



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.02.2017

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WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHANW.P(MD) No.3112 of 2017

K.Raju

... Petitioner

-vs-

1.The Chairman

Tamil Nadu Generation & Distribution Corporation Ltd.,
Tamilnadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.

2.The Chief Engineer Personnel,

Tamil Nadu Generation & Distribution Corporation Ltd.,
Tamilnadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.

3.The Internal Audit Officer,

Tamil Nadu Generation & Distribution Corporation Ltd.,
Tamilnadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 & 2 to consider the petitioners representation dated 25.04.2016 for notional promotion to the post of Assistant Accounts officer in the light of the judgement made in W.A(MD) No.510 of 2013 dated 09.04.2013 within a stipulated time fixed by this Hon'ble Court and promote the petitioner to the post of Assistant Accounts officer on par with his junior and to grant all attendant and monetary benefits.

For Petitioner : M/s.M.Senthil Kumar

For Respondents : Mr.G.Kasinatha Durai
Standing Counsel for TNEB

O R D E R

This Writ Petition has been filed, seeking a direction to the respondents 1 and 2 to consider the petitioner's representation dated 25.04.2016 for notional promotion to the post of Assistant Accounts officer in the light of the judgement



made in W.A(MD) No.510 of 2013 dated 09.04.2013 within a stipulated time fixed by this Hon'ble Court and promote the petitioner to the post of Assistant Accounts officer on par with his junior and to grant all attendant and monetary benefits.

2. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents. By consent of both parties the writ petition itself is taken up for final disposal at the admission stage.

3. The petitioner was working as Accounts Supervisor in the Tamil Nadu Electricity Board and next avenue for promotion is Assistant Accounts Officer. The petitioner's name had been included in the promotion panel for the year 2013 - 2014 and he was placed in Serial No.192. But promotion was granted only upto Serial No.188. Thereafter, the name of the petitioner was included in the subsequent promotion panel for the year 2015-2016. Even though his name was recommended for promotion, on account of Tamil Nadu State Assembly Election, the respondents withheld the promotion. In the meantime, the Petitioner attained the age of superannuation on 30.4.2016. Therefore, based upon the orders passed in W.A(MD)No.510 of 2013 dated 09.04.2013, the petitioner claimed service benefits as well as notional promotion, by making a representation dated 25.04.2016. As this representation is not considered, this writ petition has been filed.

4. The learned counsel for the petitioner would submit that even though the petitioner was eligible to be considered for promotion and he was also being considered, on account of the unexpected intervening Assembly Election, he did not get promotion and it is the duty of the State to get clearance from the Election commission and the petitioner cannot be deprived of his promotion on that score.

5. This Court perused the Judgment rendered by the Division Bench of this Court in W.A(MD)No.510 of 2013 dated 09.04.2013, under which, at paragraph - 5, it is held as follows:

"5. The mandatory duty on the part of the Government in considering the promotion of Government servants at the relevant time was held to be a fundamental right guaranteed under Article 16 of the Constitution. The Supreme court in the decision reported in Union of India vs. Hemraj Singh Chauhan, 2010 (4) SCC 290 in paragraphs 35 & 36 held as follows:-

"35. The Court must keep in mind the constitutional obligation of both the Government of India and the Government of the State of Madras as also the State Government. Both the Central Government and the



State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

and the above case is squarely applicable to the present case on hand.

6. Under such circumstances, the first and second respondents are directed to consider the representation of the petitioner dated 25.04.2016 in the light of the observations made in W.A(MD)No.510 of 2013 dated 09.04.2013 and to pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

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+1 cc to M/S.M.Sendhilkumar, Advocate in SR.No. 9992

vsn

CSL/RR/SAR-II/07.03.2017 : 3P/5C