

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.3.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Appeal No.1593 of 2012
and
MP.No.1 of 2012

1. The Chairman, Tamil Nadu Electricity Board, X Floor, K.R.R.Maligai, No.800, Anna Salai, Chennai-2.
2. The Chief Engineer, Personnel Administrative Branch, Tamil Nadu Electricity Board, VIII Floor, K.R.R.Maligai, No.800, Anna Salai, Chennai-2.

...Appellants

Vs

I.K.Kanniappan

...Respondent

APPEAL under Clause XV of the Letters Patent against the order dated 14.9.2010 made in W.P.No.31217 of 2004.

W.P.No. 31217 of 2004:

Petition under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus to call for the records relating to the order in Letter No.141586/G31/G313/2002-2 dated 10.6.2003 and consequently order in Letter No.141586/G31/G312/2002-5 dated 21.6.2004 passed by the 2nd respondent and quash the same and consequently direct the respondents to revise and refix the pay and pensionary benefits of the petitioner in the scale of Rs.4575-6100 from 1.11.1994 and extend all benefits both arrears and prospective with eligible interest.

For Appellants : Mrs.R.Varalakshmi

For Respondent : Mr.M.Thamizhavel

Judgment was delivered by V.Ramasubramanian,J

This appeal is by the Tamilnadu Electricity Board challenging an order passed by a learned Judge in a writ petition filed by the respondent seeking re-fixation of pay and pensionary benefits.

2. Heard Mrs.R.Varalakshmi, learned Standing Counsel for the appellant Board and Mr.M.Thamizhavel, learned counsel appearing for the respondent.

3. The respondent herein was appointed as a Typist way back on 14.10.1958. He was appointed as a Junior Assistant (LDC) on 19.12.1960 and promoted as Assistant on 1.11.1961.

3. After re-organisation of the Accounts Wing and formation of Internal Audit Department, the respondent was posted as Auditor on 11.10.1977 at the Audit Branch. He underwent transfers to different places and became a Selection Grade Auditor on 6.10.1980. He was promoted as Assistant Audit Officer on 26.6.1989 and was later promoted as Assistant Administrative Officer on 8.1.1993. Subsequently, he was promoted as Administrative Officer on 21.5.1994 and he retired on 30.4.1995.

4. After his retirement, the respondent made a representation, seeking fixation of pay in the time scale of pay of Rs.4575-6000, with effect from 1.11.1994 on par with his junior S.Karunanidhi, who was working as Senior Personnel Officer at the time of retirement of the respondent. But, the said representation was turned down by the Chief Engineer (Personnel) by an order dated 10.6.2003. The rejection was also reiterated by another communication dated 21.6.2004. Aggrieved by the orders of rejection, the respondent filed a writ petition in W.P.No.31217 of 2004 on the file of this Court. The said writ petition was allowed by a learned Judge by an order dated 14.9.2010. It is against the said order that the Electricity Board has come up with the above appeal.

5. The primary contention of the respondent before the learned Single Judge was that his junior the said S.Karunanidhi, who was appointed as a Junior Assistant after the respondent's appointment, gained promotions to other posts in another Wing of the Department

and at the time of retirement of the respondent, he was drawing more pay than the respondent.

6. The fact that the said S.Karunanidhi was junior to the respondent was not only established, but also confirmed by a decision rendered by the Labour Court in an industrial dispute raised by the respondent. Therefore, the learned Judge found that the claim of the respondent for fixation of pay was justified.

7. However, the contention of Mrs.R.Varalakshmi, learned Standing Counsel for the appellant Board was that when both parties had taken two different streams, the respondent was not entitled to compare himself with the said S.Karunanidhi, who took another stream. Therefore, it is contended by the learned Standing Counsel for the appellant Board that the respondent was not entitled to seek pay fixation on par with the other person.

8. We have carefully considered the above submissions.

9. In a reply counter affidavit filed by the appellant Board, the appellant Board itself has given a tabulation of the service particulars of the respondent and the person with whom he is seeking a comparison. The said tabulation is as follows :

The petitioner Thiru I.K.Kanniappan, Administrative Officer (Retired)	Thiru S.Karunanidhi, SPO (Retired)
Appointment as Typist on 14.10.1958 FN	
Appointed as LDC (Junior Assistant) on 19.12.1960	Appointed as LDC (Junior Assistant) on 1.6.1959 F.N.
Promoted as Assistant on 1.11.1961	Promoted as UDC (Assistant) on 1.4.1963 FN
Assistant/Accounts wing on 6.10.1970	

