

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.7596 of 2008

S.Palaniappan

.. Petitioner

Versus

1. The Tamil Nadu Electricity Board,
Rep. by its Chairman,
No.800, Anna Salai,
Chennai - 600 002.
2. Superintending Engineer,
Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Udayapatti, K.N.Colony,
Salem - 14.03.2008
3. A.Periyannan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents 1 and 2 to promote him as Foreman Grade-I with effect from 30.03.1998, the date on which his junior A.Periannan, the 3rd respondent herein was promoted and pay him arrears thereof and consequently, promoting him to the post of Foreman Special Grade in the vacancy to be caused due to the retirement of M. Asokhan by fixing his seniority above the 3rd respondent.

For Petitioner	:	Mr. C.K. Chandrasekaran
For Respondents	:	Mr. P.R. Dilip Kumar for RR1 & 2 Mr. V. Ajay Ghose for R3

ORDER

This writ petition has been filed by the petitioner seeking for the issuance of a Writ of Mandamus to direct the respondents 1 and 2 to promote him as Foreman

Grade-I with effect from 30.03.1998, the date on which his junior A.Periannan, the 3rd respondent herein was promoted and pay him arrears thereof and consequently, promoting him to the post of Foreman Special Grade in the vacancy to be caused due to the retirement of M. Asokhan by fixing his seniority above the 3rd respondent.

2. The petitioner joined the respondent/Tamil Nadu Electricity Board on 01.01.1977 as Helper. He is now working as Commercial Assistant from 10.10.1980, at Panamarathupatty. While he was working as such, he was issued with a charge memo dated 20.01.1994 by the Assistant Executive Engineer (O&M) Attayampatti alleging that he absented himself without prior permission and in spite of the Junior Engineer's instruction, he did not report for work. The petitioner submitted his explanation to the said Charge memo on 07.02.1994 denying the charges. Not satisfied with such explanation, the Assistant Executive Engineer (South), Salem was appointed as enquiry officer, who conducted enquiry on 19.04.1994 and submitted his enquiry report holding that the charges levelled against the petitioner are not proved. Thereafter, the Disciplinary Authority issued a Show Cause Notice dated 04.07.1994 disagreeing with the findings of the Enquiry Officer and proposed to impose the punishment of postponement of annual increment by one year with cumulative effect. The petitioner also received a memo dated 06.10.1994 from the Superintending Engineer, Salem, informing that he has not been selected for promotion to the post of Commercial Inspector since disciplinary proceedings are pending. For the said show cause notice dated 04.07.1994, the petitioner gave an explanation on 03.11.1994. As against the order passed by the Superintending Engineer, Salem informing him that he was not

entitled for promotion, he preferred an appeal on 15.11.1994, but no order has been passed on the said appeal. While so, the Disciplinary Authority by order dated 23.12.1994 disagreeing with the finding of the Enquiry Officer held him guilty of the charges and consequently, by an order dated 31.12.1994, imposed the said punishment as stated in the show cause notice. Aggrieved against the same, the petitioner filed an appeal before the Superintending Engineer, on 01.02.1995. The Superintendent Engineer, by an order dated 26.05.1995, modified the order of punishment to that of postponement of one annual increment without cumulative effect. Thereafter, the petitioner filed a mercy petition on 13.07.1995 before the Chairman of the Tamil Nadu Electricity Board.

3. In the meantime, the next panel for promotion was prepared on 08.02.1996 in which the petitioner's name was not included. Since the petitioner's further promotion is likely to be affected due to the pendency of the appeal before the 1st respondent, he made a representation dated 28.11.1995 to the second respondent, seeking to include his name for promotion to the post of Commercial Inspector notwithstanding the pendency of the appeal. In the meantime, on 01.12.1995, the petitioner's appeal was rejected, Further, his mercy petition against the punishment order was also rejected on 07.12.1995.

4. Challenging the order dated 01.12.1995 and 07.12.1995, the petitioner filed a writ petition in W.P. No. 5483 of 1996 with a further direction to promote him as Commercial Inspector from December 1994 with all consequential benefits. The said writ petition was allowed by this Court, by an order dated 05.03.2002.

