



W.A.No. 2537 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.01.2023	Delivered on 31.01.2023
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2357 of 2019
and CMP Nos.15581 and 22568 of 2019

1. Tamil Nadu Generation and
Distribution Corporation Limited,
Rep. By its Chairman-cum-Managing Director,
NPKRR Maaligai, 144 Anna Salai,
Chennai 600 002.
2. The Chief Engineer/ Personnel
Tamil Nadu Generation and
Distribution Corporation Limited,
NPKRR Maaligai, 144 Anna Salai,
Chennai 600 002.
3. The Superintending Engineer
Chennai Electricity Distribution Circle/West
Tamil Nadu Generation and
Distribution Corporation Limited,
Thirumangalam, Chennai 600 040. . Appellants/ Respondents 1 to 3

Vs.

1. P. GIRISH

1/23



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- 2 S. ELAMBARUTHI
- 3 P.KRISHNAMURTHY
- 4 C.MAHALINGAM
- 5 M. AMBROSE
- 6 N.SUBRAMANI
- 7 M.SANKAR
- 8 STEPHEN GNANADAS
- 9 JAIKISHAN
- 10 J. ANTONY DOSS
- 11 P.S.PARTHASARATHI
- 12 R. RAVISHANKAR
- 13 N. ALAGARSAMY
- 14 R.JAYASANKAR
- 15 L.RAVIKUMAR
- 16 M.SRINIVASAN
- 17 A. SELVARAJ
- 18 K. RAVICHANDRAN
- 19 P.SEETHAPATHY

... Respondents 1 to 10/Petitioners



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20 M.KARUNAMOORTHY

21 J. BASKARAN

22 M. VEDACHALAM

23 S. SELVARAJ

24 S. DEVADASAN

25 S.GOWRIPATHY

26 P. DESALU

27 N.ACHUTHAN

28 S. SUBRAMANI

29 P. SANKAR

30 K.VAIDHIYANATHAN

31 S. MANOHARAN

32 M. PONNUSAMY

33 M.KALAIVANAN

.. Respondents 11 to 33/
Respondents 4 to 26

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 22.03.2018 passed in W.P. No.16603 of 2011.

For Appellants : Mr.Anand Gopalan



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for M/s.T.S.Gopalan and Co.

For Respondents : Mr. N.G.R.Prasad
Assisted by Mr.K.Srinivasamurthy
for M/s.Row & Reddy,
for RR 1 to 10

No appearance – served
for RR14, 16, 20 to 22, 28, 30, 31 & 32

Refused – for RR11, 13 & 25

Unclaimed – for R15

No such person – RR 12, 17 to 19

No such address – RR 24 & 26

Left – RR 23, 27, 29 & 33

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this Intra Court Appeal is to the order of the Writ Court dated 22.03.2018 made in WP No.16603 of 2011 granting the prayer for Certiorarified Mandamus, to call for the records from the third respondent relating to the seniority list dated 06.02.2010 in Memo No.82/ADM.III/AI/F quash the same and to refix the seniority of the petitioners and respondents 4



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to 26 by operating the Single Channel Promotion System as provided for in

BP No.106 dated 09.04.1996. A prayer for grant of consequential benefits and promotions was also sought for.

2. At the outset we wish to point out that the material available on record in this proceeding and the earlier connected proceedings demonstrates the casual and cavalier manner in which the proceedings have been conducted by the counsel for the parties. Originally the then Tamil Nadu Electricity Board was following a Dual Channel Promotion System by which persons who are appointed to the posts of Helpers were given an option to choose either the Technical Line or the Commercial Line for promotion. A Helper, who chooses the Technical Line, will be promoted as Wireman (Lineman) – Line Inspector – Foreman Grade I – Special Grade Foreman and upwards. A Helper, who chooses the Commercial Line will be promoted as a Commercial Assistant – Commercial Inspector – Foreman Grade I – Special Grade Foreman, etc.

