

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4024 of 2014

and

M.P.Nos.1 to 3 of 2014 and 1 of 2015

G.Nethaji

... Petitioner

Vs.

1.The Chairman
Tamil Nadu Generation & Distribution Corporation Ltd
No.144, Anna Salai, Chennai - 2.

2.The Chief Engineer Peronal
Tamil Nadu Generation & Distribution Corporation Ltd
Chennai-2.

3.The Chief Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
Vellore Distribution, TNEB Vellore.

4.The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
TNEB, Tirupathur Circle
Vellore District.

5.M.Karunanidhi

6.N.Gandhimadhi Nathan

7.Sundramurthi

8.E.Yoganandhan

9.R.Sangeetha

10.J.Babu Jeyasuriyan

11.Vishnukumar

12.A.Murugesan

13.T.Ganapathi

WEB COPY

14.C.Saamudi

15.K.Dhamodharan

16.G.Murthuraj

17.R.Kumaragurubaran

18.S.Vasudevan

19.J.Kumaravel

20.E.Ramajeyam

21.B.Anandhan ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the proceedings Ku.No.11/Nee P2/Nee U 1/2014-2 dated 06.02.2017 from the file of 4th respondent and quash the same and granting promotion to this petitioner as commercial assistant.

For Petitioner : Mr.R.Margabandhu

For Respondents : Mr.M.Fakkir Mohideen [For R1 to 4]
Mr.S.N.Ravi Chandran
[For R6,8,10 & 11]
No appearance
[For RR5, 7, 9, 12, 13, 14,
15, 17, 20 & 21]

O R D E R

The order of promotion dated 06.02.2014 is sought to be quashed in this writ petition and further, direction is sought for, to grant promotion to the petitioner to the post of Commercial Assistant.

2.The learned counsel appearing for the petitioner states that the petitioner was appointed as Helper Trainee in TWE category ITI by the Superintending Engineer, Vellore vide proceedings dated 25.06.2009. His initial appointment as Field Assistant was also made in Vellore Circle, Katpadi division, on 25.06.2009. The petitioner joined duty on 01.07.2009.

3.It is an admitted fact that the writ petitioner has made a request to transfer him from Vellore circle to Thirupathur Circle. His request application for transfer was considered and

an order was passed by the Office of the Chief Engineer/Distribution, Vellore region, Vellore, in memo no.004695-2/Adm.B/B1/2011 dated 16.12.2011.

4. Consequent to the order of transfer, the writ petitioner joined duty. The grievance of the writ petitioner is that at the time of preparation of panel for promotion to the post of Commercial Assistant, the original seniority allotted to him in the cadre of Helper had not been followed. Consequently, his juniors were promoted.

5. The learned counsel further submitted that the respondent/board issued proceedings on 09.07.2014, wherein it is stated that the seniority of the Helper Trainee recruited with ITI qualification may be fixed for promotion based on the date of issue of selection order. The above said communication given by the Chief Engineer [Personal] to all the Regional Chief Engineer [Distribution] on 09.07.21014 is relied upon by the petitioner for restoring his original seniority allotted prior to his transfer to Tirupathur Circle.

6. The learned counsel for the petitioner further states that as per the rules in force the original seniority of the petitioner ought to have been considered for the purpose of including his name for the post of Commercial Assistant.

7. The learned counsel appearing on behalf of respondents 6,8,10 & 11 opposed the contentions taken by the petitioner by stating that the request transfer of the petitioner was considered with a condition that he should forgo his seniority.

8. On a perusal of the order of transfer dated 16.12.2011, 4 persons were transferred to Thirupathur circle by the Chief Engineer. In para no.1 of the order it has been categorically stated that the persons sought to be transferred on request should forgo their seniority on the basis of the date of appointment as Helper and take their rank below the list of Probationers/approved Probationers, as the case may be, on the date of joining in the circle, in which they are now transferred. Thus, the claim of the petitioner is untenable.

9. Accordingly, the transfer application of the writ petitioner was considered and he was transferred to Thirupathur circle vide proceedings dated 16.12.2011. The order of transfer also categorically enumerates that the petitioner should forgo his seniority and take his rank below in the list of Probationer/approved Probationer as the case may be in the circle to which he is now transferred.

10. Secondly, the learned counsel for the respondents stated that the writ petition has been filed challenging the order of promotion and not with regard to re-fixation of seniority done

in Tirupathur Circle. In the absence of challenging the seniority the petitioner cannot challenge the order of promotion, which is only consequential.

11.The learned counsel appearing on behalf of the respondent/board, supported the arguments advanced by the contesting respondents and informed this court that the petitioner has already got transfer on request, with a condition to forgo his seniority. In this regard, the petitioner has given an undertaking for request transfer to other circle. Clause 3 of the undertaking furnished by the writ petitioner on 04.01.2011, states that " I shall take my rank last in the list of Probationers/Approved Probationers as the case may be on the date of joining in the circle in which there transfer is made". The writ petitioner has signed the undertaking for request transfer to other circle. Thus, the petitioner himself has given an undertaking that he is ready to forgo the seniority in the event of considering his transfer to Tirupathur Circle.

12.Thus, the present writ petition is devoid of merits. Considering, the respective arguments of the learned counsels appearing for the parties, this Court is of the opinion that, no doubt the petitioner may be senior to other persons already promoted in Thirupathur circle, however, his initial appointment was not in Thirupathur circle. He filed an application seeking transfer to Thirupathur circle and at the time considering the transfer application, an undertaking was obtained from the writ petitioner and the writ petitioner has signed the undertaking, accepting the condition that he will forgo his seniority in the event of considering his transfer application.

13.Thus, the request transfer was ordered on condition that the petitioner should forgo his seniority. Under these circumstances, this Court is of the opinion that there is no infirmity in considering the name of the petitioner for promotion to the post of Commercial Assistant in Thirupathur circle. If the name of the petitioner was placed lastly in Thirupathur circle, he will be promoted in accordance with his turn of seniority.

14.Secondly, the learned counsel for the contesting respondents stated that the petitioner has not challenged the seniority. In this regard, the learned counsel for the petitioner states that the petitioner may be given liberty to challenge the seniority. However the same is subject to his understanding furnished already to the department.

15.It is needless to state that it is left open to the writ petitioner to redress his grievances in the manner known to law.

However, in respect of the present writ petition, this Court is of the opinion that the writ petitioner was transferred to Thirupathur circle on condition to forgo the seniority and accordingly, there is no infirmity in respect of the rejection of the claim for promotion to the post of Commercial Assistant over and above the contesting respondents.

16. In this view of the matter, no further adjudication needs to be undertaken in respect of the grounds raised in this writ petition. Therefore, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Asst. Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Chairman
Tamil Nadu Generation & Distribution Corporation Ltd
No.144, Anna Salai, Chennai - 2.
2. The Chief Engineer Personal
Tamil Nadu Generation & Distribution Corporation Ltd
Chennai-2.
3. The Chief Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
Vellore Distribution, TNEB Vellore.
4. The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
TNEB, Tirupathur Circle
Vellore District.

+ 1 cc to Mr.R.Margabandhu Advocate, SR.88328

+ 1 cc to Mr.S.N.Ravi Chandran Advocate, SR.87533

W.P.No.4024 of 2014

nr 10/01/2018