

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.2862, 2915 and 2873 of 2018
and
W.M.P.Nos.3531, 3532, 3549, 3582 and 3583 of 2018

G.Ravi .. Petitioner in W.P.No.2862/2018
V.Rajasekaran .. Petitioner in W.P.No.2915/2018
M.Udayakumar .. Petitioner in W.P.No.2873/2018
.. Vs ..

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai - 2.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 2.
3. The Superintending Engineer,
Vellore Electricity Distribution Circle,
Gandhi Nagar, Katpadi,
Vellore - 6. .. Respondents in W.P.No.2862/2018

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai - 2.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 2.

3. The Superintending Engineer,
Thirupattur Electricity Distribution Circle,
Thirupattur,
Vellore District.
4. The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Villupuram. .. Respondents in W.P.Nos.2915 & 2873/2018

Prayer in W.P.No.2862/2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned memo passed by the second respondent vide Memo No.042066/510/G.18/G.181/2017 dated 29.05.2017, confirming the order in letter No.3845/NiKi/Ji.13/Ji.132/07, dated 26.02.2008 and quash the same and direct the respondents to include the name of the petitioner in the list of panel of Assistant of Engineer (electrical) in the appropriate place vide Letter No.010708/29/G.1/G.11/2017-3, dated 28.06.2017, for promotion to the post of Assistant Executive Engineer based on the date of provisionally selection panel to the post of Assistant Engineer (electrical) by internal selection, vide order of the second respondent in CE/per U.O. note No.061352/499/G.55/G.551/06-3 dated 27.12.2006 and order allotment of circle vide Memo No.14935/Adm.Br/G13/G132/07-1, dated 22.02.2007 and consequently promote the petitioner as Assistant Executive Engineer/Electrical.

Prayer in W.P.No.2915/2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of declaration, declaring the para-3 Clause (II) of the Board proceedings of the first and second respondent vide B.P.Ms.(F.B) No.65, (Administrative Branch) dated 12.08.1985, as unconstitutional, null and void and ultravires of article 14 and 16 of the Constitution of India and contrary to the Board regulations 97(a) insofar as the petitioner's concerned and direct the respondents to include the name of the petitioner in the list of panel of Assistant of Engineer (electrical) in the appropriate place vide Letter No.010708/39/G.1/G.11/2017-3, dated 28.06.2017, for promotion to the post of Assistant Executive Engineer based on the date of provisionally selection panel to the post of Assistant Engineer (electrical) by internal selection, vide order of the second respondent in U.O. Note No.061352/499/G.55/G.551/06-3 dated 27.12.2006 and order allotment of circle vide Memo No.14935/Adm.Br/G13/G132/07-2, dated 03.03.2007 and consequently promote the petitioner as Assistant Executive Engineer/Electrical.

Prayer in W.P.No.2873/2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned memo passed by the second respondent vide Memo No.042066/510/G.18/G.181/2016-3 dated 25.09.2017 and quash the same and direct the respondents to include the name of the petitioner in the list of panel of Assistant of Engineer (electrical) in the appropriate place vide Letter No.010708/39/G.1/G.11/2017-3, dated 28.06.2017, for promotion to the post of Assistant Executive Engineer based on the date of provisionally selection panel to the post of Assistant Engineer (electrical) by internal selection, vide order of the second respondent in U.O. Note No.061352/499/G.55/G.551/06-3 dated 27.12.2006 and order allotment of circle vide Memo No.14935/Adm.Br/G13/G132/07-2, dated 03.03.2007 and consequently promote the petitioner as Assistant Executive Engineer/Electrical.

In all W.Ps.

For Petitioners : Mr.S.N.Ravichandiran

For Respondents : Mr.P.R.Dhilipkumar,

Standing Counsel

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COMMON ORDER

Assailing the impugned orders dated 29.05.2017 and 25.09.2017 passed by the Chief Engineer (Personnel)/the second respondent herein, rejecting the request of Mr.G.Ravi/petitioner in W.P.No.2862 of 2018 for inclusion of his name in the seniority list to the post of Assistant Engineer/Electrical Grade-I and rejecting the request of Mr.M.Udayakumar/petitioner in W.P.No.2873 of 2018 for inclusion of his name in the seniority list to the post of Assistant Engineer/Electrical during the year 2006 is not feasible of compliance and also for inclusion of the name of Mr.V.Rajasekaran/petitioner in W.P.No.2915 of 2018 in the list of panel of Assistant Engineer (Electrical), these writ petitions have been filed.