5. According to the petitioner, he has omitted to challenge the charge memos dated 06.10.1994 and 08.02.1996 in the above said WP No. 5483 of 1996. Further, he has also not impleaded his juniors, who have been given promotion, in the said writ petition. Therefore, the petitioner has filed another WP No. 4079 of 1997 challenging the charge memos dated 06.10.1994 and 08.02.1996 by impleading his juniors. In the affidavit filed in support of the said writ petition in WP No. 4079 of 1997, the petitioner has stated that he was placed at S.No.56 in the seniority list published on 01.01.1990, but, the 3rd respondent's name, who was placed at S.No.57 in the seniority list, was included in the panel for promotion on 06.10.1994 and 08.02.1996 when the promotion has to be conferred based on seniority and suitability. This Court, by an order dated 15.10.2003, passed the following orders in WP No. 4079 of 1997:-

"5. The learned counsel for the respondent produced an order dated 22.01.2003, whereby the petitioner has been promoted from 23.11.1994 onwards, however, without monetary benefits. After taking into consideration of the said order, the present order is passed. In view of the order in this writ petition, the order dated 22.01.2003 would not have any effect to the extent that it denied the wages from 23.11.1994 till the petitioner was actually promoted. The order passed in this writ petition should be given effect to within a period of eight weeks from the date of receipt of copy of this order.

6. With the above observation, the writ petition is disposed of. No costs."

6. Now, the grievance of the petitioner is that pursuant to the order of this Court passed on 15.10.2003 in WP No. 4079 of 1997, he was paid a sum of Rs.29,804/- towards arrears of salary during May 2004, but, it was not disclosed as to how the said amount was arrived at. According to the petitioner, he came to understand that legal adviser of the Board, by his letter dated 15.03.1994, has advised the Board to confer payment of backwages only from 23.11.1997 onwards

instead of 23.11.1994. Therefore, he would contend that he is entitled for backwages from 23.11.1994 onwards with interest at the rate of 18% p.a. till the actual date of payment. Further, after his promotion as Commercial Inspector and Foreman Grade-I with retrospective effect, the respondents 1 and 2 prepared a fresh seniority list as on 30.11.2006, wherein, it is found that his name was shown at S.No.50 while, the third respondent herein, who is far junior not only to him but also to one Swaminathan, was shown at S.No.17 and he had been promoted as Foreman Grade-I, with effect from 30.03.1998 during the pendency of the writ petition. The petitioner therefore made a representation dated 22.02.2007 to the second respondent requesting to give him retrospective promotion from 30.03.1998 and place him above the 3rd respondent herein and pay the arrears from that date. But, there was no response on the said representation. The petitioner has therefore made another representation dated 18.06.2007. A reply dated 14.03.2008 was received from the Executive Engineer, based on the instructions from the second respondent, which according to the petitioner is arbitrary and unreasonable.

7. With this factual background, let us analyse the relief sought for by the petitioner in this writ petition. In the present writ petition, the petitioner seeks for a direction to the respondents 1 and 2 to promote him as Foreman Grade-I with effect from 30.03.1998, the date on which his junior A.Periannan, the 3rd respondent herein was promoted and pay him arrears thereof and consequently, promoting him to the post of Foreman Special Grade in the vacancy to be caused due to the retirement of M. Asokhan by fixing his seniority above the 3rd respondent.

8. The learned counsel for the petitioner would contend that the petitioner is entitled for the promotion to the post of Foreman Grade-I when admittedly the third respondent, who is his junior, was given promotion to such post on 30.03.1998. Therefore, the petitioner's right to get legitimate promotion cannot be denied by the respondents. The petitioner has also given repeated representations and sought legal remedy as against the non-consideration of his claim for promotion on par with his junior. In spite of such efforts having been taken by the petitioner, as the petitioner has not been conferred promotion with retrospective effect, he is before this Court.

