

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.03.2018

Delivered on: 22-03-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.16603 of 2011 &
WMP Nos.1 to 3 of 2011

1 P. GIRISH
2 S. ELAMBARUTHI
3 P.KRISHNAMURTHY
4 C.MAHALINGAM
5 M. AMBROSE
6 N.SUBRAMANI
7 M.SANKER
8 STEPHEN GNANDAS
9 JAIKISHAN
10 J. ANTONY DOSS

VERSUS

1 TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION
REP BY CHAIRMAN,
CUM MANAGING DIRECTOR,
NPKRR MAALIGAI,
144 ANNA SALAI, CHENNAI 2
2 CHIEF ENGINEER/PERSONNEL
TAMILNADU GENERATION AND DISTRIBUTION
CORPORATION,
NPKRR MAALIGAI,
144 ANNA SALAI,
CHENNAI 2

3 THE SUPERINTENDING ENGINEER
CHENNAI ELECTRICITY DISTRIBUTION CIRCLE/WEST
TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION,
THIRUMANGALAM CHENNAI 40.

4 P.S.PARTHASARATHI

5 R. RAVISHANKAR

6 N. ALAGAR SAMY

7 R.JAYASANKAR

8 L.RAVIKUMAR

9 M.SRINIVASAN

10 A. SELVARAJ

11 K. RAVICHANDRAN

12 P.SEETHAPATHY

13 M.KARUNAMOORTHY

14 J. BASKARAN

15 M. VEDACHALAM

16 S. SELVARAJ

17 S. DEVADASAN

18 S.GOWRIPATHY

19 P. DESALU

20 N.ACHUTHAN

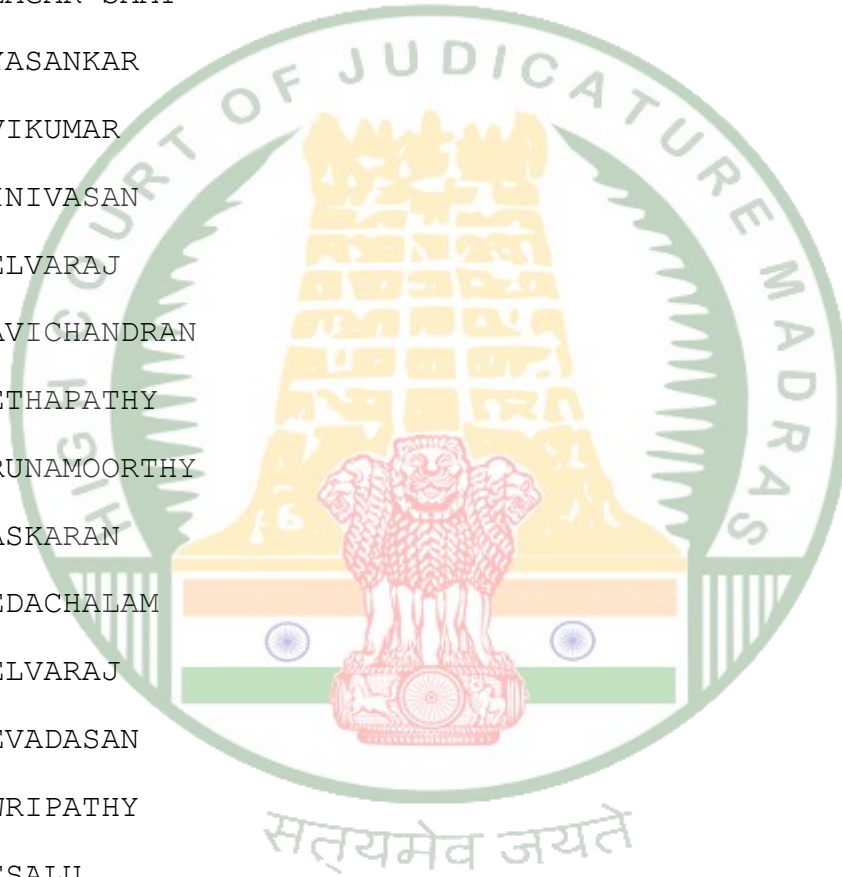
21 S. SUBRAMANI

22 P. SANKAR

23 K.VAIDHIYANATHAN

24 S. MANOHARAN

25 M. PONNUSAMY



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Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records from the 3rd Respondent relating to memo.no.82/ADM.III/AI/F seniority list of F.M./2010 dated 6.2.2010 and quash the same as illegal, arbitrary and violative of principles of natural justice in so far the respondents 4 to 26 are shown as seniors to the writ petitioners and consequently direct the respondent 1 to 3 to consider the petitioners representations more particularly representation dated 4.12.2010 read with the Letter No.012143/1354/G46/G462/2010-2 of the 2nd respondent dated 18.02.2011, recast the seniority of both the petitioners and the respondents 4 to 26 based on their seniority in the post of Wireman/Commercial Assistant/Telephone Operator based on the single channel system viz., A.P.(ch.) No.106, dated 9.4.1996 and grant all subsequent promotions to the petitioners on that basis and promote the petitioners to the post of Special Grade Foreman accordingly before considering the respondents 4 to 26 and grant all consequential benefits.

For Petitioners : Mr.K.Srinivasamurthy for
M/s.Row & Reddy

For Respondents: Mr.P.R.Dilipkumar for R1toR3
Ms.Anna Mathew for R4, 6 to 8,
10 to 21 & 23 to 26
NA for RR5, 9 & 22.

ORDER

The petitioners have come forward with the present Writ Petition, for the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records from the 3rd Respondent relating to memo.no.82/ADM.III/AI/F seniority list of F.M./2010 dated 6.2.2010 and quash the same as illegal, arbitrary and violative of principles of natural justice in so far the respondents 4 to 26 are shown as seniors to the writ petitioners and consequently direct the respondent 1 to 3 to consider the petitioners representations more

