



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) No.20714 of 2015

and

M.P. (MD) Nos.2, 3, 5 and 7 of 2015

- 1.M.Mohammed Raffi
- 2.V.Mohammed Ali
- 3.E.Shanmugavel
- 4.S.Murugan
- 5.A.Ismail
- 6.A.Habeebullah
- 7.Annavmuthu

.. Petitioners

Versus

- 1.The Chief Engineer/Personnel,
TANGEDCO/TNEB,
No.144, Anna Salai,
Chennai.
- 2.M.Vetrivelu,
Junior Engineer (Electrical) Grade - I,
Tuticorin Thermal Power Station,
Tuticorin.
[Representing himself and the other
similar persons]
- 3.K.Sankara Pandi
- 4.A.Saravanan
- 5.M.Baruk Hussain
- 6.S.Kesavan
- 7.M.Senthil Kumar
- 8.P.Anand
- 9.R.Sundareswaran
- 10.A.Palani
- 11.K.Venkatesan
- 12.M.Kannimuthu
- 13.S.K.Ramamoorthy
- 14.R.Rangaraj
- 15.K.Ramasamy
- 16.D.Palaniswamy
- 17.D.Palaniswamy



18. Tamil Nadu Power Engineers Organisation,
Rep. by its General Secretary,
(Regd. No.2998/CNI),
27, Mosque Street,
Chepauk, Chennai - 600 005.

[R3 to R18 are impleaded, vide Court order,
dated 10.12.2015, in M.P.(MD)Nos.6, 8 & 9/2015]

19. V. Natarajan

20. G. Ravi

21. G. S. Saurendran

22. K. V. Gopinath

23. K. N. Govindaraman

.. Respondents

[R19 to R23 are impleaded vide Court order
dated 04.03.2016 in W.M.P.(MD)No.4009/2016]

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Memo.No.60296/280/G1/G12/2013-60, dated 11.11.2015 and Memo No.88345/330/G1/G12/2015-3, dated 11.11.2015 and quash the same and consequently, direct the first respondent to promote the petitioners from the date of promotion given to Mr.Manickam, Serial No.5 in the 2nd impugned order, in Memo No.88345/330/G1/G12/2015-3, dated 11.11.2015, with all service and monetary benefits and also direct the first respondent to prepare a common seniority list of J.E. Grade - II for promotion to the post of J.E. Grade - I and benefits.

[Prayed amended vide Court order dated 20.04.2017, made in W.M.P. (MD)No.13387/2016]

For Petitioner	:	Mr.H.Arumugam
For R1	:	Mr.G.Kasinathadurai
		Standing Counsel for TNEB
For R2	:	Mr.T.Lajapathi Roy
For R3 to R8	:	Mr.T.Antony Arul Raj
For R9	:	Mr.R.T.Arivu Kumar
For R10 to R18	:	Mr.K.M.Ramesh
For R19 to R23	:	Mr.A.Rahul

O R D E R

The present Writ Petition has been filed by seven Junior Engineers Grade-II jointly originally seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Memo.No.60296/280/G1/G12/2013-60, dated 11.11.2015 and Memo No.88345/330/G1/G12/2015-3, dated 11.11.2015 and quash the same and consequently, direct the first respondent



to issue updated and current inter se seniority list of Junior Engineer Grade - II, by applying the ratio of 3:1 and promote the petitioners to the post of Junior Engineer Grade - I with all service and monetary benefits.

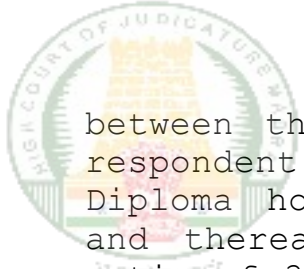
2. During the pendency of the Writ Petition, an amendment of second part of the prayer has been sought for. The said prayer has been amended vide order dated 20.04.2017, in W.M.P.(MD)13387 of 2016, with the following prayer:

'To call for the records of the first respondent in Memo.No.60296/280/G1/G12/2013-60, dated 11.11.2015 and Memo No.88345/330/G1/G12/2015-3, dated 11.11.2015 and quash the same and consequently, direct the first respondent to promote the petitioners from the date of promotion given to Mr.Manickam, Serial No.5 in the 2nd impugned order, in Memo No.88345/330/G1/G12/2015-3, dated 11.11.2015, with all service and monetary benefits and also direct the first respondent to prepare a common seniority list of J.E. Grade - II for promotion to the post of J.E. Grade - I.'