2. Learned counsel appearing for the petitioners submitted that the Chief Engineer, Personnel, the second respondent herein had prepared the panel on 27.12.2006 for the post of Assistant Engineer based on the placement of the petitioners in the feeder category Junior Engineer, Grade-I passing the B.E qualification. When the Board/committee by letter dated 01.08.2006 invited

suitability certificate from B.E. qualified employees for appointment to the posit of Assistant Engineer by internal selection, the petitioners were found eligible to be appointed as Assistant Engineer based on their B.E. qualification and they have also exercised their options. In the meanwhile, the petitioners' names were included in the panel for routine promotion to the post of Junior Engineer Grade-I on 23.12.2006 and their names also figured in Sl.Nos.64, 188 and 61 respectively in the said panel. After waiting for almost four years in the post of Junior Engineer Grade-II, as per seniority, Mr.G.Ravi/petitioner in W.P.No.2862 of 2018 was promoted as Junior Engineer Grade-I and he joined on 24.01.2007 at Chakkaramallur, Ranipet Division and Mr.V.Rajasekaran/petitioner in W.P.No.2915 of 2018 was promoted as Junior Engineer Grade-I and he joined on 09.02.2007 at Natrampally North Section, Thirupattur Electricity Distribution Circle and Mr.M.Udayakumar/petitioner in W.P.No.2873 of 2018 was promoted as Junior Engineer Grade-I and he joined on 01.02.2007 at Samalpatty Section, Dharmapuri Electricity Distribution. Finally, pursuant to the selection panel dated 27.12.2006, the second respondent/Chief Engineer (Personnel) also issued allotment order of circle by memo dated 22.02.2007. The second respondent also in his order dated 27.12.2006 published 140 names of Assistant Engineers and issued posting order on 03.03.2007 and posted the petitioner in W.P.No.2862 of 2018 viz., Mr.G.Ravi at Kancheepuram Electricity Distribution Circle and posted the petitioner in W.P.No.2915 of 2018 viz., Mr.V.Rajasekaran and the petitioner in W.P.No.2873 of 2018 viz., Mr.M.Udayakumar at Villupuram Electricity Distribution Circle respectively.

3. Since the petitioner in W.P.No.2862 of 2018 viz., Mr.G.Ravi did not work in his native District, he made a representation to the second respondent on 16.03.2007 requesting for modification of the order of posting as Assistant Engineer from Kancheepuram Electricity Distribution Circle to Vellore Electricity Distribution Circle. Accepting his request, the Superintending Engineer, Vellore Electricity Distribution Circle also forwarded his representation to the Chief Engineer (Personnel), the second respondent herein to consider his request for retention at Vellore Electricity Distribution Circle as Assistant Engineer/Electrical. But there was no response. Therefore, a representation was made and on the basis of the same, the Superintending Engineer, Vellore Electricity Distribution Circle, in his letter dated 18.10.2007 recommended his request for retention in the Vellore Electricity Distribution Circle as Assistant Engineer/Electrical, to the second respondent. The Superintending Engineer, Vellore Electricity Distribution Circle has recommended the petitioner twice for retention of appointment as Assistant Engineer at

Vellore Electricity Distribution Circle, however, the Superintending Engineer, Vellore Electricity Distribution Circle had cancelled the order of allotment of Kancheepuram Electricity Distribution Circle on 03.04.2008 based on the order issued by the Chief Engineer (Personnel), the second respondent herein. Citing reason that Mr.G.Ravi joined the post of Junior Engineer Grade-I as the order of cancellation of allotment passed by the second respondent and the consequential order passed by the third respondent are without any notice, it is pleaded before this Court that the impugned order rejecting his request for retention at Vellore Electricity Distribution Circle as Assistant Engineer is wholly unsustainable in law. Further, it is submitted that when the panel for the post of Assistant Engineer was duly prepared on 27.12.2006 showing the name of Mr.G.Ravi in Sl.No.6, Mr.V.Rajasekaran in Sl.No.46 and Mr.M.Udayakumar in Sl.No.44, the respondents should place all these petitioners in the seniority panel prepared on 27.12.2006.

