

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33332 of 2004

R.Vinayagam

..Petitioner

Vs.

Tamil Nadu Electricity Board
Superintending Engineer
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore 632 006.

.. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the concerned records from the respondent bearing K.No.45130/1507/NP2/U1/2003-04 dt. 19.3.2004 and quash the same as illegal, arbitrary and contrary to law and consequently direct the respondent to consider the petitioner for promotion from the post of Helper to Wireman with effect from the date when the petitioner's junior K.Subramanian was promoted.

For Petitioner : Mr.Balan Haridas

For Respondent : Mrs.R.Varalakshmi
Standing Counsel

* * * * *

ORDER

The relief sought for in this Writ Petition is to quash the order of rejection dated 19.3.2004, issued by the respondent.

2.The learned counsel appearing of the writ petitioner made a submission that the writ petitioner was appointed as Helper and his next avenue of promotion is to the post of Wireman. However, during the relevant point of time, when the panel of Helpers fit for promotion to the post of Wireman was prepared and published on 23.03.2001, the petitioner's name was not considered, since a charge memo was issued to him on 29.01.2001 and the departmental disciplinary proceedings were pending against him.

3.The learned counsel submitted that on 4.10.2001, the writ petitioner made a representation to the respondent to consider his name for promotion. The learned counsel also urged that final order in the disciplinary proceedings were issued on 08.03.2002, and all the charges framed against the writ petitioner were dropped and the writ petitioner was exonerated from the charges. Thereafter, the writ petitioner made a representation on 08.04.2002, for considering his name for promotion. However, the same was rejected by the

respondent in proceedings dated 19.03.2004.

4.The question to be considered is whether the writ petitioner is entitled for retrospective promotion on par with his junior or not?

5.The consideration for promotion is a fundamental right of an employee, though not the promotion. In the case on hand, no doubt the disciplinary proceedings were initiated against the writ petitioner by issuance of a charge memo on 29.01.2001. As the Departmental Disciplinary Proceedings ended with an order of exoneration, the right of promotion to the writ petitioner ought to have been considered on par with his junior with retrospective effect. However, the respondent rejected the claim on the ground that during the relevant point of time when the panel was published, the disciplinary proceedings were pending against the writ petitioner.

6.The reasons stated in the impugned order is directly in violation of the Rules and the Principles laid down in the matter of promotion. Whenever an employee is facing any disciplinary proceedings, during pendency, his name for promotion shall be deferred. However, if the employee was exonerated from the charges or the charges were dropped against him, then certainly he is eligible

for promotion and all the monetary benefits to be extended with retrospective effect on par with his immediate junior, in the order of seniority. After the passing of final orders in the disciplinary proceedings dropping all the charges, the consequential benefits includes promotion also.

7. In the present case, though the charges were dropped, the consequential benefit of promotion has been denied to the writ petitioner by stating that as on the crucial date the disciplinary proceedings were pending against him. The reasons stated in the impugned order is unsustainable and the legal principles in this regard has already settled by this Court as well as by the Hon'ble Apex Court in various decisions by stating that once an employee was exonerated from the charges, then he will be entitled for all the benefits, including the monetary benefits on par with his immediate junior in the order of seniority. सत्यमेव जयते

8. Such being the principles, the order impugned in this writ petition passed by the respondent in proceedings in K.No.45130/1507/ NP2/U1/2003-04 dated 19.3.2004, is quashed and the respondent is directed to grant promotion to the petitioner in the post of wireman retrospectively with effect from the date on which

his immediate junior was promoted, with all consequential service benefits in accordance with Rules, within a period of twelve weeks from the date of receipt of a copy of this order.

