

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.18325 of 2011 and
M.P.No.1 of 2012

V.K.Thangaraju

... Petitioner

Vs.

1.The Chief Engineer, Distribution,
Erode Region,
Tamil Nadu Electricity Board,
Erode.

2.The Superintending Engineer,
Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Salem.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the second respondent's order made in Ku.No.010328/152/Ni.Pi II/Udavi 2/Ko.Kambi.Pa.Vu/2010/dated 14.08.2010 and to quash the same and consequently direct the respondents to promote the petitioner to the post of Line Inspector from 30.12.2008 by fixing his seniority in between one P.Munusamy and S.Shanmugam whose SI.Nos are 35 and 36 respectively in the promotion panel dated 30.12.2008, relating to the post of Line Inspector and extend all benefits both service and monetary.

For Petitioner : Mr.G.Ananda Kumar

For Respondents: Mr.P.R.Dhilip Kumar,
Standing Counsel for R1

O R D E R

Heard Mr.G.Ananda Kumar, learned counsel appearing for the petitioner and Mr.P.R.Dhilip Kumar, Standing Counsel appearing for the first respondent.

2.The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the second respondent's order made in Ku.No.010328/152/Ni.PiII/Udavi2/Ko.Kambi.Pa.Vu/2010/dated 14.08.2010 and to quash the same and consequently direct the respondents to promote the petitioner to the post of Line Inspector from 30.12.2008 by fixing his seniority in between one P.Munusamy and S.Shanmugam whose SI.Nos are 35 and 36 respectively, in the promotion panel dated 30.12.2008, relating to the post of Line Inspector and extend all benefits both service and monetary."

3. The case of the petitioner is as follows:

The petitioner was appointed as Helper on 25.09.1991, in the respondent Board. He was subsequently promoted as Wireman on 07.06.2000, on attaining the age of superannuation, the petitioner retired from service on 31.01.2011. While the petitioner was working in the second respondent office, a charge memo was issued on 20/28.03.08, alleging certain acts of misconduct on the part of the petitioner. In response to the charge memo, an explanation was offered by the petitioner, denying the same. Not satisfied with the reply of the charge memo, the second respondent had passed a final order on 24.08.2009, imposing a penalty of stoppage of increment for a period of one year without cumulative effect. Aggrieved by the penalty imposed by the disciplinary authority viz., the second respondent, the petitioner preferred an appeal and the first respondent-the appellate authority had passed an order on 22.03.2010, setting aside the order of penalty passed by the disciplinary authority, the second respondent herein.

4. During the time when the disciplinary action was pending against the petitioner, he was over looked for promotion to the post of Line Inspector. According to the petitioner, a seniority list of all the eligible Wireman for promotion to the post of Line Inspector was drawn up as on 31.12.2008 and the name of the petitioner figured in the panel. However, all the persons whose names in the panel which was drawn up as on 31.12.2008 had been promoted by overlooking the claim of the petitioner, obviously for the reason that the disciplinary action was pending against him and penalty was also imposed by the disciplinary authority, which of course came to be set aside by the appellate authority in the year 2010.

5. According to the petitioner, if he had been promoted in 2008 panel, his seniority would have fixed in the post of Line Inspector above one S.Shanmugam and below one P.Munusamy. However, after the punishment was set aside by the appellate authority, the petitioner had made a representation on

15.04.2010, requesting for promotion to the post of Line Inspector with effect from 2008, in line with the promotion of other batch mates who were promoted from the panel as on 31.12.2008. The second respondent however without considering the claim in proper perspective, rejected the promotion of the petitioner vide proceedings dated 14.08.2010, which is impugned in this writ petition.

6. According to the rejection order, the promotion to the post of Line Inspector was already over in 2008 and therefore, his claim could not be considered favourably. The learned counsel for the petitioner would submit that the impugned rejection order suffers from misapplication and non application of mind, as the reasons spelt out in the impugned rejection order cannot be countenanced both in law and on facts. It is needless to mention that at the time of the promotion due on 31.12.2008, disciplinary action was pending against the petitioner and the punishment was imposed on 24.08.2009, which came to be set aside subsequently on 22.03.2010, only thereafter, the petitioner was entitled to approach the authority for seeking promotion on the basis of the panel which was drawn up in 2008. In the said circumstances, the rejection by the second respondent is completely misconceived and preposterous and the same is absolutely arbitrary, unjust and cannot be appreciated at all.

7. Upon notice, the learned counsel for the respondents entered appearance and filed a detailed counter affidavit. In the counter, the second respondent had averred as if the petitioner had approached the Board with frivolous request and therefore, the request of the petitioner was not worthy of consideration by the Board. Such averment on the part of the second respondent, prima facie discloses the mean mindset on the part of the authority in brushing aside the claim of the petitioner. Moreover, some more averments which are averred in the counter affidavit are completely bereft of any factual or legal meaning. Without proper examination of the contents of the affidavit, the same has been signed and filed in this Court which discloses the irresponsible conduct of the officer concerned while dealing with the writ petition filed before this Court.

8. In the said circumstances, as regards the claim of the petitioner is concerned, this Court in view of the facts and legal aspects, has no hesitation in allowing the writ petition. Therefore, the writ petition is allowed and the impugned order dated 14.08.2010 is set aside. There shall be a consequential direction to the respondents to grant promotion to the petitioner to the post of Line Inspector by granting him proper seniority in the said post in the panel which was drawn up as on 31.12.2008 and extend all attendant service and monetary

benefits as admissible to the petitioner. The said direction shall be complied with by the respondents within a period of two weeks from the date of receipt of a copy of this order.

9. In view of the irresponsible conduct of the second respondent in signing the affidavit without proper averments, this Court in order to reprimand such behaviour of the official, imposes a cost of Rs.2,000/- payable to the petitioner by the deponent of the affidavit. Such cost shall be paid within a period of one week from the date of receipt of a copy of this order.

10. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsk
To

- 1.The Chief Engineer, Distribution,
Erode Region,
Tamil Nadu Electricity Board,
Erode.
- 2.The Superintending Engineer,
Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Salem.

+1 cc to Mr.P.R.Dhilip kumar Advocate sr 62226
+1 cc to Mr.G.Anandakumar Advocate sr 62043

W.P.No.18325 of 2011

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