

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5662 of 2007

P.R.Jayabalan

... Petitioner

Vs.

1.Tamil Nadu Electricity Board; Rep. by
Chairman, No.600, Anna Salai,
Chennai - 2.

2.Tamil Nadu Electricity Board; Rep. by
Chief Engineer/ Personal
600, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer
Nilgiris Electricity Distribution Circle,
Udhagamandalam.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent herein made in memo No.11782 1081- 621 file 50/2006 dated 20.11.2006 quash the same and consequentially direct the respondent herein to restore the seniority of the petitioner as it was in the provisional list dated 01.07.1999 published by the third respondent.

For Petitioner : Mr.R.Ramesh

For Respondents : Mr.P.R.Dhilip Kumar

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent made in Memo No.11782 - 1081 - 621 - file.50 - 2006 dated 20.11.2006, to quash the same and to consequentially direct the respondents to restore the seniority of the petitioner as it was in the provisional list dated 01.07.1999 published by the third respondent.

2.The case of the petitioner is that he joined the service of the respondents as Helper on 26.08.1987 and was given promotion as Commercial Assistant on 26.08.1992. The petitioner was transferred from Avanashi Division to Coonoor Division with his seniority intact in 1994. In the meanwhile, the respondents Board abolished the post of Assistant Commercial Inspector and provided for direct promotion to Commercial Inspector from Commercial Assistant.

3.The petitioner would further state that consequent to the abolition of Assistant Commercial Inspector post, vide order dated 04.02.1995, he was informed by the third respondent that he was selected for inclusion in the approved panel for promotion to the post of Commercial Inspector and the petitioner's seniority was fixed at Item No.35 below one R.Sivaraj and above one N.Murugan. Thereafter, the respondents vide B.P.No.106 dated 09.04.1996, combined the post of Wireman and Commercial Assistant into a common cadre and Line Inspector and Commercial Inspector into a common cadre.

4.The petitioner would further state that in the year 1999, when promotion panel for the post of Commercial Inspector was issued, the petitioner's name was not found in the said panel and subsequently, in the 2002 panel also his name was not found. However, nine persons who are juniors to the petitioner were given promotion as Commercial Inspector. Aggrieved by the same, the petitioner filed writ petition in W.P.No.15168 of 1996 before this Court and the said writ petition was dismissed on 1998.

5.The petitioner would further state that the respondent vide B.P.No.256 dated 12.12.2005, once again segregated the post of Wireman and Commercial Assistant. This would have had the effect of restoring the petitioner's seniority. However, there was a provision enabling the Wireman in the common cadre to either go back to the Wireman cadre or to remain in the Commercial Inspector cadre and almost all of them opted to remain in commercial line. Therefore the petitioner's seniority was again blocked. Hence, the petitioner made representation to the third respondent to refix his seniority. Since no order was passed on the said representation, the petitioner filed W.P.No.24385 of 2006 before this Court and this Court vide order dated 01.08.2006 disposed of the said writ petition by directing the second respondent therein to consider the petitioner's representation dated 10.03.2006. Thereafter, the impugned order came to be passed. Hence, this writ petition.

6.The learned counsel appearing for the petitioner would submit that during the pendency of this writ petition, similarly placed persons filed W.P.Nos.17026 of 2006 and 7321 of 2007

before the Hon'ble Division Bench of this Court and the Hon'ble Division Bench of this Court vide order dated 09.02.2009 disposed of the writ petitions holding that the impugned promotion system should not be given effect to until the list of the petitioners therein was exhausted. Hence, the petitioner's representation for refixation of seniority has to be considered in the light of the order dated 09.02.2009, passed by the Hon'ble Division Bench of this Court in W.P.Nos.17026 of 2006 and 7321 of 2007. Accordingly, he prayed for allowing the writ petition.

7. Heard the arguments advanced on either side.

8. It is useful to extract hereunder the relevant portion of the order of the Hon'ble Division Bench of this Court dated 09.02.2009 made in W.P.Nos.17026 of 2006 and 7321 of 2007:

"The petitioners have established and proved before us that Clause (iv) of the impugned B.P.(Ch) No.256 (Administrative Branch) dated 12.12.2005, extracted above, is working much against their interest. Therefore, following the dictum laid down by the Honourable Apex Court in the above judgment, instead of quashing the impugned B.P.(Ch) No.256 (Administrative Branch) dated 12.12.2005, we order that the impugned promotion system should not be given effect to until the list of the petitioners is exhausted. With this direction, these writ petitions are disposed of. Consequently, all the connected Miscellaneous Petitions are closed. No costs."

9. The learned counsel appearing for the petitioner seeks that the petitioner's representation for refixation of seniority has to be considered in the light of the order cited supra. However, perusal of the impugned order discloses that the respondent has issued only a provisional seniority list and it is only temporary. The petitioner is only challenging the provisional seniority list and based on the said list, the petitioner's promotion cannot be considered. Only after finalizing the seniority list, the petitioner's promotion could be considered.

10. I do not find any illegality in the order passed by the third respondent. Admittedly, the third respondent issued a well reasoned order that based on the provisional seniority list, no seniority will be considered. However, in the present circumstances, the petitioner is at liberty to make representation to the respondents and after receipt of such representation from the petitioner, the concerned respondent

shall consider the same and pass appropriate orders, in accordance with law, as early as possible, preferably, within a period of six weeks from the date of receipt of the petitioner's representation.

11.The writ petition is accordingly disposed of. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Chairman Tamil Nadu Electricity Board;
No.600, Anna Salai,
Chennai - 2.

2.The Chief Engineer/ Personal
Tamil Nadu Electricity Board;
600, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer
Nilgiris Electricity Distribution Circle,
Udhagamandalam.

+1 CC to Mr. Srinath Sridevan, Advocate sr 36868.

+1 CC to Mr. Dhilip Kumar, Advocate sr 36645.

W.P.No.5662 of 2007

SKS (CO)
SP(03/07/2018)

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