3. This practice was pursuant to the settlement entered into between



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the Board and its employees during the year 1980. Since the number of posts in the Technical Line were more, the Helpers who opted for the technical line were promoted on a fast track basis than the Helpers who had opted for the commercial line, this led to several representations being made by various Trade Unions for a relook into the policy and there were also certain litigation regarding the promotions effected. The Writ Court dismissed the two Writ Petitions in WP Nos.718 and 1136 of 1990 negating the prayer for promotion made by the Helpers, who had chosen the commercial line. The said judgment of the Writ Court dated 06.01.1992 was appealed against in WA Nos.176 and 177 of 1992. Pending the above Writ Appeals, the Board issued BP No. 106 dated 09.04.1996 reverting to the Single Channel Promotion.

4. The said Board proceeding dated 09.04.1996 was challenged in WP No.15168 of 1996 by the Trade Union and the said proceeding was stayed pending disposal of the said Writ Petition. When Writ Appeals in WA Nos.176 and 177 of 1992 came up before the Division Bench of this Court on 15.10.1998, it appears that a representation was made before the Division Bench that in view of BP No. 106 dated 09.04.1996, the Board having



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resorted to the Single Channel Promotion, the grievance of the petitioners/appellants stood vindicated and therefore nothing remains to be adjudicated upon. Recording the statement of the counsel appearing for the parties, the Division Bench disposed of those Appeals.

5. Subsequently, when the Writ Petition challenging BP No. 106 dated 09.04.1996 came up for hearing before the Writ Court on 22.09.2004, surprisingly, a representation was made before the Writ Court that BP No. 106 dated 09.04.1996 was upheld by the Division Bench in ***K.Vijayan and others v. Tamil Nadu Electricity Board and others*** made in Writ Appeal Nos.176 and 177 of 1992. We deem it fit to extract the relevant portion of the orders of the Division Bench in WA Nos.176 & 177 of 1992 which reads as follows:

“8. In that view of the matter, the impugned proceedings would definitely affect the seniority list, since the appellants as well as the other Assistant Commercial Inspectors were appointed on the same day by Memo dated 13.11.1980. Therefore, there is no difficulty in coming to the conclusion that the appellants had genuine grievance, in view of the impugned Board Proceedings of the respondent Board issued in B.P. Ms. (CH) No. 66, Administrative



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Branch, dated 1.2.1986.

9. At the end of the arguments, the learned Advocate General has brought to our notice that a fresh Board Proceedings in B.P. No. 106, dated 9.4.1996 has been issued clubbing both the categories for promotion chances by which the grievance of the appellants has been redressed. The relevant portions in the said proceedings are as follows:-

“3. After careful consideration of the above demand of the unions and taking into account of the views expressed by them during negotiation, the Board hereby orders:—

(i) on and from the date of issue of this order, the line of promotion among the R.W.E. categories in Distribution Circles will be Helper-Wireman (and/or equivalent categories)/Commercial Assistant-Lineman (and/or equivalent categories)-Line Inspector/Commercial Inspector-Foreman I Grade. Consequent on the re-introduction of single channel of promotion ordered, there will be no change in the existing condition/qualification prescribed in the Service Regulations for promotion to the higher post;

(ii) Clubbing the category of Commercial Assistant and Commercial Inspector in the existing seniority of Wireman/Line Inspector the inter se seniority among the



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categories of employees may be fixed on the basis of then seniority in the category of Wireman so as not to affect the chances of promotion of some of the Wireman who are seniors to the Commercial Assistants while they were in the category of Wireman.”

10. We are informed that now the petitioners are already promoted, and in view of the Board Proceedings in B.P. No. 106, dated 9.4.1996 there may not be any need to quash and the B.P. Ms. No. (CH) 66, Administrative Branch, dated 1.2.1986. The Board is now required to accord notional promotion to the petitioners from the date they were entitled, and the seniority is to be re-fixed. All the parties likely to be affected by re-fixation of seniority are not before this Court. We think it is appropriate to direct the Board to hear all the parties concerned, and fix the inter se seniority between the petitioners and the persons who are likely to be affected. In the result, the writ appeals are ordered accordingly. No costs.

The above extract would show that the validity or otherwise of BP No. 106 dated 09.04.1996 was not the subject matter before the Division Bench in Writ Appeal Nos.176 and 177 of 1992, because of this erroneous



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representation made to the Writ Court in WP No.15168 of 1996 on 22.09.2004, the present litigation has cropped up.

