

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.10.2018
CORAM
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
W.P.No.32696 of 2003

P.Sekar

...Petitioner

Vs.

- 1.The Chief Engineer, (Distribution)
Tamil Nadu Electricity Board
Trichy Region,
Thenur, Trichy.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Karur Electricity Distribution Circle,
Karur.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in Memo. No.13594/679/ADM.B/B.1/2003, dated 21.07.2003 quash the same and direct the respondents to restore the petitioner to his original position of Junior Engineer Grade-I with all attendant benefits.

For Petitioner : Mr.S.Jayaraman
for Mr.C.S.Krishnamoorthy

For Respondents: Mr.P.R.Dhilip Kumar
for R1 and R2

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the first respondent in Memo.No.13594/679/ADM.B/B.1/2003, dated 21.07.2003 quash the same and direct the respondents to restore the petitioner to his original position of Junior Engineer Grade-I with all attendant benefits.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:-

The petitioner was appointed as a Switch Board Operator in the Tamil Nadu Electricity Board in the year 1984. Thereafter, he was promoted as Junior Engineer Grade-II, in the year 1987

and subsequently got promoted as Junior Engineer Grade-I in 1992.

3. While so, disciplinary proceedings have been initiated against the petitioner by framing charges against him. As against the charges, explanation was called upon from the petitioner and on receipt of explanation and not satisfied with the same, the respondents conducted the domestic enquiry by appointing an Enquiry Officer. After having completed their enquiry, the Enquiry Officer filed a report stating that all the five charges framed against the petitioner have been proved.

4. Thereafter, after giving second opportunity to the respondent, the Disciplinary Authority had inflicted the punishment of reduction to the lower post of Technical Assistant for a period of five years with cumulative effect and without affecting his seniority for the post of Junior Engineer Grade-I (Electrical).

5. As against the said order of punishment, the petitioner preferred an appeal to the first respondent which was rejected by the first respondent. However, as against such order of rejection, the petitioner approached this Court by filing writ petition in W.P.No.19361 of 2000, where this Court by an order dated 09.04.2003, after having set aside the order of punishment as well as the order of appeal had remanded the matter back to the first respondent/ Appellate Authority to reconsider the issue.

6. Pursuant to the said order passed by this Court, the Appellate Authority after having reconsidered the issue, passed detailed order on 21.07.2003, whereby, the Appellate Authority by taking into account all the aspects had modified the punishment of reduction to the lower post of Technical Assistant for a period of 5 years with cumulative effect into reduction to the lower post of Technical Assistant for a period of 3 years without cumulative effect excluding the leave period if any availed by him and without affecting his seniority in the post of Junior Engineer Grade-I (Electrical).

7. Aggrieved over the said order passed by the Appellate Authority, the present writ petition has been filed with the aforesaid prayer.

8. I have heard Mr.C.S.Krishnamoorthy, learned counsel appearing for the petitioner. He has made his submissions mainly on the ground that, if at all punishment has to be given for the proved charges against the petitioner for reduction to the lower rank, such punishment cannot be given to reduce the rank of the petitioner two tire lower. In other words, since,

the petitioner had been working as Junior Engineer Grade-I, if at all punishment has been inflicted on him, he should have been reverted to the post of Junior Engineer Grade-II which is a next hierarchy of post from which only the petitioner had been promoted as Junior Engineer Grade-I. However, in the impugned order, the petitioner had been reverted to Technical Assistant post which is one of the lowest cadre of post in that category and therefore, such a two tier reduction could not have been made by the respondents. Therefore, with regard to the proportionality and quantum of punishment, the learned counsel appearing for the petitioner has made elaborate submissions.

9. In this regard the learned counsel had relied upon the judgment of the Hon'ble Supreme Court reported in 1991 Supp. (1) SCC 190 in the matter of Ram Prakash Agnihotri Vs. District Judge U.P. and others. The said judgment is extracted here under for easy reference:

1. Rule nisi.
2. The petitioner was appointed as a Stenographer Grade II in 1962 and by 1978 he was confirmed as Stenographer Grade I. A departmental enquiry was held against him for remaining absent without leave and in that departmental enquiry he was found guilty and was reduced to the rank of Clerk/Typist. His grievance is that he could have been reduced to the next lower rank in the hierarchy and not to the post of Clerk/Typist which is outside the hierarchy. We had issued notice on the limited question as to why he should not be reverted to the post of Stenographer Grade II instead of being reverted to the post of Clerk/Typist. We have heard counsel for both the sides on this limited question and we think that the grievance of the petitioner in this behalf is fully justified. We, therefore, substitute the order of his reversion to the post of Clerk/Typist to that of Stenographer Grade II with effect from the date on which he was so reverted. He will be entitled to all consequential benefits flowing from this order. The rule is made accordingly with no order as to costs.