3. The learned counsel for the petitioners submitted that the first petitioner was initially appointed as Helper in the year 1986 and the other petitioners were appointed in the year 1987 as Helpers in the Tamil Nadu Electricity Board and the first petitioner was promoted to the post of Commercial Assistant in the year 1989 and the other petitioners were promoted to the said post in the year 1991. Thereafter, the petitioners 1 to 6 were further promoted to the post of Commercial Inspectors in the year 1994 and the seventh petitioner was promoted in the year 1998 and subsequently, the petitioners 1 to 6 were promoted to the post of Foreman Grade - I in the year 2002 and the seventh petitioner was promoted in the year 2007. After completing seven years in the post of Foreman Grade - I, the petitioners 1 to 6 were further promoted as Junior Engineer [Electrical] Grade - II on 29.10.2009 and the seventh petitioner was promoted on 02.07.2010. The further promotion to the post of Junior Engineer Grade - I is based on the date of appointment to the feeder category, viz., Junior Engineer Grade - II, but the first respondent, till date, has not prepared the inter se common seniority list among the Junior Engineers Grade - II.

4. The learned counsel for the petitioners further submitted that the method of appointment to the post of Junior Engineers Grade - II is by recruitment of Diploma holders and Non-Diploma holders from the feeder category of Foremen Grade - I, subject to pass in Electricity Departmental Test, in the ratio of 3:1 viz., three from the Diploma holders and one from the Non-Diploma holders. As per Regulation 92, Category IV in Division II of

Annexure - I, the first respondent has to prepare a common seniority list for appointment to the post of Junior Engineer Grade - II and the same was made in the ratio of 3:1



between the Diploma holders and Non-Diploma holders. The first respondent should prepare a common seniority list both from the Diploma holders and Non-Diploma holders under separate category and thereafter, they should publish the seniority list in the ratio of 3:1 for further promotion to the post of Junior Engineer Grade - II.

5.As on today, the first respondent has not prepared any such common seniority list among the Junior Engineers Grade - II. The reason is, an order of appointment was issued to the petitioners 1 to 6 and others as Junior Engineer [Electrical] Grade - II on 29.10.2009, in which, one S.Manickam was shown in Serial No.264. Whereas, the petitioners 1 to 6 were shown in Serial Nos.198, 247, 239, 130, 246 and 250 respectively. Therefore, when the first respondent has claimed that he has prepared a common seniority list among the Junior Engineers Grade - II, nowhere the date of joining has been mentioned against any one of the candidates in the common seniority list, which is challenged in the present Writ Petition. Therefore, if a direction is issued to the first respondent to prepare a common seniority list among the Junior Engineers Grade - II for the purpose of promoting the eligible candidates on the basis of the seniority assigned to them, no prejudice would be caused to any one.

6.The learned counsel for the petitioners also submitted that admittedly, the order of appointment dated 29.10.2009, clearly shows that the ranking of S.Manickam is at Serial No.264. Therefore, when all the petitioners except the seventh petitioner viz., Annavamuthu, are going to be given promotion, they should be placed on par with S.Manickam. At the time of giving promotion to the petitioners and others, the first respondent should ensure that the petitioners 1 to 6 except the seventh petitioner should be placed on par with S.Manickam in the post of Junior Engineer Grade - I.

