding, the relevant portion of the said G.O. is reproduced below:-

".....

(6) That taking into consideration of the backlog in the promotion of Junior Engineers and Assistant Engineers, working in the State Transport corporations Government hereby issues order to the effect that in the promotion of Junior Engineers and Assistant Engineers, the scheme for giving time bound promotions may be implemented as follows:-

1	For Junior Engineers who have completed 6 years of service	Assistant Engineers (pay scale 5000-150-8000)
2	For Assistant Engineers who have completed 6 years of service (or) for Junior Engineers who completed 12 years of service.	Senior Assistant Engineers (Pay Scales 5900-200-9000)
3	For Senior Assistant Engineers who have completed 10 years of service (or) Assistant Engineers who completed 16 years of service (or) Junior Engineers who completed 22 years of service.	Selection Grade Senior Assistant Engineer (Pay Scale 8000-275-13,500)

Thus, it is clear that a Junior Engineer, who completes twelve years of service, or



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an Assistant Engineer who completes six years of service, is eligible to be promoted to the post of Senior Assistant Engineer. Hence, the contention of the appellants that since the first respondent was promoted to the post of Assistant Engineer in 2003, after he obtained Heavy Vehicle Driving Licence, and that his further promotion to the post of Senior Assistant Engineer would come only in 2009, is not sustainable. It is further clear from the said G.O., that a Junior Engineer who has completed twelve years of service, or an Assistant Engineer who has completed six years of service, is eligible to be promoted to the post of Senior Assistant Engineer. In this case, as stated above, the first respondent was regularized on 02.09.1995 and after completion of twelve years of service, he is entitled is entitled to be promoted to the post of Senior Assistant Engineer, viz., in the year 2007. However, he was not given promotion within the time. In the meantime, in the year 2008, the time-bound promotion scheme was abolished, due to which, the first respondent should not be penalized. As the first respondent became due for promotion on an anterior date viz., 02.09.2007 itself under the then-existing policy, the subsequent change cannot be applied retrospectively to deprive his vested right of promotion.

9. It is also to be noted that the appellants promoted two other employees viz., R.Selvamani and A.Muruganantham to the post of Senior Assistant Engineers



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on 23.05.2012 after considering their combined service of 12 years in junior/senior level cadres. The same yardstick should have been applied to the case of the first respondent, who became eligible for such promotion on the earlier date of 02.09.2007 itself. Further, there is no concrete material produced on the side of the appellants to prove that the first respondent is not in the same footing of the similarly placed persons. Considering all these aspects, the learned Judge rightly allowed the writ petition filed by the first respondent, by the order impugned herein. This court finds no reason much less plausible reason to interfere with the same.

10. Finding no merit, the writ appeal deserves to be dismissed and is accordingly, dismissed. No costs.

[R.M.D., A.C.J.] [M.S.Q, J.]
12.07.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

1.The Chairman,
Tamil Nadu State Transport Corporation,
Secretariat,

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<https://www.mhc.tn.gov.in/judis>



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Chennai - 600 009.

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2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-1) Ltd.,
Head Office, No.82, Mettupalayam Road,
Coimbatore - 641 043.



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THE HON'BLE ACTING CHIEF JUSTICE
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MOHAMMED SHAFFIQ, J.

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