particularly representation dated 4.12.2010 read with the Letter No.012143/1354/G46/G462/2010-2 of the 2nd respondent dated 18.02.2011, recast the seniority of both the petitioners and the respondents 4 to 26 based on their seniority in the post of Wireman/Commercial Assistant/Telephone Operator based on the single channel system viz., A.P.(ch.) No.106, dated 9.4.1996 and grant all subsequent promotions to the petitioners on that basis and promote the petitioners to the post of Special Grade Foreman accordingly before considering the respondents 4 to 26 and grant all consequential benefits."

2. The petitioners are all employees of the Tamil Nadu Generation & Distribution Corporation, first respondent herein. They originally joined as Helpers on various dates. The private respondents 4 to 26 herein also joined as Helpers like the petitioners herein. There were two channels of promotion for the post of Helper which is described as under:

Helper	
Wireman	Commercial Assistant/ Telephone Operator
Line Inspector	Commercial Inspector
Foreman I Grade	
Special Grade Foreman I Grade	

3. All the petitioners had opted for Commercial Assistants/Telephone Operator channel, whereas the respondents 4 to 26 opted as Wireman channel. On the basis of available vacancies, in the channel opted by the petitioners, they were promoted as Commercial Assistants before the respondents are promoted as Wiremen. Therefore, the petitioners became admittedly seniors to respondents 4 to 26 in the promoted post. On 9.4.1996, the respondent Corporation, by Board proceedings No.106 introduced 'single channel of promotion' to the next promotion post as Line Inspector/Commercial Inspector. The promotion was to be effected on the basis of the seniority in the category of Wireman/Commercial Assistants as the case may be. In view of the introduction of the single channel of promotion, the petitioners became eligible for promotion in the line of the Line Inspector/Commercial Inspector earlier to respondents 4 to 26 in view of the admitted position that the petitioners were promoted ahead of the private respondents as Commercial Assistants/Telephone Operators. While so, the Board

proceedings No.106 which sought to introduce to system of single channel was challenged in W.P.No.15168 of 1996 and on 18.10.1996, this Court stayed the implementation of the said Board proceedings pending disposal of the Writ Petition. In view of the interim order granted by this Court, the respondent Corporation, as a temporary measure, decided to follow earlier two channel system which were in vogue before introduction of Board proceedings No.106 dated 9.4.1996. For the said purpose, the respondent Corporation has issued Board Proceedings in B.P.No.2, dated 19.1.1998 restoring two channel method of promotion only as an interim measure and it was made clear that the said B.P.No.2 was subject to the outcome of the Writ petition in WP No.15168 of 1996. In effect, any promotion made by resorting to two channel system vide B.P.No.2 was subject to the outcome of the said Writ Petition.