9. The learned counsel appearing for the respondents opposed this writ petition by placing reliance on the counter. According to the respondents, an approved list of eligible candidates for promotion to the post of Foreman Grade-I was prepared and communicated to all concerned, including the petitioner. However, for the reasons best known, the petitioner did not prefer any appeal thereagainst as contemplated under TNEB Service Regulation 98 (2) (b) and therefore it has become final as against the petitioner. It is vehemently contended by the learned counsel for the respondents that if the claim of the petitioner has not been considered or overlooked, as alleged by him, he ought to have preferred an appeal before the appellate authority and the writ petition is not maintainable. According to the learned counsel for the respondents, the promotion conferred on the third respondent is in accordance with the Service Regulations as he was in possession of 8 years of practical experience in the Special Maintenance unit. On the contrary, the petitioner was not in possession of such experience at the time of consideration for promotion. The promotion given to the third respondent was on

the basis of suitability and eligibility and it cannot be sought for by the petitioner as a matter of right. Therefore, the learned counsel for the respondents prayed for dismissal of the writ petition by directing the petitioner to prefer an appeal before the appellate authority, if he is advised to do so.

10. The learned counsel for the third respondent would contend that the promotion conferred to the third respondent is proper and in accordance with the Service Regulations of the Board and it calls for no interference by this Court.

11. I heard the learned counsel on either side and perused the material records. The writ petition was filed in the year 2008 and now we are in 2016. Eight years have passed since the filing of the writ petition. This Court can infer that at this stage the petitioner as well as the third respondent would have been conferred successive promotion to the further post. Further, it is seen that in the approved list for promotion prepared by the Department, there were several other persons who were also not considered for promotion for various reasons and it is not as though the petitioner alone has been isolated or singled out. According to the third respondent, the petitioner has not been overlooked as alleged and the third respondent was promoted to the post only on the basis of his experience in a particular department which experience has not been possessed by the petitioner at the relevant time. In other words, the promotion has been conferred on the third respondent by following suitability cum eligibility, as contemplated under the TNEB Service Regulation.

12. The respondents have opposed the writ petition on the ground that the writ petition itself is not maintainable when an alternative remedy of appeal is provided before the appellate Authority. It is their main contention that an approved list for promotion has been communicated to all concerned, including the petitioner, but he has not chosen to either prefer an objection thereof or to file an appeal before the appellate authority. Instead, the petitioner has approached this Court by filing the present writ petition. Therefore, according to the respondents, when there is an alternative remedy of appeal is available, the discretionary jurisdiction conferred on this Court under Article 226 of The Constitution ought not to have been invoked by the petitioner and therefore they prayed for dismissal of the writ petition.

13. I find considerable force in the submissions made on behalf of the respondents. Admittedly, as against the non-consideration of the petitioner's claim for promotion or if he has been overlooked by promoting the third respondent, as alleged by him, he ought to have filed an appeal before the Appellate Authority, but for the reasons best known, the petitioner has not chosen to avail such remedy. As mentioned above, eight years have been passed after institution of this writ petition and therefore at this length of time, I am not inclined to direct the petitioner to approach the appellate authority by preferring an appeal. This is more so that in the affidavit in para No.8, the petitioner himself has agreed that he was given promotion as Commercial Inspector and Foreman Grade-I with retrospective effect and also received arrears thereof. The petitioner also received arrears from 23.11.1997, but he claims that such arrears has to be paid from 23.11.1994. Further, the petitioner seeks for a direction to confer him promotion to the post of

Foreman Special Grade in the vacancy to be caused due to the retirement of M. Asokhan by fixing his seniority above the 3rd respondent. The petitioner has not questioned about the promotion, especially when the third respondent has been taken over for promotion and by virtue of representations, he cannot seek to topple either the 3rd respondent or others in the seniority list. Now, the petitioner is praying to topple the other persons between S.Nos.13 to 50 in the seniority list. Hence, such a relief cannot be considered by this Court. It is for the respondents to consider the same. In such view of the matter also, I do not find any reason to issue a Mandamus as prayed for in this writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.09.2016

ogy/rsh

Index : Yes/No

Internet: Yes/No

To

1. The Chairman,
Tamil Nadu Electricity Board
No.800, Anna Salai,
Chennai - 600 002.
2. Superintending Engineer,
Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Udayapatti, K.N.Colony,
Salem - 14.03.2008

B.RAJENDRAN,J.

ogy

W.P.No.7596 of 2008

02.09.2016

To

The Hon'ble Mr.Justice B.Rajendran