

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.12.2016

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.41318 of 2002

V.Rangan

.... Petitioner

VS

1. The Chairman,
Tamil Nadu Electricity Board,
9th Floor, NPKRR Maligai,
Electricity Avenue,
800, Anna Salai,
Chennai-600 002.

2. The Secretary
Tamil Nadu Electricity Board,
Secretariat Branch,
Electricity Avenue,
800, Anna Salai,
Chennai-600 002.

.... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Memorandum (Permanent) No.27501/A1/A12/2002-2, dated 24.7.2002, quash the same and direct the respondents to include the petitioner's name in the Panel of Executive Enginners/Mechanical, fir for promotion as Superintending Engineer/Mechanical issued by the second respondent in Proceedings No.(Permanent) B.P.(Ch) No.62, Secretariat Branch, dated 11.3.2002 at the appropriate place with reference to the petitioner's seniority and grant him all consequential benefits including promotion on par with his immediate juniors with all attendant benefits.

For petitioner : Mr.P.Manoj Kumar
For respondents: Mrs.Varalakahsmi

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Memorandum (Permanent) No.27501/A1/A12/2002-2, dated 24.7.2002, quash the

same and direct the respondents to include the petitioner's name in the Panel of Executive Engineers/Mechanical, fir for promotion as Superintending Engineer/Mechanical issued by the second respondent in Proceedings No.(Permanent) B.P. (Ch) No.62, Secretariat Branch, dated 11.3.2002 at the appropriate place with reference to the petitioner's seniority and grant him all consequential benefits including promotion on par with his immediate juniors with all attendant benefits."

2. The petitioner while working under the respondents, was served with a charge memo dated 28.10.1999 for certain alleged lapses. After enquiry, the same culminated into imposition of minor penalty of stoppage of increment with one year without cumulative effect. The punishment was imposed on 27.1.2001. The petitioner who was last working as Executive Engineer (Mechanical), retired on attaining the age of superannuation on 30.6.2002.

3. According to the petitioner, the date of his increment was due on 1st of January of every year and therefore, the implementation of the punishment was to commence only on the following year, i.e. 1.1.2002 as the increment due for the year 2001 was already sanctioned and drawn on 1.1.2001.

4. Be that as it may, the case of the petitioner is that the second respondent prepared to draw a panel for the promotion to the post of Superintending Engineers/Mechanical by proceedings dated 22.5.2001. In the said panel, the petitioner's name was not included even though his juniors names came to be included in the panel. Against the non-inclusion of his name, the petitioner is said to have filed an appeal before the first respondent on 16.6.2001. While so, in response to his representation, an order was passed on 29.9.2001 stating that his appeal was considered by the Board and since he was undergoing punishment on the crucial date, his name was not included in the panel of Superintending Engineers/Mechanical. In effect, his appeal came to be rejected.

5. Subsequently, another panel was prepared on 11.3.2002 and in the said panel, his name was not included whereas, the names of his juniors were included. Against this, the petitioner also preferred an appeal to the Board on 18.3.2002 and the same was once again rejected on 24.7.2002 which is impugned in the writ petition, stating the same reason that the petitioner was undergoing punishment. Against the rejection of his appeal, the petitioner has filed the present writ petition.

6. Heard the learned counsel for the parties and perused the material available on record.

7. The fact that the increment is payable only on the 1st January of every year is not in dispute. In the instant case, though the punishment was imposed on 27.1.2001, the same had given effect from 1st January 2002 since for the year 2001, increment was already paid and drawn by the petitioner. This fact was not also seriously disputed by the respondents. In the circumstances, the rejection of the representation made earlier by the petitioner against his non-inclusion in the panel of the year 2001 was not proper and correct. However, it appears that the prayer in the Writ Petition is only for inclusion of his name in the panel of the year 2002 which relief obviously cannot be granted in view of the above stated position that in 2002, there was a currency of penalty and hence, his name was rightly omitted to be included in the panel. However, as regards non-inclusion of his name in the panel for the year 2001, from the facts narrated above, that there was no justification of his non-inclusion as the penalty was factually and actually not in operation. Therefore, overlooking the petitioner and including his juniors in the panel for the year 2001 cannot be countenanced both in law and on facts.