4. Based on re-introduction of two channel system of promotion vide B.P.No.2, the private respondents were given promotion as Line Inspector by order dated 25.5.1998 and in the order of promotion, it was specifically mentioned that the promotion was subject to the result of the writ petition pending before this Court in W.P.No.15168 of 1996. In fact, in the promotion order, it was specifically mentioned that by such promotion, the employees are not conferred on any preferential claim for seniority, probation etc., and they will be reverted back to the original post at any time without assigning any reasons. In the meanwhile, some Line Inspectors filed a writ petition in W.P.No.6464 of 1998 challenging the subsequent B.P.No.2 which reiterated two channel system of promotion. On 30.4.1998, this Court also granted stay of said B.P.No.2. During pendency of the said WP, the said B.P.No.2 was withdrawn by the respondent Corporation and on the basis of the development, the Writ Petition No.6464 of 1998 came to be closed on 4.9.2002. Subsequently, it appears that even the other writ petition which challenged the single channel system i.e. W.P.No.15168 of 1996 also came to be closed. The net effect of the dismissal of the writ petitions was that the single channel system of promotion had come into vogue and the promotions of all those Wiremen as Line Inspectors under two channel system had to be reviewed since admittedly such promotions were effected on a temporary measure subject to the outcome of the writ petition in W.P.No.15168 of 1996.

5. While matters stood thus, the dismissal of the writ petition by this Court had not come to the knowledge of the writ petitioners as according to the petitioners, even after the disposal of the said writ petition, when promotions were granted to the private respondents, the respondent Corporation had incorporated in the promotion order itself that their promotion would be subject to the result of the writ petition. Therefore,

the petitioners were all along under bona fide impression that the writ petition was pending for final consideration before this Court. This fact was highlighted by the petitioners by stating that even as late as 13.6.2007, when private respondents were further promoted as Foreman Grade I, it was mentioned that the promotion was made subject to outcome of the writ petition in W.P.No.15168 of 1996. Since these petitioners were not parties to the said writ petition, they were not aware of the fact that the said writ petition was dismissed as early as on 22.9.2004. Further for the first time, when the promotion panel dated 29.7.2010 was published for promotion to the post of Special Foreman Grade I and in the promotion panel, there was no mention about the words "subject to WP 15168 of 1996". Thereafter, on enquiry, the petitioners came to understand that the said writ petition was disposed of as early as in the year 2004. Therefore, they requested the authorities concerned for redrawing the seniority list based on B.P.No.106 providing for single channel system of promotion and effect promotions on that basis. Since no action was forthcoming in regard to their representation dated 4.12.2010, the petitioners are before this Court, seeking to issue Writ of Mandamus, to recast the seniority of both the petitioners and the respondents 2 to 26 herein, in the post of Wireman and Commercial Assistant-cum Telephone Operator based on single channel system and grant all subsequent promotions on that basis.

6. Upon notice, Mr.P.R.Dilipkumar and Ms.Anna Mathew, learned counsels entered appearance for respondents 1 to 3 and for respondents 4, 6 to 8, 10 to 21 & 23 to 26 respectively and filed a detailed counter affidavits. In the counter affidavits, the facts are broadly admitted. Several objections are raised on behalf of the respondent Corporation stating that the petitioners were aware of the seniority list published in the promoted posts and in the absence of challenge to seniority, the present writ petition seeking to issue Writ of Mandamus is not maintainable. During the course of one of the hearings, relevant seniority list has been produced as between the petitioners and the private respondents and an attempt was made on behalf of the respondent Corporation to impress upon this Court to show that the private respondents were promoted as Line Inspectors and further promoted to the post of Foreman I Grade ahead of the writ petitioners and therefore, the writ petitioners cannot have any legitimate grievance in assignment of inter se seniority. In order to circumvent the legal objections raised on behalf of the respondent Corporation, the petitioners have not challenged the seniority list, however an amendment petition was filed seeking to raise additional grounds and to challenge the seniority list dated 6.2.2010. The said amendment petition was allowed vide order dated 7.1.2013 and consequently, the prayer was also amended accordingly.