6. In view of the fact that the operation of BP No. 106 dated 09.04.1996 was stayed by this Court in WP No.15168 of 1996, the Board continued to implement the Dual Channel Promotion Policy. It however took care to mention in the orders of promotion issued during the pendency of WP No.15168 of 1996 and even after its disposal that those promotions would be subject to the result of WP No.15168 of 1996. This mistake again contributed to the petitioners raising the issue of promotion after a gap of at least four years which the Writ Court had condoned because of the orders issued by the Board stating that the promotions would be subject to the result of WP No.15168 of 1996 even after its disposal.

7. After the disposal of the Writ Petition in WP No.15168 of 1996, the Board entered into an another Settlement under Section 12(3) of the Industrial Disputes Act, with majority of the Trade Unions representing the employees of the Board on 15.10.2005, wherein it was agreed that the Dual Channel Promotion will be restored. The relevant portion of the settlement



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entered into under Section 12(3) of the Industrial Disputes Act, which relates to promotion reads as follows:

“Based on the request of the Unions, it is agreed to reintroduce the double channel of promotion in the Regular Work Establishment category. The existing employees may be given one more opportunity to go either to choose the line of promotion as Commercial Assistant, Commercial Inspector and Foreman (or) Wireman, Line Inspector and Foreman, based on their seniority in the category of Helper.”

Pursuant to this settlement, the Board issued another proceeding in BP No.256 dated 12.12.2005 and Clause (iv) of the said Board proceedings which relates to promotion reads as follows:

(iv) நடைமுறையிலுள்ள பொதுப் பணிமூப்பிலிருந்து வணிக உதவியாளர் / வணிக ஆய்வாளர் மற்றும் கம்பியாளர் / மின்பாதை ஆய்வாளர் ஆகிய வகைகளின் தொடர்பால் ஏற்பட்ட பிரிவினையின் விளைவாக, கம்பியாளர், வணிக உதவியாளர், வணிக ஆய்வாளர் மற்றும் மின்பாதை ஆய்வாளர் ஆகியோர்களின் பணி மூப்பினை தற்போதுள்ள வகையில் அவர்களுடைய பணி மூப்பின்



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அடிப்படையில் கள உதவியாளர் பதவியில் அதே தேர்ந்த பெயர்ப் பட்டியலில் நபர்களுக்கிடையே எந்த ஒரு தனிநபர் முதலிலேயே பதவி பெற்றாரோ அதன் பொருட்டு அவருக்கு மறுபொருத்தம் செய்யப்படும். ஆயினும், முணிமூப்பு திருத்தியமைப்பதன் விளைவாக ஏற்கெனவே புறக்கணிக்கப்பட்ட நபர்கள் உத்தேசமில்லாப் பயன்கள் ஏதும் அடையமாட்டார்கள் என்பதை உறுதி செய்ய வேண்டும்.

8. We must point out, at this juncture, that neither Settlement entered into under Section 12(3) dated 15.10.2005 nor the Board proceeding in BP No.256 dated 12.12.2005 were brought to the knowledge of the Writ Court when the Writ Petition in WP No.16603 of 2011 (subject matter of this Appeal) was heard by the Writ Court, this again is a contribution of the bar to the confusion. The petitioners, joined as helpers and they chose the commercial line for promotion and respondents 4 to 26 in the Writ Petition chose the technical line for promotion. The petitioners were promoted as Commercial Assistants from the post of Helpers, prior to respondents 4 to 26, therefore they became seniors. However, while effecting the promotion from the post of Wireman and Commercial Assistant to the post of Line Inspector and Commercial Inspector, the respondents 4 to 26 were promoted as line



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inspectors on 25.05.1998 and the petitioners were promoted as Commercial Inspectors on 30.12.1999. The petitioners did not choose to question this promotion as WP No.15168 of 1996 was pending and BP No. 106 dated 09.04.1996 which provide for Single Channel Promotion was stayed by this Court.

9. After the dismissal of WP No.15168 of 1996, the petitioners moved the Authorities seeking a reconsideration claiming that, since BP No. 106 dated 09.04.1996 has been upheld by this Court, the seniority between 09.04.1996 and 12.12.2005, date of issuance of BP No.256 providing for Dual Channel Promotion, should be as per BP No. 106 dated 09.04.1996 i.e. Single Channel Promotion. In essence the contention of the petitioners was that they should be promoted ahead of respondents 4 to 26 or at least on the date on which respondents 4 to 26 were promoted as Line Inspectors i.e. 25.05.1998.