10. By relying upon the said judgment the learned counsel for the petitioner would make the submission that, if at all the punishment of reduction in rank is to be inflicted upon the petitioner as set out above, he should have been punished by

reducing the rank from Junior Engineer Grade-I to Junior Engineer Grade-II. Instead of such reduction in rank, the impugned order of punishment made the petitioner from Junior Engineer Grade-I to Technical Assistant which is far lower category and also which is out of the purview of the hierarchy of the post where the petitioner travelled from the date of appointment. Therefore, the learned counsel for the petitioner would submit that the said punishment of reduction into lower rank that too outside the hierarchy of post is impermissible and therefore, the impugned order is liable to be interfered with.

11. Per contra, Mr.P.R.Dhilip Kumar, learned Standing Counsel appearing for the respondents/ TANGEDCO would submit that, as per the list of penalties clause 5 of the Disciplinary Rule suggests various punishments including reduction to a lower rank and the relevant portions of the Rule reads thus:

Penalties:-

The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed upon the employees of the Board namely

- (i) Censure
- (ii) Withholding of increment or promotion
- (iii) Reduction to a lower rank in the seniority list or to a lower post or time scale, whether in the same class of service, or in another class of service, or to a lower stage in a time scale.

12. The learned Standing Counsel would also rely upon the subsequent amendment made dated 05.11.2002 in the said regulations called Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations. According to the said amendment, a clarification has been given as to how a reduction to a lower rank punishment has to be inflicted. For easy reference, the relevant portion of the said regulations is extracted hereunder:

- (iii) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited whether in the same class of service or in another class of service, or to a lower time-scale not being lower than that to which he was directly recruited, or to a lower stage in a time scale.

13. By relying upon these regulations, the learned counsel would submit that, while making the punishment of reduction to

the lower rank on an employee he should not have been reduced to a lowest rank or the rank in which he was originally entered into the service but above one rank as the rank or hierarchy of post where he entered into service upto which he can be reverted.

14. In this context, the learned standing counsel would also rely upon various classes of service as it has been mentioned in the service regulations. According to which, the post of Junior Engineer Grade-I comes under the Class-II category and Junior Engineer Grade-II comes under the class-III category. In that class-III category under Division VII-A in Serial No.15 and 16, the original post called Tester Grade-I and Tester Grade-II had been renamed as Technical Assistant Electrical and Technical Assistant Mechanical.

15. Since the petitioner was originally appointed as Switch Board Operator Grade - I in 1984, subsequently had been promoted on 25.03.1985 to the post of Tester Grade-II from which post he has been further promoted as Junior Engineer Grade-II and further promoted as Junior Engineer Grade-I in the year 1987 and 1992 respectively.

16. In this context, the learned standing counsel would further submit that, the said post called Tester Grade-II has been re-designated as Technical Assistant (Electrical) as per the amendment made through Board proceedings 15 dated 05.03.2002.

17. Since, the Technical Assistant (Electrical) is one of the post which is equivalent to the earlier post of Tester Grade-II comes within the Division VII-A of Class III category, such a reduction in rank can be made possible by way of inflicting punishment in view of Regulation 5 under the heading Penalties in the said Regulations namely Tamil Nadu Electricity Board employees' Disciplinary and Appeal Regulations.

18. Therefore, the learned standing counsel appearing for the respondent TANGEDCO would vehemently contend that the respondents have not violated the said regulations in inflicting the punishment on the petitioner for the 5 proven charges made against him. Whereby he had been reduced to the rank from the post of Junior Engineer Grade - I to the Technical Assistant which is equivalent to erstwhile post of Tester Grade-II which is certainly one grade above than the post called Switch Board Operator-I, where originally the petitioner entered into service. Therefore, the learned standing counsel appearing for the respondents would submit that the impugned orders do not require any interference from this Court.

19. I have considered the said rival submissions made by the respective counsels appearing for the parties and also have perused the materials placed before this Court. The main objection on the side of the petitioner which was raised is that, by inflicting the punishment on the petitioner viz., the punishment of reduction in rank as per the regulations, such a reduction could have been only made to the next lower cadre or post. While that being so, the petitioner if at all could have been reduced to the rank from Junior Engineer-I he should have been reduced to the rank of Junior Engineer Grade-II alone and not beyond that.