7. Shri K.Srinivasamurthy, learned counsel appearing for the petitioners would submit that all the promotions which took place during the pendency of litigation before this Court, were subject to the outcome of the writ petition in WP No. 15168 of 1996 and only by way of interim measure, such promotions took place and once such writ petition having been dismissed in 2004, the respondent Corporation ought to have reviewed the entire promotions and ought to have refixed the seniority on the basis of single channel system of promotion. If the respondent Corporation had undertaken such exercise at appropriate time, it could not have resulted in undue favour being granted to private respondents 4 to 26 herein and resulting in negation of petitioners' right to be promoted ahead of the private respondents 4 to 26 in terms of BP No.106 dated 9.4.1996. The stand taken by the respondent Corporation that no matter the introduction of single channel system, the seniority assigned to respondents 4 to 26 cannot be disturbed is per se preposterous and cannot be countenanced both in law and on facts.

8. On behalf of the private respondents 4 to 26, though learned counsels names appeared in the cause list, however there was no representation on behalf of the private respondents in none of the hearings and they remained absent throughout.

9. Shri K.Srinivasamurthy, learned counsel appearing for the petitioners would submit that the private respondents are unlikely to be affected by recasting the seniority of the petitioners herein since many of them have got due promotion and retired from service. Therefore, they are most disinclined to make appearance before this Court as they ceased to be stake holders in the litigation. As regards the official respondents are concerned, though several reasons have been cited in the counter affidavit as well as in the additional counter affidavit, none of the averments contained in both the affidavits addressed the core issues which arose for consideration before this Court. This Court finds that most of the averments contained in the counter affidavit as well as in the additional counter affidavit are extraneous in nature and not addressing the points in issue before this Court. Admittedly, after the disposal of W.P.No.15168 of 1996 in 2004, it was imperative on the part of the respondent Corporation to introduce the single system of channel of promotion on the basis of BP No. 106 dated 9.4.1996 and the entire promotion effected during the pendency of the litigation ought to have been reviewed and resettled. Such exercise had not been done by the respondent Corporation for whatever reasons which were not properly explained before this Court. On the other hand, the respondent Corporation has proceeded with two channel system of promotion while following the seniority which was fixed on that

basis and continued to promote the private respondents as Foreman Grade I and Special Foreman Grade I without resorting back to single channel system of promotion. Such action on the part of the respondent Corporation was contrary to its own proceedings vide B.P.No.106 dated 9.4.1996. Although this Court initially expressed its apprehension about the delay of the petitioners in approaching this Court in 2011, while the Writ Petition in WP 15168 of 1996 was disposed as early as in the year 2004, the apprehension expressed by this Court sought to be allayed by the learned counsel for the petitioners stating that even as late as in 2007, when promotions were effected in respect of private respondents 2 to 26 to the post of Foremen Grade I, the administration continued to mention in the promotion order that their promotion would be subject to the result of WP 15168 of 1996. Since the petitioners were not parties to the said Writ Petition, they were not aware of the dismissal of the same. However, for the first time, when promotion order was issued to the private respondents in 2010, when the petitioners found in the promotion order issued that there was no mention of pendency of subject Writ Petition, they ultimately came to know about the dismissal of the Writ Petition. Thereafter, they made representation immediately and in the absence of any action thereon, the petitioners had chosen to approach this Court, seeking for issuance of Writ of Certiorarified Mandamus while challenging the subsequent seniority list.

10. This Court is satisfied with the explanation submitted by the learned counsel for the petitioners in regard to delay in approaching this Court.

