

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.33749 of 2012 &
M.P.No.1 of 2012

S.C.Raja

... Petitioner

Vs

- 1.The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
Corporation Limited,
No.144, Anna Salai,
Chennai-600 002.
 - 2.The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Generation Distribution
Corporation Ltd.,
Dharmapuri-5.
 - 3.The Junior Engineer,
O & M, TANGEDCO,
Kaveripattinam,
Krishnagiri District.
- Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the first respondent to include the name of the petitioner in the "list of post of Stores Custodian, Grade II by Internal Selection for the post of Stores Custodian, Grade II by Internal selection and allotted for appointment during April, 2012" issued in Memo No.035333/442/G34/G.341/2012-1, dated 08.05.2012, by the 1st respondent in the appropriate place therein on par with the petitioner's junior in the light of recommendations of the 2nd respondent in his letter dated 23.05.2012.

For Petitioner : Mr.D.Baskar for
M/s.R.Thamaraiselvan

For Respondents : Mr.M.Fakkir Mohideen, SC

O R D E R

Heard Mr.D.Baskar, learned counsel for the petitioner and Mr.M.Fakkir Mohideen, learned Standing Counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Mandamus, directing the first respondent to include the name of the petitioner in the "list of post of Stores Custodian, Grade II by Internal Selection for the post of Stores Custodian, Grade II by Internal selection and allotted for appointment during April, 2012" issued in Memo No.035333/442/G34/G.341/2012-1, dated 08.05.2012, by the 1st respondent in the appropriate place therein on par with the petitioner's junior in the light of recommendations of the 2nd respondent in his letter dated 23.05.2012."

3. The case of the petitioner is as follows:

The petitioner joined as Junior Engineer on 31.03.2009, having been selected after being sponsored by the Employment Exchange. On 24.05.2011, the 1st respondent addressed to all Superintending Engineers of Circles of TANGEDCO, proposing to call for applications for qualified employees in various categories of Regular Establishment Cadre including ITI/Diploma Holders, Office Helper and Record Clerk, etc., who were drawing regular Time Scale of pay and who were in possession of required qualification for appointment to the post of Stores Custodian Grade II by Internal Selection in the scale of pay of Rs.5400-20200 with Grade Pay Rs.2500/-. The applications were to be submitted before the 1st respondent from all Circle Eligible employees for internal selection on or before 30.06.2011.

4. In response to the notification dated 24.05.2011, it appeared that the petitioner forwarded his application in June, 2011 to the local Office well before 30.06.2011. It further appeared that unfortunately, the person in-charge of forwarding applications viz., Executive Engineer, had forwarded the application belatedly and it was received by the office of the 1st respondent on 22.07.2011. In the said circumstances, the petitioner was omitted to be included in the list and thereafter, on the basis of the selection, several candidates were appointed as Stores Custodian Grade II in 2012.

5.Subsequently, in 2013, similar applications were called, in which the petitioner's application has been forwarded and on consideration, the petitioner came to be appointed as Stores Custodian Grade II in 2013. However, the petitioner's grievance in this writ petition is that he ought to have been considered for appointment in 2012, in pursuance of the notice issued dated 24.05.2011. Because of the lapse committed by the higher official, he had been denied his due promotion and also consequential monetary benefits. Therefore, the learned counsel for the petitioner would submit that the petitioner is entitled to seek a Writ of Mandamus directing the respondents to include his name in 2012 on the basis of the notification dated 24.05.2011 and grant him all other benefits.

6.Upon notice, Mr.M.Fakkir Mohideen, the learned Standing Counsel appearing for the respondents entered appearance.

7.It is seen that the facts are undisputed. The only ground on which the relief claimed in the writ petition is that the application pertaining to the petitioner was received by the 1st respondent Office only on 22.07.2011. That is beyond last date of submission of the application on 30.06.2011. In fact, the learned counsel for the petitioner would draw the attention of this Court to the communication exchanged between the Superintending Engineer/2nd respondent and the Junior Engineer/3rd respondent, dated 23.05.2012, in which, it is admitted that the application of the petitioner was forwarded belatedly. Since the only ground on which, the petitioner's name was omitted to be included in the list in 2012, for which the petitioner was not at fault, this Court is of the considered view that the petitioner has made out a clear case for grant of the relief as prayed for. For the fault committed by the higher official, the petitioner cannot be denied his due promotion and consequently, monetary benefits. Though the learned counsel for the respondents would submit that the petitioner had been subsequently promoted as Stores Custodian Grade II, that does not mean that the petitioner can be denied an opportunity for being considered at the appropriate time. A mistake or lapse committed on the part of the higher official of the petitioner cannot result in negation of the right of promotion to the petitioner, since that would result in denial of several consequential benefits to the petitioner for his lifetime.

8.For the above said reasons, this Court has no hesitation in allowing the writ petition. There shall be a direction to the respondents to grant promotion to the petitioner as Stores Custodian Grade II, by including his name in the list prepared in pursuance of the intimation, dated 24.05.2011, on par with his juniors who were accommodated in 2012, with all benefits

like consequential and monetary benefits as admissible. The respondents are directed to pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Engineer (Personnel)
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- 3.The Junior Engineer,
O & M, TANGEDCO,
Kaveripattinam,
Krishnagiri District.

+1cc to Mr.M.Fakkir Mohideen, Advocate sr.43580
+1cc to Mr.R.Thamaraiselvan, Advocate Sr.44169

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