20. The learned counsel appearing for the petitioner by relying upon the judgment cited supra has contended that, since the post of Technical Assistant (Electrical) is not in the hierarchy of post where the petitioner travelled from the date of entering into service, definitely, the said post can only be construed as post outside the purview of the hierarchy, therefore, if the factum of the said judgment of the hon'ble Apex Court is applied to the present facts of the case, the impugned punishment inflicted on the petitioner reducing two ranks and posting him in Technical Assistant post which is outside the purview of the hierarchy, definitely would be an unlawful punishment and therefore the impugned order can be interfered with.

21. The said argument advanced on the side of the petitioner is liable to be rejected for the reason that, in the said judgment the incumbent working as Stenographer Grade-I when punishment was imposed against him was reverted to the post of Clerk/ Typist. Only in that context the Hon'ble Supreme Court had held that if at all the reduction could have been made by way of punishment, the incumbent could have been reduced from the rank of Stenographer Grade-I to Stenographer Grade-II alone and since he had been reduced to the rank of Clerk / Typist which is outside the hierarchy of post such kind of reduction in rank cannot be permitted. Therefore, only in that context the said punishment had been interfered with.

22. Here in the case in hand, it has been demonstrated before this Court by the learned standing counsel appearing for the respondent that, no doubt, the petitioner was entered into service in the year 1984 as he was appointed on 26.05.1984 to the post of Switch Board Operator-I. He had been further promoted to the post of Tester Grade-II on 25.03.1985. Thereafter, he was given further promotion as Junior Engineer Grade -II in 1987 and Junior Engineer-I in 1992.

23. Prima-facie if we look into these hierarchy of posts, the argument advanced by the learned counsel appearing for the

petitioner appears to be acceptable. However, the fact remains that, as clarified by the learned standing counsel appearing for the respondents, by virtue of the amendment dated 05.03.2002 under Board proceedings 15, the Tester Grade-II post had been renamed as Technical Assistant (Electrical) and the Tester Grade-I has been renamed as Technical Assistant (Mechanical).

24. In that context since the post of Tester - Grade II held by the petitioner during the year 1985 to 1987 is nothing but the present renamed post of Technical Assistant (Electrical) under which there is another category of post called Switch Board Operator wherein the petitioner exactly entered into service.

25. When the punishment is imposed on the petitioner by reducing his rank from Junior Engineer Grade I, he has been reverted to the post of Technical Assistant (Electrical), which is the post held by the petitioner of course in a different name called Tester Grade-II. Therefore, the argument on the petitioner side that he had been reverted to the post outside the purview of the hierarchy of the post is completely without any basis and therefore, the said judgment, the petitioner referred to above, cannot be made applicable to the facts of the present case.

26. That apart, an argument was advanced by the learned counsel appearing for the petitioner that if at all the punishment of reduction in rank has to be inflicted, it could be done from the post where he is demoting only to the next post or cadre of post and in that case, the petitioner from the post of Junior Engineer Grade-I has to be reverted or reduced to Junior Engineer Grade-II and not beyond that. The said argument is liable to be rejected on the ground that, if we look at Regulation 5 (iii), it makes abundantly clear that when reduction to a lower rank in the seniority list or to a lower post or time-scale wherein the same class of service or in another class of service, he can be reverted or posted.

27. In this context, the class of services mentioned under the Service Regulations is projected by the learned standing counsel appearing for the respondents TANGEDCO which suggests that, in clause 8 under the heading Constitution, various posts of respondent TANGEDCO have been given. In that heading certain Division of posts under various categories come under Class I, like that several other posts under various Divisions and category come under Class II, in that Class II in Division II category 4 the Junior Engineer (Electrical) Grade-I comes. Like that in Class III in Division I category 3 Junior Engineer (Electrical) Grade-II post comes. In the same Class III Division VII-A Serial No.15 the Tester (Electrical) Grade-I

comes which is a renamed post as stated above. Therefore Board Proceeding No.15 dated 05.03.2002 under which the earlier name of Tester Grade-II has been renamed as Technical Assistant (Electrical).

28. Therefore, if we strictly apply Clause 5(iii) of the Regulations, the power vests with the Disciplinary Authority to inflict a punishment of reduction to a lower rank, enables the Authority to reduce the erring person/ employee either to the next hierarchy of post or to the next cadre of post or next class of post. Here, in the case in hand, he had been reduced to next class of post as the post of Technical Assistant (Electrical) comes within Class III and his original post where he held at the time of disciplinary action namely Junior Engineer Grade I comes under Class I.