4. Learned counsel appearing for the petitioners submitted that the petitioners in W.P.Nos.2915 of 2018 and 2873 of 2018 viz., Mr.V.Rajasekaran and Mr.M.Udayakumar have not been served the order of allotment dated 03.03.2007 and the same was forwarded to the Superintending Engineer, Thirupattur Electricity Distribution Circle, who in turn, returned the order of allotment and posting order to the Superintending Engineer, Villupuram Electricity Distribution Circle, on the ground that the petitioners had already joined as Junior Engineer (Electrical) Grade-I. After knowing the same, immediately, Mr.V.Rajasekaran and Mr.M.Udayakumar met the Superintending Engineer, Villupuram Electricity Distribution Circle in person and requested for allotment and posting orders and the Superintending Engineer informed Mr.V.Rajasekaran that he was posted at Periyasavalai Section Office and also informed Mr.M.Udayakumar that he was posted at Saram Section Office, Dindivanam Division and however, both the allotment order and posting order were sent to the second respondent, since the petitioners already joined as Junior Engineer Grade-I at Thirupattur EDC and Dharmapuri EDC respectively. Therefore, the petitioners in W.P.Nos.2915 of 2018 and 2873 of 2018 viz., Mr.V.Rajasekaran and Mr.M.Udayakumar have made representations dated 08.05.2007 to the second respondent through the third respondent requesting to issue allotment and posting order.

5. Again reiterating his contentions, the learned counsel appearing for the petitioners submitted that even if the respondents had refused to accept the request of Mr.G.Ravi to be retained in Vellore Electricity Distribution Circle, they cannot promote him in the post of Junior Engineer Grade-I, since he was already selected as eligible candidate for the post of Assistant Engineer in the panel drawn on 27.12.2006 without any notice

whatsoever. The reason being, firstly if he is not retained in the seniority list of Assistant Engineer and wrongly placed in the post of Junior Engineer Grade-I, the ratio 3:1 given to the Assistant Engineer and Junior Engineer Grade-I would gravely affect further promotion to the post of Assistant Executive Engineer. Secondly the impugned orders are liable to go on the ground that no notice whatsoever issued and no explanation has been called for. Thirdly, after placing him in the post of Assistant Engineer in the panel dated 27.12.2006, he cannot be taken out from the list and placed him in the Junior Engineer Grade-I inasmuch as his promotion will be delayed considerably in view of application of 3:1 ratio.

6. A detailed counter has been filed. The learned Standing Counsel appearing for the respondents would submit that the petitioners' names were shown in the panel drawn in the year 2006 for the post of Assistant Engineer and an order dated 03.03.2007 has been issued placing Mr.G.Ravi in Sl.No.6, Mr.V.Rajasekaran in Sl.No.46 and Mr.M.Udayakumar in Sl.No.44. Having accepted their placement, a further representation was given to re-designate Mr.V.Rajasekaran as Assistant Engineer. Since Mr.G.Ravi had requested for modification of allotment order from Kancheepuram Electricity Distribution Circle to Vellore Electricity Distribution Circle, his name was not considered and allotment order issued to him in Kancheepuram Electricity Distribution Circle was cancelled on 26.02.2008. Subsequently, he has also joined the post of Junior Engineer/Electrical Grade-I and informed to get redesignation as Assistant Engineer/Electrical. As he has joined the post of Junior Engineer/Electrical Grade-II by promotion, he cannot be eligible for selection to the post of Assistant Engineer through internal selection because the Assistant Engineer/Junior Engineer/Clerical Grade-I is one and the same category. Therefore, he is not eligible for promotion as Assistant Engineer.

7. This Court is unable to accept the said contention made by the learned Standing Counsel appearing for the respondents, when the petitioners were selected to the post of Assistant Engineer/Electrical in the memo No.14935/Adm.Br/G13/G132/07-2, dated 03.03.2007 and placed in Sl.Nos.6, 46 and 44 respectively.

8. Paragraph No.2 of the Memo dated 03.03.2007 reads as follows:-

"2. Their selection for appointment as Assistant Engineer/Electrical through internal selection is subject to the following conditions.

i) that their pay will be fixed by grant of personal pay to extent of the difference in the basic

pay admissible to them from time to time in the post of Assistant Engineer/Electrical till it becomes equal to or more than the basic pay in the previous post whichever is earlier, as per orders in B.P.Ms. (FB) No.95 (Sectt.Branch) dated 20.11.1985 and clarificatory orders issued thereon from time to time.

ii) since the appointment now ordered is by internal selection, the individuals are not eligible for fixation of pay under Regulation 33(b) of Tamil Nadu Electricity Board Service Regulation.

iii) they should produce satisfactory evidence in original regarding their education qualification, date of birth and community before joining duty for verification and that if any discrepancy is found in the certificates or if they are found to be unqualified, their appointment will be cancelled immediately followed by cancellation of selection also.

iv) As they have already furnished an undertaking relinquishing their rights for further promotion in their present cadre, in the event of their appointment as Assistant Engineer/Electrical they have no claim for further promotion in the present cadre.

v) they will not be eligible for reversion to their parent cadre or post under any circumstances.

vi) that anomalies if any will not be considered."

