

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

PRONOUNCED ON : 05.06.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.A.No.722 of 2015
and M.P.No.1 of 2015

- 1.Tamil Nadu Electricity Board,
rep.by the Secretary,
800, Anna Salai, Chennai-2.
- 2.Tamil Nadu Electricity Board,
rep.by Chief Engineer / Personnel,
Administrative Branch,
800, Anna Salai, Chennai-2.Appellants/Respondents

-vs-

M.Balaiyan ...Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.26205 of 2004 dated 18.11.2014.

Writ petition filed under Article 226 of the constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records as comprised in memorandum No.51976/A11/A112/2004-1, on the file of the secretaty, Secretariat Branch, TNEB/ first Respondent, dated 11.08.2004 and quash the same and consequently direct the respondents to give due promotion and place the petitioner by fixing the seniority taking into account of his date of his initial appointment in the post of Typist as 21.01.1988 in W.P.no.722 of 2015.

For Appellants :: Ms.Varalakshmi

For Respondent :: Mr.R.Singaravelan, Sr.Counsel
for M/s.Lesi Saravanan

JUDGMENT

R.MAHADEVAN, J.

This appeal has been filed by the Tamil Nadu Electricity Board against the order passed by this Court in W.P.No.26205 of 2004 dated 18.11.2014, quashing the order passed by the first appellant herein in Memorandum No.51976/A11/A112/2004-1 dated 11.08.2004 and also directing the appellants to refix the seniority of the respondent herein by taking into account his original seniority as on 21.01.1988 with due service and other benefits including promotion, within a period of eight weeks from the date of receipt of a copy of the order.

2.The matter relates to refixation of seniority of the respondent from the date of his initial appointment, ie., on 21.01.1988 as typist and to give him due promotion. The respondent was appointed as typist in the Secretariat Branch of the appellant Board on 21.01.1988. The post of typist is classified as Class III of Category IV of Division VI-A as per the Tamil Nadu Electricity Board Service Regulations. The respondent completed his probation on 15.02.1989. While so, the respondent made a request for transfer to Operation and Maintenance Branch at Nagapattinam and accordingly he was transferred to that place in the same post, ie., typist, on 03.09.1992. Thereafter, the respondent was transferred to the Distribution Circle, MES/North Madras on 03.11.1993. He was once again at his request, retransferred and posted at Secretariat Branch in the same post on 19.02.1994, subject to the following conditions:

- (i)He should forego his seniority in the circle as typist;
- (ii)He will take last rank in the seniority list of typist in the Board Office Secretariat Branch as it stands on the date of his joining in the Board Office Secretariat Branch.
- (iii)He should forego his service in the present post or in the present category for his seniority in the Board Office Secretariat Branch.
- (iv)He is not eligible for TTA as the transfer is made on his request.

3.The respondent was also directed to furnish an undertaking to that effect to the Secretary, Tamil Nadu Electricity Board, Secretariat Branch and consequent on his giving such undertaking, an order dated 07.03.1994 was passed appointing him temporarily as typist in TNEB Office, Secretariat Branch. It was also stated in the order passed by the Board that he will be reverted to his parent office at any time without previous notice and his seniority in the cadre of typist in the Board Office Secretariat Branch for the purpose of promotion, will be

issued separately. The respondent also reported for duty on 06.04.1994 in the Board Office Secretariat Branch. While so, the respondent made a representation to the Chairman, Tamil Nadu Electricity Board to restore his seniority by reckoning the same from the date of his initial appointment in the Secretariat Branch on 21.01.1988, and the same was rejected by the first appellant by order dated 05.10.1994. In the order dated 05.10.1994, no reason has been assigned for rejecting his request, except stating that his request for restoration of his original service by condoning the break in the continuity of service in the Board Office Secretariat Branch has not been accepted. Thereafter, the respondent's service was regularised with effect from 06.04.1994, i.e., from the date on which he rejoined the post of typist in the Secretariat Branch.

4.The respondent, again made a representation seeking seniority from the date of his initial appointment citing Board's proceedings in B.P.Ms.(Ch)No.160, Secretariat Branch, dated 15.05.1985, wherein similar relief was granted to five persons belonging to Junior Assistant cadre. The said representation was rejected on the ground that the retransfer of Junior Assistants from the Board Office to the Administrative Branch with the original seniority restored was based on administrative reasons and the respondent's retransfer is on his own and also on his undertaking. The respondent has once again made a representation on 18.03.1985. Pending consideration of the same, he was appointed as Junior Assistant on 03.01.1997. Thereafter, the respondent made a representation on 30.12.1999 to refix his seniority in the post of Junior Assistant by taking into account his continuous service from the date of his initial appointment. Without considering his request for seniority, he was promoted as Assistant on 23.01.2002. His further representation made to the Government on 11.12.2003 was also rejected on the same ground. Aggrieved by the same, the respondent herein filed the writ petition in W.P.No. 26205 of 2004.

5.The learned single Judge, after observing that in the case of Junior Assistants, the transfer from parent office was on their own request and on the basis of the relinquishment of their right, and their retransfer to the parent office was also again on the basis of their request but with the restoration of the original parent office seniority and the rights relinquished by them, and that both the transfer and retransfer in respect of Junior Assistants and the respondent are hence under identical situation and therefore the denial of the benefit extended to the Junior Assistants, to the respondent is hence discriminatory in nature and in violation of the principles of natural justice and Articles 14 and 16 of the Constitution of India, besides, in

contravention of the TNEB Service Regulations, quashed the impugned order with a direction to the appellants to refix the seniority of the respondent by taking into account his original seniority as on 21.01.1988 with due service and other benefits including promotion.