7.A detailed counter affidavit has been filed by the first respondent. The first respondent has clearly stated in the counter affidavit that the post of Junior Engineer Grade - II/Electrical is filled up by two methods, i.e., promotion of Diploma Holders and appointment of Non-Diploma Holders in the ratio of 3:1. The ratio of 3:1 is not applicable for further promotion to the post of Junior Engineer Grade - I and only the employees, who were working as Junior Engineer Grade - II alone will be considered for inclusion in the panel for promotion. For the purpose of giving promotion to the post of Junior Engineer Grade - I, the particulars of employees in the post of Junior Engineer Grade - II/Electrical [common seniority of Diploma Holders and Non-Diploma Holders], for considering to draw a panel for the post of Junior Engineer Grade - I/Electrical were called for as early as in the second respondent's Letters, dated 03.12.2013 and 29.01.2014. After receipt of the same, the



particulars were to be received from about 140 Superintending Engineers in Distribution Circles and other Circles of the TANGEDCO/TANTRANSCO. On 09.01.2014, W.P.No.1871 of 2014 has been filed before this Court by R.Ravichandra Gowthaman and nine others, for a direction to the TANGEDCO to promote them as Junior Engineer Grade - I. They had also prayed for an interim injunction restraining the TANGEDCO from promoting any other Junior Engineers Grade - II / Electrical to Grade - I, without first considering and promoting them. This Court, on 03.02.2014 in W.P.No.1871 of 2014 and M.P.No.1 of 2014, passed an order to maintain status quo as on that date. Therefore, a detailed counter affidavit has been filed on behalf of the TANGEDCO by the first respondent before the Principal Bench of this Court in the said Writ Petition. Finally, when W.P.No.1871 of 2014 was posted before the Division Bench of this Court, the Division Bench, by considering the decision made in W.A.Nos.1571 of 2012 etc. batch, dated 22.06.2015, has given certain observations in the said Writ Petition. Based on the observations made in the said Writ Appeals in W.A.Nos.1571 of 2012 etc. batch and W.P.No.1871 of 2014, a selection list was prepared and panel for promotion to the post of Junior Engineer Grade - I/Electrical from among the Junior Engineers Grade - II/Electrical was issued on 11.11.2015. Again, the same is under challenge in the present Writ Petition. Therefore, the present Writ Petition is liable to be rejected. The reason is, when the present impugned common seniority list in the post of Junior Engineer Grade - II has been prepared on the basis of the guidelines given by this Court in the final judgment in W.A.Nos.1571 of 2012 etc. batch, dated 22.06.2015, no interference is called for.

8.The learned counsel for the first respondent submitted that the petitioners are not even coming within the zone of consideration for appointment to the post of Junior Engineer Grade - I. Moreover, there is no right for them to seek for promotion. No doubt, they have a right to be considered for promotion, but they did not fall within the zone of consideration. Therefore, they do not have any vested right to be promoted to the post of Junior Engineer Grade - I. Further, the writ petitioners secured appointment to the post of Junior Engineer Grade - II only on 29.10.2009 and 02.07.2010 respectively. But, the persons in the seniority list for the promotion to the post of Junior Engineer Grade - I were appointed as Junior Engineer Grade - II much earlier to the writ petitioners. Hence, they came within the zone of consideration. Therefore, it is wrong on the part of the writ petitioners to state that the ratio of 3:1 for appointment to the post of Junior Engineer Grade - II from the feeder category of Technical Assistant and those who coming from the regular work establishment, like Foreman Grade - I, Commercial Inspector will be applicable for promotion to the post of Junior Engineer Grade - I.



9.A detailed counter affidavit has been filed by the second respondent. The learned counsel for the second respondent submitted that the second respondent viz., M.Vetrivelu was appointed as Junior Engineer Grade - II on 21.04.1994 i.e., much earlier to the writ petitioners. Therefore, the second respondent and others were eligible to be appointed to the post of Junior Engineer Grade - I and hence, they came within the zone of consideration. It is not open to the writ petitioners to file the present writ petition after failing to secure orders in W.P.No.590 of 2014. In fact, similar relief as sought for in the present writ petition was prayed in W.P.Nos.590 and 20244 of 2014. Even assuming without admitting that retired persons have been shown in the seniority list, the petitioners have not any vested right to seek promotion to the post of Junior Engineer Grade - I. Therefore, the impugned seniority list need not be disturbed.

