

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2018

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THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.443 of 2018

M.Dhanapakiam ... Appellant

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
rep. By its Chairman and Managing Director
No.14, Anna Salai, Chennai - 600 002.
2. The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.800, Anna Salai, Chennai - 600 002.
3. The Superintendent Engineer,
Kadamparai Generation Circle,
Tamil Nadu Electricity Board,
Minparai - 642 101.

.... Respondents

This Writ Appeal is filed under clause 15 of the Letters Patent against the order dated 30.10.2017 made in W.P.No.27641 of 2017 on the file of this Court.

PRAYER IN W.P.No.27641 of 2017:

*Petition Under Article 226 of the Constitution of India,
Praying for the issuance of the Writ of Mandamus directing the respondents to effect promotion of the petitioner to the post of Foreman Grade I with effect from July 2014 with arrears and all other consequential benefits including pensionary benefits and revision of pension.*

For Appellant : Ms.S.Meenakshi
For Respondent : Mr.P.R.Dhilip Kumar

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN,J.)

This intra Court appeal has been filed by the petitioner in W.P.No.27641 of 2017 challenging the dismissal of the Writ Petition seeking a writ of mandamus directing the respondents to effect promotion to the petitioner to the post of Foreman Grade I with effect from July, 2014 with arrears and all other consequential benefits including pensionary benefits and revision of pension.

2. The facts leading to the filing of the Writ Petition are as follows:

The petitioner has joined the services of the respondents as a Helper and she was promoted as Foreman Grade III vide proceedings dated 11.10.1999. In the year 2014, the Department has decided to increase the number of Foreman Grade I from 8 to 17. The said increase led to the respondents calling for list of eligible Foreman Grade III to be promoted as Foreman Grade I. On 18.09.2014, the Divisional Officers were required to furnish the list of eligible persons to be promoted as Foreman Grade I. Consequently, the Head of the Division in which the petitioner was working had submitted a list of three persons on 20.09.2014. The petitioner's name figures as number 1 in the said list. However, the promotions were not effected. In the meantime, the petitioner retired on 30.11.2014 as Senior Maistry, which is an equivalent post of Foreman Grade III. Thereafter, 9 persons were promoted on 11.12.2014.

3. Complaining that because of the delay on the part of the respondents in effecting promotion the petitioner has been denied of her chance of retiring in the higher post, which would affect the retirement benefits and pension, the petitioner has made a representation to the respondents even on 26.11.2014 seeking promotion. The same has not been considered. Hence, the Writ Petition. The learned single Judge, who heard the Writ Petition dismissed the same on the ground of delay. Hence, the present appeal.

4. We have heard Ms.Meenakshi, learned counsel appearing for the petitioner and Mr.Dhilip Kumar, learned standing counsel appearing for the respondents.

5. The respondents have filed a counter affidavit claiming that the number of posts of Foreman Grade I was increased only with effect from 23.07.2014 and the lists were called for from the Divisional Officers and due to administrative reasons the promotions could not be effected and by the time the appellant retired on 30.11.2014. Claiming that

the delay is not wilful, learned counsel appearing for the respondents submitted that the petitioner is not entitled for notional promotion.

6. We find from the records that the decision to increase the number of posts of Foreman Grade I was taken on 23.07.2014 and the petitioner was found fit for promotion and her name was also recommended for promotion on 20.09.2014. However, because the promotions were not effected and the petitioner has retired in the meantime, she was denied promotion. The counter affidavit filed by the respondents itself shows that there were vacancies in the post of Foreman Grade I when the recommendations were called for on 18.09.2014 and when the petitioner's name was shortlisted for promotion on 20.09.2014. Therefore, the claim of the respondents that there were no vacancies and the delay in effecting promotions would have no effect on the pensionary benefits that the petitioner would be entitled to cannot be countenanced.

7. We are of the view that the delay has, in fact, affected the rights of the petitioner. It is not in dispute that there were vacancies in the higher post on the day when the petitioner retired from service. Therefore, the claim of the respondents that the petitioner is not entitled to promotion, since she had retired by the time the promotions were actually given effect to cannot be countenanced. Hence, we are of the view that the learned single Judge was not right in rejecting the Writ Petition on account of laches only. In fact, the petitioner has made a representation seeking promotion even when she was in service and followed it up with a Writ Petition without any undue delay. Therefore, we are constrained to set aside the order of the learned single Judge.

8. Accordingly, the Writ Petition is allowed and the respondents are directed to give notional promotion to the petitioner from 20.09.2014 viz., the date on which date the petitioner's name was actually recommended for promotion to the post of Foreman Grade I. It is made clear that the petitioner will not be entitled to any salary in the promoted post. The notional promotion is only for the purpose of calculating her retirement and pensionary benefits.

9. With the above observations, the intra Court appeal is disposed of. There will be no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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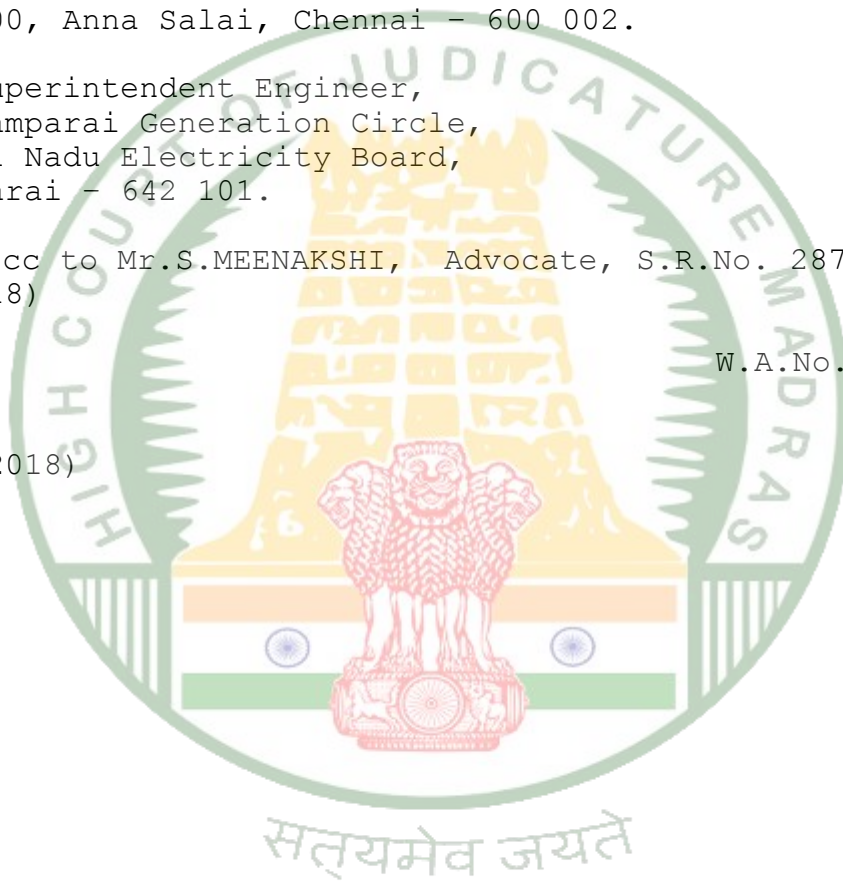
To

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+1cc to Mr.S.MEENAKSHI, Advocate, S.R.No. 28783
(07/06/2018)

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KAN(CO)
TR(14/05/2018)



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