10. This claim was resisted by the Board contending that the Writ Petition has to be dismissed on the ground of delay and laches, though BP No.256 was introduced in the year 2005, the petitioners did not choose to



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challenge the same and therefore, they cannot contend that they were unaware of the proceedings and approach this Court after the publication of the Seniority List for the next higher post viz. Foreman Grade I. On behalf of the petitioners it was contended before the Writ Court that since orders of promotion issued even after the disposal of WP No.15168 of 1996 and issuance of BP No.256 dated 12.12.2005 were made subject to the result of WP No.15168 of 1996 they were under the impression that the said Writ Petition was still pending and only when the seniority list was published in the year 2010 did they realise that the Writ Petition challenging BP No. 106 dated 09.04.1996 was dismissed as early as on 22.09.2004.

11. This explanation of the petitioners has been accepted by the Writ Court. Even though Mr.Anand Gopalan, learned counsel appearing for the appellants/Corporation would contend that the explanation is far from convincing and the Writ Court ought not to have accepted it, we find that the Writ Court was justified in accepting the reasons assigned by the petitioners for the delay in filing the Writ Petition. The facts that are not in dispute would demonstrate that the Board as well as its successor, the Appellants Corporation, had been issuing promotion orders citing the pendency of WP



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15168 of 1996, even after it came to be disposed of thereby making the employees believe that the said Writ Petition is still pending. Therefore, we are unable to fault the Writ Court for having accepted the explanation offered by the employees. Acceptance of reasons for delay and laches is a discretion exercised by the Writ Court. Unless there are compelling reasons or unless it is shown that the Writ Court had not taken into account the factual matrix, we do not think we can interfere with the said exercise of discretion by the Writ Court.

12. Turning to the merits, the primary question that has to be addressed is, as to whether, the respondents 1 to 10 in this Writ Appeal are justified in their claim that the Corporation ought to have followed BP No.106 dated 09.04.1996 till such time the Dual Channel Promotion was reintroduced by BP No.256 dated 12.12.2005, since BP 106 was upheld by this Court. It should also be pointed out that the Corporation issued BP No.2 on 19.01.1998 resolving to follow the Dual Channel Promotion but the same came to be withdrawn by the Corporation by another Board proceeding bearing BP No.27 dated 22.06.1999. While the Corporation has justified in its contention that because of the stay granted in WP No.15168 of 1996, the



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Single Channel Promotion was never implemented, it cannot be heard to contend that even after the dismissal of WP 15168 of 1996 by this Court, it would not implement the Single Channel Promotion, since it had subsequently decided to reintroduce the Dual Channel Promotion by issuing BP No.256 dated 12.12.2005

13. The main contention of the learned counsel appearing for the Corporation is that in view of the settlement reached under Section 12(3) of the Industrial Disputes Act, on 15.10.2005 the Corporation need not implement the Single Channel Promotion for the interregnum period i.e. between 09.04.1996 and 12.12.2005. This is a completely new submission which was not raised before the Writ Court, there is also no reference to the settlement or BP No.256 in the order of the Writ Court. This again is the contribution of the bar.

14. We have extracted the relevant portions of the settlement as well as the Board proceeding in BP No.256 supra. The settlement states that it has been agreed upon to reintroduce Dual Channel Promotion and the



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language of BP No.256 extracted above would also show that Dual Channel Promotion is reintroduced on and from 12-12-2005. Therefore, between 09.04.1996 and 12.12.2005, the Board ought to have implemented the Single Channel Promotion as provided for under BP No. 106. The fact that it did not do so because of the interim orders of stay that was in force in WP No.15168 of 1996 would not aid the Corporation to deny the benefit of the employees even after the dismissal of the Writ Petition.