11. Be that as it may, the single most important fact for consideration before this Court is, whether the respondent Corporation ought to have followed single channel system of promotion as per its B.P.No. 106 dated 9.4.1996 or to follow two channel system of promotion as conveyed in B.P. No.2 dated 19.01.1998?

12. Admittedly, B.P.No.2 came to be withdrawn by the respondent Corporation itself by B.P.No. 27 dated 22.6.1999 and on the basis of which, one another Writ Petition was filed, challenging the said BP No.2, which came to be closed. Once the BP No.2 had been withdrawn by the respondent Corporation itself, it is needless to mention that the entire seniority had to be recast on the basis of single channel system of promotion and further promotion had to be effected on such seniority. Moreover, it is admitted fact that the promotions effected in favour of the private respondents was on temporary basis subject to the outcome of the WP No.15168 of 1996. As rightly contended by the learned counsel for the petitioners, a specific clause

was incorporated in all the promotion orders that the promotion would be subject to the result of WP No.15168 of 1996. Once the Writ Petition came to be dismissed and BP No.106 dated 9.4.1996 came to be restored, the natural corollary of such happening would be the restoration of status quo ante and as rightly contended by the learned counsel for the petitioners that the entire seniority has to be recast and the promotions which were effected all these years had to be reviewed. Although this Court is conscious of the fact that such exercise after lapse of several years would unsettle the settled matters, however, is of the considered view that by any such exercise now undertaken, would unlikely to affect the private respondents, since they had already been granted their due promotion and many of them had retired and further they have not shown or exhibited any iota of interest in defending their position before this Court as they do not have any stake in the litigation as on date. In the said circumstances, this Court has to see whether the right of the petitioners can be tinkered with merely because of the passage of time and the pendency of litigation before this Court.

13. Admittedly, the right of the petitioners flow from the BP 106 dated 9.4.1996 and once the said BP had been restored by subsequent development as indicated above, the right of the petitioners for promotion in terms of B.P.No.106 needs to be restored as otherwise, the restoration of the said BP would have no meaning to these petitioners. In the circumstances, the seniority list dated 6.2.2010 challenged in the present Writ Petition, which was prepared on the basis of two channel system of promotion, cannot be sustained in law as the same is contrary to B.P. 106 dated 9.4.1996. Correspondingly the promotion denied to these petitioners ahead of the respondents 4 to 26 without following the single channel system of promotion, cannot also be countenanced in law.

14. Therefore, for all the reasons stated above, the impugned seniority list in F.M./2010 dated 6.2.2010 is hereby set aside. The Official respondents are directed to recast the seniority of the writ petitioners in terms of of B.P. 106 dated 9.4.1996 and effect promotions to the next higher post, Foreman I Grade, Special Grade Foreman, etc. on the basis of such revised seniority list and grant all consequential benefits. The said direction shall be complied with by the official respondents within a period of 12 weeks from the date of receipt of copy of this order. It is made clear that on being promoted to the higher post on the basis of recast of seniority list, the petitioners are not entitled to actual differential wages on the ground that they have not shouldered higher responsibility in the promoted post, however, they are entitled to notional fixation of pay and other benefits.

In the result, the Writ Petition is allowed on the above terms. No costs. Consequently, connected MPs are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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- 1 TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION
REP BY CHAIRMAN,
CUM MANAGING DIRECTOR,
NPKRR MAALIGAI,
144 ANNA SALAI, CHENNAI 2
- 2 CHIEF ENGINEER/PERSONNEL
TAMILNADU GENERATION AND DISTRIBUTION
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- 3 THE SUPERINTENDING ENGINEER
CHENNAI ELECTRICITY DISTRIBUTION CIRCLE/WEST
TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION,
THIRUMANGALAM CHENNAI 40.

+1 CC to Mr.P.R. Dhilipkumar, advocate sr 22793.
+1 CC to Mr.Row and Reddy, Advocate sr 21836.

WP 16603 of 2011

PVS (CO)
SP(09/04/2018)

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