10.Placing on record an order passed by a Division Bench of this Court, dated 22.06.2015, in W.A.Nos.1571 of 2012 etc. batch [The Secretary, TNEB, Chennai and another Vs. D.Ravichandran and others], it is further submitted that an observation has been made that the promotions so far made, without reference to the amendment dated 05.07.2003, shall not be reversed, as it would otherwise lead to another set of litigation, hence, this Writ Petition may be closed, he pleaded.

11.Heard both sides.

12.It is an admitted case that the post of Junior Engineer Grade - I is a promotional post from the feeder category of Junior Engineer Grade - II, which has already been filled up in the ratio of 3:1 between the Diploma Holders and Non-Diploma Holders. It is also an admitted case that the ratio of 3:1 is not applicable for further promotion to the post of Junior Engineer Grade - I. But, the date of appointment in the feeder category of Junior Engineer Grade - II will be the crucial date to be taken into account by the first respondent at the time of preparing the common seniority list among the Junior Engineers Grade - II for further promotion from the post of Junior Engineer Grade - II to the post of Junior Engineer Grade - I. No doubt, the petitioners 1 to 6 were shown in Serial Nos.198, 247, 239, 130, 246 and 250 respectively in the seniority list. Whereas, one S.Manickam was shown in Serial No.264. Needless to mention that the seventh petitioner, who was promoted to the post of Junior Engineer Grade - II in the year 2010, has admitted that he does not come within the zone of consideration. Therefore, it is unnecessary to deal with the case of the seventh petitioner. However, the date of appointment of the second respondent shows that he was appointed to the post of Junior Engineer Grade - II on 21.04.1994, but the impugned seniority list, which was challenged in the present Writ Petition, has not shown the date of appointment of either the petitioners or



S.Manickam or even the second respondent - M.Vetrivelu. Therefore, the learned counsel appearing for the petitioners heavily contended before this Court that when the first respondent has pleaded before this Court that the inter se seniority list has been prepared among the Junior Engineers Grade - II, for the purpose of giving promotion to the post of Junior Engineer Grade - I, since hundreds of employees are working in the post of Junior Engineer Grade - II, for the sake of convenience, the Department has to sort out the inter se seniority list in future among the Junior Engineers Grade - II and Junior Engineers Grade - I, specifically mentioning the date of appointment of the employees as on the level of Junior Engineer Grade - II, so that in future, there would not be any further problem to the Department for giving further promotions.

13.I also find some merits on the said submission.

14.When the first respondent has taken a stand in the counter affidavit that the petitioners have not come within the zone of consideration, no basis has been made to say that they are ineligible to be brought in the zone of consideration for the post of Junior Engineer Grade - I. Therefore, no prejudice would be caused to the Department, if they are directed to prepare a common seniority list among the Junior Engineers Grade - II, specifically mentioning the dates of their respective joining in the said post. Therefore, the impugned seniority list is hereby set aside. The first respondent is directed to prepare a common seniority list among the Junior Engineers Grade - II, within a period of eight weeks from the date of receipt of a copy of this order and after framing such common seniority list, the same shall be displayed inviting objection from the affected persons, if any, and thereafter, within three weeks they can proceed further, by giving promotion to the post of Junior Engineer Grade - I. Needless to mention that the first respondent is given liberty to work out the placement of the Junior Engineers Grade - I at the time of giving promotion, by re-arranging the seniority list, but till then, the status quo as on today shall be maintained.

15.With the above direction, this Writ Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar



To

1. The Chief Engineer/Personnel,
TANGEDCO/TNEB,
No.144, Anna Salai,
Chennai.

2. The General Secretary,
Tamil Nadu Power Engineers Organisation,
(Regd. No.2998/CNI),
27, Mosque Street,
Chepauk,
Chennai - 600 005.

+1cc to M/S.H.Arumugam, Advocate SR.No. 67832
+1cc to M/S.A.Rahul, Advocate SR.No. 67807
+1cc to M/S.G.Kasinathadurai, Advocate SR.No. 67763
+1cc to M/S.T.Lajapathi Roy, Advocate SR.No. 67684
+1cc to M/S.T.Antony Arul Raj, Advocate SR.No. 68229

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