15. Once the Writ Petition in WP No.15168 of 1996 is dismissed, the stay granted would stand effaced and BP No.106 dated 09.04.1996 would come alive and it has to be operated/implemented till such time BP No.256 was introduced. The Writ Court has held that the natural corollary of dismissal of WP No.15168 of 1996 would be restoration of *status quo ante* and the petitioners would be entitled to be promoted as per the Single Channel Promotion System provided under BP No. 106 dated 09.04.1996 till such time it was revisited by BP No.256 dated 12.12.2005. The judgment of the Hon'ble Supreme Court in ***S.B.Sarkar and Others v. Union of India and others***, reported in ***(1990) 3 SCC 168***, abundantly supports the contention of the petitioners. In fact BP No.256 dated 12.12.2005 was subject matter of



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challenge in WP Nos.17026 of 2006 and 7321 of 2007, wherein a Division

Bench of this Court had after referring to the judgment in ***S.B.Sarkar and***

Others v. Union of India and others, held as follows:

20. In the case on hand also, because of the impugned promotion system and in view of the admitted fact that the number of posts of wiremen are more than the number of posts of Commercial Assistant and the Helpers, who got promoted as wiremen earlier in their opted line, would now enjoy more advantage of the option and prefer the Commercial Assistant line to become Commercial Inspectors earlier, the above judgment of the Honourable Apex Court would squarely apply to the facts of the case on hand.

The petitioners have established and proved before us that clause (iv) of the impugned B.P.(Ch) No.256 (Administrative Branch) dated 12.12.2005, extracted above, is working much against their interest. Therefore, following the dictum laid down by the Honourable Apex Court in the above judgment, instead of quashing the impugned B.P.(Ch)No.256 (Administrative Branch), dated 12.12.2005, we order that the impugned promotion system should not be given effect to until the list of the petitioners is exhausted. With this direction, these writ petitions are disposed of. Consequently, all the connected Miscellaneous Petitions are



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closed. No costs.

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In view of the above categorical pronouncement of the Division Bench, we are clear in our mind that the Writ Court cannot be faulted for allowing the prayer of the petitioners to implement the Single Channel Promotion System as provided under BP No.106 during the period between 09.04.1996 and 12.12.2005.

16. The learned counsel appearing for the appellants Corporation would submit that under Section 12(3) of the Industrial Disputes Act settlement is binding on the workers and they cannot make a claim *dehors* the settlement. As we have already observed the Section 12(3) settlement only reintroduces the Dual Channel Promotion and till such time the settlement was given effect to by BP No.256, BP No.106 which is validly issued and upheld by this Court, will have to be implemented.

17. Another apprehension expressed by the learned counsel appearing for the appellants Corporation is that the seniority of the employees in the Regular Work Establishment is maintained circle wise and no other



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employee except respondents 1 to 10 in the Writ Appeal, who are working in the Chennai West Circle have challenged their respective seniority list and if we are to allow the claim of these 10 employees, it might result in stale claims being reenergised. This apprehension of the learned counsel can be addressed by observing that the benefits that flow from this order would be available only to the petitioners and not to the other employees who have not chosen to challenge the seniority list of the year 2010.

18. This fiasco would have been avoided if only the counsel had been cautious and have been little more responsible in placing the facts before the Court BP No.106 dated 09.04.1996 which was the subject matter of challenge in WP No.15168 of 1996 was never tested on merits because of a wrong assumption that it was upheld in ***K.Vijayan and others v. Tamil Nadu Electricity Board and others***'s case made in WA Nos. 176 and 177 of 1992. Be that as it may, we cannot now redeem the Appellants from the position in which it has brought to itself because of lack of proper instructions to its counsel. We hope that such instances are not repeated.

19. In fine, the Writ Appeal stands dismissed with a rider that



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benefits flowing out of the order of the Writ Court would be available only to the petitioners before the Writ Court and not to other employees. The parties are directed to bear their own costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (SATHI KUMAR SUKUMARA KURUP, J.)

31.01.2023

Index: Yes
Internet: Yes
Speaking Order
Neutral Citation: Yes
jv

To

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1. The Chairman-cum-Managing Director,
Tamil Nadu Generation and
Distribution Corporation Limited,
NPKRR Maaligai, 144 Anna Salai,
Chennai 600 002.
2. The Chief Engineer/ Personnel
Tamil Nadu Generation and
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R.SUBRAMANIAN, J.

and

SATHI KUMAR SUKUMARA KURUP, J.

(jv)

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