8. In the above circumstances, notwithstanding the prayer sought for in the writ petition, the relief is modified and the respondents are directed to include the name of the applicant in the panel Superintending Engineers/Mechanical drawn for the year 2001 vide proceedings of the second respondent dated 22.5.2001 and notionally consider him for promotion to the post of Superintending Engineer/Mechanical, if he was otherwise fit in all aspects on the date when his immediate junior was promoted and on such promotion, the petitioner is entitled to notional fixation of pay and allowances and subsequent calculation and computation of pension.

9. It is also made clear that since the petitioner, having not worked in the promoted post and having not shouldered responsibilities and not discharged the functions of the higher post, is not entitled to arrears of any pay and allowances on such notional promotion. However, the petitioner is entitled to pensionary benefits on such notional fixation and computation of pension.

10. The respondents are directed to complete the said exercise within a period of three months from the date of receipt of copy of this order.

The Writ Petition is disposed of on the above terms. There shall be no order as to costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

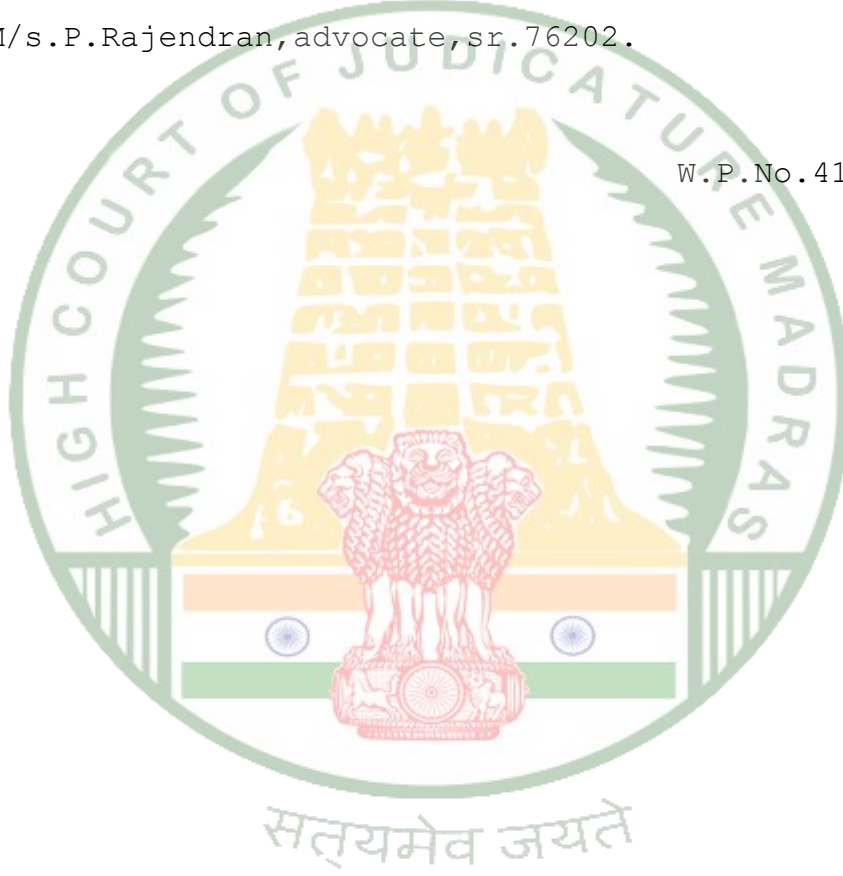
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+1 cc to M/s.P.Rajendran,advocate,sr.76202.

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