WEB COPY

The petitioner Thiru I.K.Kanniappan, Administrative Officer (Retired)	Thiru S.Karunanidhi, SPO (Retired)
Consequent on the re-organisation of Accounts Wing and formation of Internal Audit Department - as Auditor on 11.10.1977 at Audit Branch Transferred to ETPs on 18.3.1978 Transferred to RPI/Madras on 3.11.1978 Transferred to Pre-Audit on 5.4.1979	Junior Superintendent on 4.10.1979 FN
Selection Grade Auditor on 6.10.1980	
Promoted as Assistant Audit Officer in IAD on 29.6.1989	Promoted as PA on 24.10.1979 FN at Thanjavur EDC Transferred to Gen. Circle/Kundah on 12.4.1984 FN Transferred to Adm. Branch on 29.5.1985 AN Selection Grade PA (Adm. Br.) on 14.1.1989 AN
Appointed as Assistant Administrative Officer on 8.1.1993 at GCC/Salem Transferred to Chengalpattu EDC on 4.10.1993 FN	
Promoted as Administrative Officer at CE/D/ Vellore on 21.5.1994	Promoted as Personnel Officer/Adm. Branch on 28.12.1992 AN
	Senior Personnel Officer/Adm. Branch on 31.10.1994 AN
Retired on 30.4.1995 AN as Adm. Officer	Retired on 30.9.1996 as Senior Personnel Officer

10. From the above tabular column, it is seen that upto one point of time, the cadre was common. Subsequently, the re-organisation took place and without knowing the consequences, people were sent to different streams. But, thereafter, admittedly, the respondent raised

an industrial dispute in I.D.No.48 of 1973 before the Industrial Tribunal, seeking a direction to consider his services as a Typist for promotion to the post of Assistant from 1961 and to fix his seniority over and above one Mr.Durai. The said Durai was even senior to the said S.Karunanidhi. The award passed by the Industrial Tribunal on 16.4.1974 was actually to the following effect :

"In the result, I hold that the demand of the union that the services put in by Thiru I.K. Kanniappan as a Typist should be taken into consideration for promotion of Assistant is justified and that his seniority is fixed just above Thiru K.Durai."

11. Following the award of the Tribunal, the respondent also filed a claim petition in C.P.No.534 of 1974. In the claim petition, the Labour Court passed an order, which came to be certified by the Government in terms of Section 33-C(1) of the Industrial Disputes Act, 1947 in G.O.RT.No.484 Labour and Employment Department dated 2.3.1977. Therefore, the question of seniority between the respondent herein and the said S.Karunanidhi got settled by an award passed by the Industrial Tribunal followed by the order passed in the claim petition by the Labour Court and as certified by the Government in terms of the provisions of the Act. While so, the claim of the respondent for parity of treatment, in so far as pay fixation is concerned, cannot be said to be unjustified.

12. Since the respondent was appointed as a Typist on 14.10.1958 and as Junior Assistant on 19.12.1960, he was originally treated as junior to the said S.Karunanidhi on the ground that the said S.Karunanidhi was appointed as Junior Assistant on 1.6.1959. But, this position was turned upside down by the award of the Industrial Tribunal in favour of the respondent.

13. As observed by the learned Judge in paragraph 3 of the judgment, after the re-organisation, seniority list had been prepared by the Board proceedings bearing No.19 dated 26.5.1995, in which, the date of option exercised by the respondent as per the Scheme of the Board was 23.8.1994. After the exercise of option, the original list was allowed to be retained, as seen from Paragraph 2. This Paragraph 2 of the Scheme was extracted by the learned Judge and it reads as follows :

"In pursuance of the above decision, it is hereby ordered that the Administration Officers in the present circle administration cadre, who originally belonged to the headquarters

administration cadre but remaining in the circle administration cadre because of their permanent absorption without option, be permitted to give an option if they so desire to come back to the headquarters cadre with their original lien. They should exercise their option before 15.9.1994. If no option is received within the time limit, it will be deemed that they opted to remain in the circle administration cadre itself. The option once exercised shall be final."

14. Therefore, it is very clear

(i) that the seniority of the respondent vis-a-vis the said S.Karunanidhi reached finality through court proceedings; and

(ii) that the original lien that the respondent had in the headquarters cadre was allowed to be retained by the Scheme floated in 1994.

Once these two facts are admitted, there is no way that the appellants could deny parity of treatment to the respondent on par with the said S.Karunanidhi.

15. Hence, we find no reason to interfere with the order of the learned Judge. Accordingly, the writ appeal is dismissed. No costs. Consequently, the above MP is also dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Chairman, Tamil Nadu Electricity Board, X Floor, K.R.R.Maligai, No.800, Anna Salai, Chennai-2.

2. The Chief Engineer, Personnel
Administrative Branch, Tamil Nadu
Electricity Board, VIII Floor,
K.R.R.Maligai,
No.800, Anna Salai,
Chennai-2.

1 CC to Mr.M.Thamizhavel, Advocate SR.No. 14547

WA.No.1593 of 2012

NM (CO)
PSI (24.03.2015)



WEB COPY