6.Challenging the order passed in the writ petition, the Tamil Nadu Electricity Board has come up with the present writ appeal.

7.The learned counsel for the appellants submitted that the learned single Judge has failed to appreciate the established Regulations, norms and administrative practice of the Board and the fact that the Board Office Secretariat Branch is functioning under the direct control of the Secretary, Tamil Nadu Electricity Board with a separate seniority among the employees working in the Board Office Secretariat Branch, and any request transfer from Board Office Secretariat Branch to any other circle would result in forfeiture of the seniority in the Board Office Secretariat Branch. He further submitted that the learned single Judge has failed to take note that according to TNEB Service Regulation 97(b), if there is any difficulty or doubt arises in applying the Sub-Regulations, the seniority will be determined by the "appointing authority". The respondent was transferred from Nagapattinam Circle to Board Office Secretariat with a condition to forego his seniority in the circle as typist and hence he has to take last rank in the list of typist in the Board Office Secretariat Branch. Having executed such undertaking waiving his seniority for getting transfer to the Board Office Secretariat Branch, it is not proper on his part to seek seniority, which was already relinquished by him. He further emphasised that the learned single Judge ought to have considered the fact that the transfer and re-transfer orders issued to the employees on administrative grounds are different in nature and is not identical to the transfer order issued to the respondent based on his own request. Stating so, the learned counsel prayed for quashing the order passed by this Court in the writ petition.

8.Per contra, the learned senior counsel appearing for the respondent has submitted that the order passed in the writ petition does not require any interference, as the learned single Judge has considered the issue in detail, by taking note of the grounds relating to Regulation 97(b) of the TNEB Service Regulations, fundamental rights guaranteed under Article 16 of the Constitution of India and conferment of the same benefit to one set of employees under the different cadre, ie., Junior Assistants.

9. We have heard the learned counsel on either side and perused the materials available on record.

10. As per Regulation 97(b) of the TNEB Service Regulations, which deals with seniority, the transfer of a person from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category or grade from which he was transferred. Relying on the same, the learned single Judge, accepted the contention of the learned counsel for the petitioner that while the petitioner was re-transferred to the same post under the same class under the same category in the same Board Office Secretariat Branch, the question of losing his seniority will not arise under Regulation 97(b) and his original seniority will be counted for the purpose of fixation of his seniority on transfer. On a reading of Regulation 88 dealing with the 'classes, categories and grades in the TNEB Service', it is seen that the post of typist of the Board Office Secretariat Branch falls under Division VI-A Category 4 and since the respondent was retransferred to the same post under the same class under the same category in the same Board Office Secretariat Branch, the learned single Judge has held that the question of losing seniority in respect of the respondent herein, does not arise under Regulation 97(b) and hence his original seniority will be counted for the purpose of fixation of his seniority on retransfer, which finding does not require any interference by this Court.

11. It was argued on behalf of the respondent herein, before the learned single Judge that by Board Proceedings No.160, dated 15.05.1985, Junior Assistants were appointed in the Administrative Branch and they were transferred to the Board Office Secretariat Branch, subject to the condition that they would be reverted to the parent office at any time without any previous notice. Thereafter, since the number of Junior Assistants in the Secretariat Branch was found to be surplus and the Junior Assistants who were originally transferred to the Board Office Secretariat Branch on their own requests have made written representations expressing their willingness to revert them to their parent office with the parent office seniority, they were accordingly reverted back with their original parent office seniority, thereby the rights relinquished by them in the parent office on transfer to Board Office were restored and they were held to be entitled to all privileges including pay, promotion etc., which they would have availed had they not been transferred in the Board Office Secretariat Branch. Thus it was

argued that when one set of employees in different category are extended the benefit of restoration of rights relinquished by them, there is no reason to deny the similar benefit to the respondent herein. With regard to this argument, the counsel for the Tamil Nadu Electricity Board would state that the transfer of those employees to parent office was on administrative ground, whereas the transfer of the respondent herein is on his own request and the basis of his undertaking. Since the facts available herein are different and is not supporting the said stand taken by the TNEB, and that in the case of Junior Assistants also, the transfer from parent office was on their own request and on the basis of the relinquishment of their right, and their retransfer to the parent office is also again on the basis of their request but with restoration of the original parent office seniority and the rights relinquished by them, and therefore, both the transfer and retransfer in the case of Junior Assistants and in the case of the respondent are identical, the learned single Judge rightly held that the denial of the benefit extended to the Junior Assistants, to the respondent, is discriminatory in nature and violative of the principles of natural justice and also Articles 14 and 16 of the Constitution of India, besides in contravention of the TNEB Service Regulations. This Court is not inclined to interfere with the said finding, as the same is based on facts, in an identical situation.

12. In view of the foregoing reasons, the writ appeal is liable to be dismissed and accordingly it is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

KM

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To

1.The Secretary,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2.

2.The Chief Engineer / Personnel,
Tamil Nadu Electricity Board,
Administrative Branch,
800, Anna Salai, Chennai-2.

+1cc to Mr.R.Varalakshmi, Advocate, S.R.No.40193

+2cc to M/s.Lesi Saravanan, Advocate, S.R.No.39817

W.A.No.722 of 2015
and
M.P.No.1 of 2015

NMI (CO)
RS(13/06/2017)



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