29. The only embargo against the reduction to a lower post is the one namely the amendment made by B.P.(FB) No.62(SB) dated 05.11.2002 which has already been extracted herein above, under which, such reduction in rank cannot be made to the lowest post in that category and such reduction can be made only up to the level of one level or category higher than the post to which he was directly recruited.

30. If the said Regulation is applied in the present case, since the petitioner entered into Switch Board Operator - I the next higher category is Tester Grade-II renamed as Technical Assistant (Electrical) and only to that post now the reduction has been made. Therefore, it does not offend the amendment made under B.P.(FB) No.62(SB) dated 05.11.2002. Therefore, the argument advanced by the petitioner's side on all these aspects discussed above are liable to be rejected. Accordingly, it is rejected.

31. Apart from the aforesaid aspects, when the petitioner preferred an appeal against the original Disciplinary Authority's order, under which he had been punished by reducing to the lower post of Technical Assistant for a period of 5 years with cumulative effect without affecting his seniority in the post of Junior Engineer Grade - I, the Appellate Authority in the impugned order dated 21.07.2003 has modified the said punishment by reduction to the lower post of Technical Assistant for a period of 3 years without cumulative effect excluding the leave period if any availed by him and without affecting his seniority in the post of Junior Engineer Grade-I (Electrical).

32. As per the modified punishment through the impugned order of the Appellate Authority it is informed that the petitioner has undergone 3 years punishment between 07.04.2001 and 06.05.2004. Thereafter, from 07.05.2004 to 10.01.2007 he

had been reposted to the original position i.e., Junior Engineer Grade-I. Thereafter, he had been working in the said post of Junior Engineer Grade-I from 11.01.2007 to 14.02.2007 and thereafter he was promoted as Assistant Executive Engineer and he was working as Assistant Executive Engineer from 15.02.2007.

33. Since, the 3 years punishment has already been undergone by the petitioner for which he would have been paid salary equivalent to the Technical Assistant post where he was admittedly working for 3 years period during the currency of the punishment and he cannot claim back any other perquisites than the salary he had received.

34. However, the learned counsel appearing for the petitioner had raised an issue that, during the currency of the punishment, some of the juniors got promoted and subsequently even though the petitioner has been put into the original position after undergone the punishment, he had been given such promotion only on 15.03.2007. Such promotion should have been given atleast notionally from the date when even one of his Juniors was given such promotion because, even under the punishment as inflicted through the impugned order, the seniority of the petitioner in the grade of Junior Engineer Grade-I shall not get affected.

35. The said issue raised by the petitioner has been stoutly denied by the learned standing counsel appearing for the respondents and he would maintain that during the currency of the punishment no one of the Juniors have been given promotion to the post of Assistant Executive Engineer.

36. Be that as it may, the modified punishment suggests that the punishment of reduction in rank for 3 years was without cumulative effect and also his seniority in the post of Junior Engineer Grade-I would not get affected.

37. If that being so, whatever promotional avenue which became due for the petitioner during the currency of the punishment and during that period if any one of the Juniors to the petitioner have been promoted to the post of Assistant Executive Engineer, certainly the post of Assistant Executive Engineer shall be conferred on the petitioner, of course notionally without any monetary benefits.

38. In that view of the matter as discussed above this Court is inclined to pass the following orders:

The impugned orders are sustainable and it does not require any interference from this Court. Therefore, the writ petition fails in this regard, accordingly, it is dismissed. However, if at all any promotion to the post of Assistant Executive Engineer

is given to any one of the Juniors of the petitioner either during the currency of the punishment i.e., between 07.04.2001 and 06.05.2004 or thereafter, certainly from that date the petitioner shall also be entitled to get such promotion, of course notionally, and if such promotion is given notionally to the petitioner after verifying the records to that effect the other service benefits without any back wages shall also be conferred on the petitioner.

39. With these observations and directions, the writ petition is dismissed, however, there shall be no costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dsa/sni

To

- 1.The Chief Engineer, (Distribution)
Tamil Nadu Electricity Board
Trichy Region,
Thenur, Trichy.
- 2.The Superintending Engineer,ts,
Tamil Nadu Electricity Board,
Karur Electricity Distribution Circle,
Karur.

+lcc to Mr.P.R.Dhilipkumar, Advocate sr.73988

+lcc to Mr.C.S.Krishnamoorthy, Advocate sr.73992

W.P.No.32696 of 2003

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