9. Moreover, paragraph No.8 of the Memo dated 03.03.2007 reads as follows:-

"8. The attention of the Superintending Engineer is also drawn to B.P.Ms.(FB) No.45 (Adm. Branch) dated 05.09.88 wherein it has been stipulated that all Assistant Engineer/Electrical recruited shall be posted to any one of the field branch (i) to (vi) stated therein."

10. Therefore, when the petitioners were all appointed as Assistant Engineers by orders dated 22.02.2007, 03.03.2007 and 03.03.2007 respectively, it is not open to the respondents again to place them in the post of Junior Engineer Grade-I and this could be considered one step lower than the post of Junior Engineer while applying the ratio namely 3:1 given to the Assistant Engineer and Junior Engineer Grade-I. As rightly

contended by the learned counsel for the petitioners, if the official respondents, after selecting the petitioners for the post of Assistant Engineers, have given them posting as Junior Engineer Grade-I, on the false pretext that both the post of Assistant Engineer and Junior Engineer Grade-I are one and the same, their further promotional avenues to the post of Assistant Executive Engineer would be seriously affected. Because the ratio to be followed for promotion shall be 3:1 viz., 3 post will be given to Assistant Engineer and one post out of four will be given to the Junior Engineer Grade-I, therefore, for all these reasons, these three writ petitions are allowed and the impugned orders dated 29.05.2017 and 25.09.2017 are set aside and the respondents are directed to place the petitioners as per the panel dated 27.12.2006 on the basis of the allotment orders dated 22.02.2007, 03.03.2007 and 03.03.2007 and the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jrl

To

1. The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai - 2.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai - 2.
3. The Superintending Engineer,
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Gandhi Nagar, Katpadi,
Vellore - 6.
4. The Superintending Engineer,
Thirupattur Electricity Distribution Circle,
Thirupattur,
Vellore District.

5. The Superintending Engineer,
Villupuram Electricity Distribution Circle,
Villupuram.

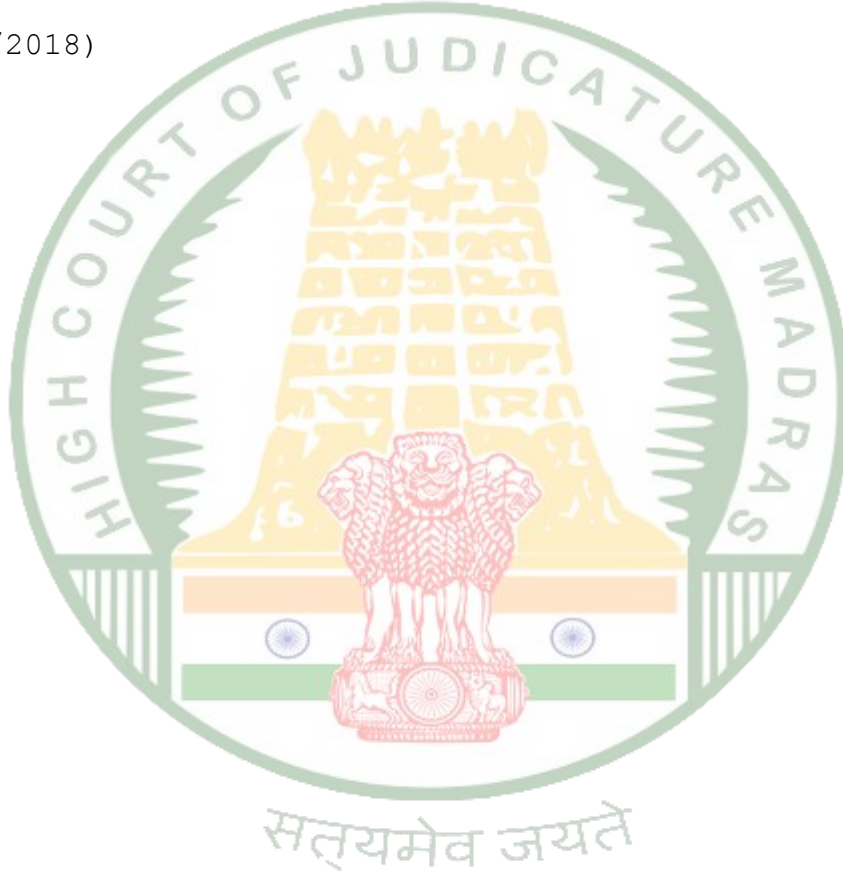
+3cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.14844 to 14846

+3cc to Mr.*, Advocate, S.R.No.14941

W.P.Nos.2862, 2915 & 2873/2018

VGII (CO)

RRK (28/03/2018)



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