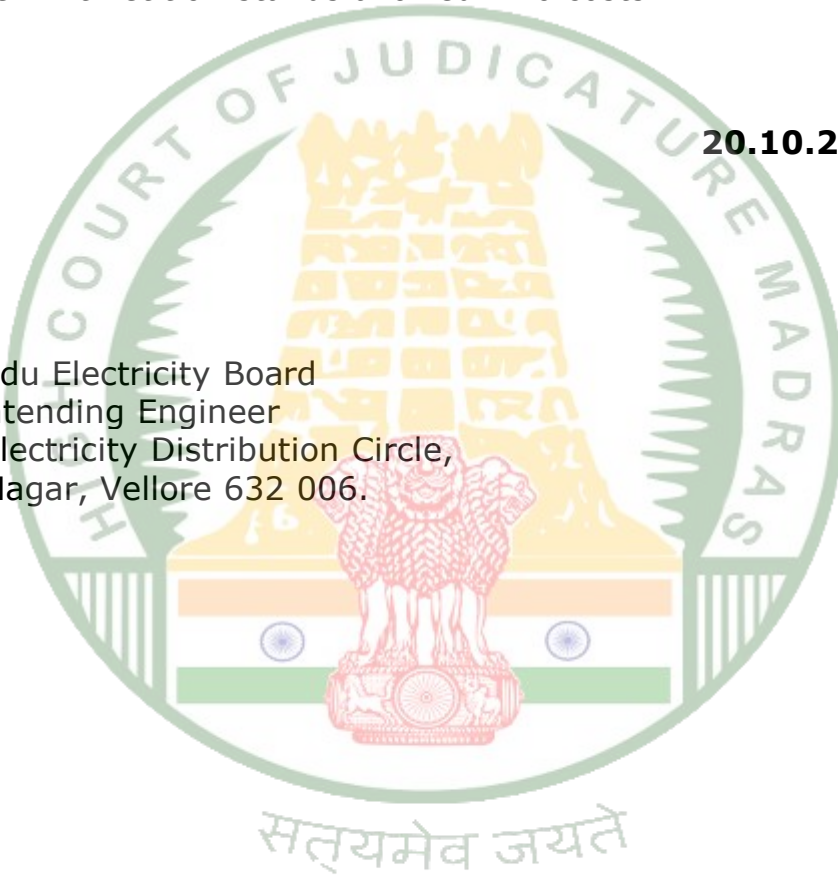
The Writ Petition stands allowed. No costs.

20.10.2017

rpa

To

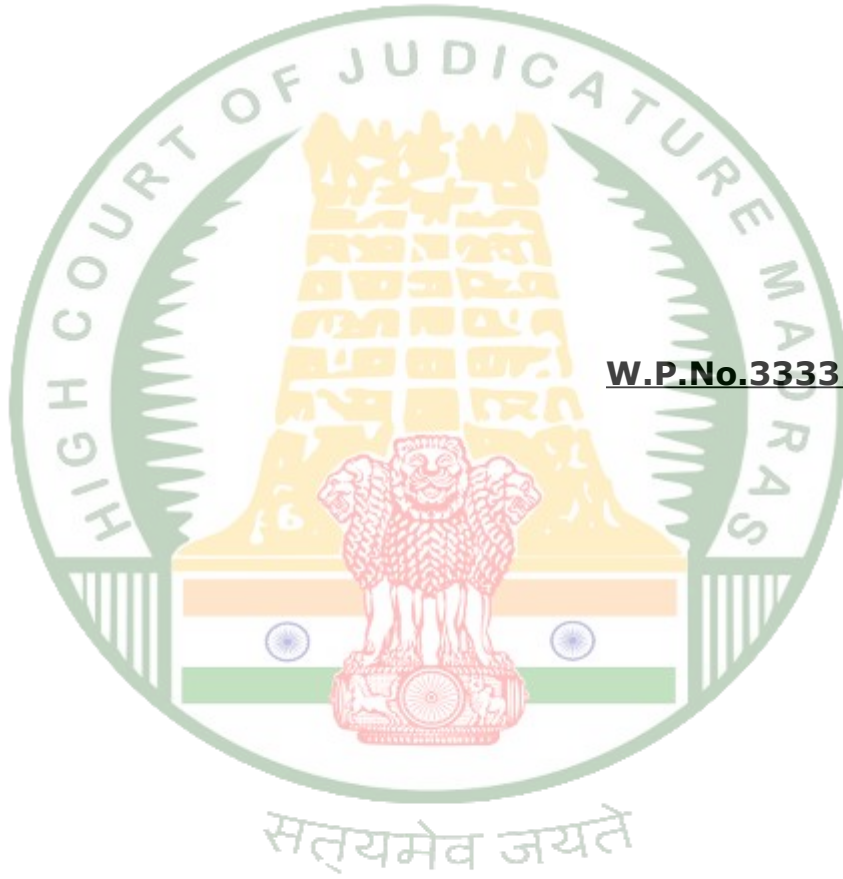
Tamil Nadu Electricity Board
Superintending Engineer
Vellore Electricity Distribution Circle,
Gandhi Nagar, Vellore 632 006.



WEB COPY

S.M.SUBRAMANIAM, J.,

rpa



W.P.No.33332 of 2004

WEB COPY 20.10.2017