

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.281 of 2008
and
M.P.Nos.1 & 2 of 2008

T.S.Sudarsan

... Petitioner

Vs.

1. The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer/Personnel,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.
3. S.Rajendran
4. N.P.Nesamani
5. R.Murugan
6. Mrs.Brindha Shankar
7. K.Ezhilarasan

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondents 1 and 2 relating to Memo No.107683/626/G18/G181/06/2 dated 18.05.2007 and Memo No.107683/626/AB/G18/G181/2006-3 dated 12.10.2007, on the file of the 2nd respondent and quash the same as illegal and direct the respondents to revise the seniority of the Petitioner and fix his seniority above the 3rd respondent in the seniority list. (Prayer amended as per Court order dated 26.09.2008 in M.P.No.3 of 2008 in W.P.No.281 of 2008)

For Petitioner : Mr.K.Sasindran
For R1 & R2 : Mr.P.R.Dhilip Kumar
For R3 to R7 : Served
No Appearance

O R D E R

This Writ Petition has been filed to call for the records of the Respondents 1 and 2 relating to Memo No.107683/626/G18/G181/06/2 dated 18.05.2007 and Memo No.107683/626/AB/G18/G181/2006-3 dated 12.10.2007, on the file of the 2nd respondent and to quash the same, and to direct the respondents to revise the seniority of the Petitioner, by fixing his seniority above the 3rd respondent in the seniority list.

2. The case of the petitioner is that he had passed his B.E.Degree in Electrical and Electronics in the year 1975. In the year 1978, the respondents 1 & 2 herein, advertised for recruitment to the post of Assistant Engineer (Electrical) in Tamilnadu Electricity Board through Employment Exchange, to which, the petitioner has also applied and got selected by the Chief Engineer (General) by his Memo No.018427 - CE R3/79-I dated 17.03.1979. Further, the petitioner was directed to produce physical fitness certificate, and after producing the same, by another memo dated 20.02.1979, the petitioner was directed to appear before the Divisional Engineer (Personnel) on 27.02.1979 for verification of certificates. On being satisfied about his fitness and educational qualification, he was posted to Ennore Thermal Power Station, as Assistant Engineer (Electrical) and he joined the service on 11.04.1979. Thereafter, he was promoted as Assistant Executive Engineer on 14.06.1991 and further promoted as Executive Engineer on 20.07.2005.

3. The petitioner would contend that for fixing inter-se seniority among the Assistant Engineers recruited by direct recruitment, their merits in the selection is considered as criteria. While fixing the inter-se seniority between the Assistant Engineers by direct recruitment and Assistant Engineers through internal selection, Regulation 97(a) of Tamilnadu Electricity Board Service Regulations provides certain norms. As per the same, the seniority of Assistant Engineers recruited by both internal selection and direct recruitment in the same year, shall be fixed in the ratio of 1:1 in a cyclic order placing the internal selectees as the first and direct recruits as the second. However, the respondents 1 and 2, placing the internal selectees who joined in the year 1979 on top of the seniority list and the direct recruits appointed in

the same year, after the last person appointed under internal selection quota, had committed a serious error in fixing the seniority and due to which, the petitioner's seniority position was pushed down far below. Further, the petitioner would contend that even among the direct recruitees selected in the year 1979, the respondents 1 and 2 did not follow the rank list in the selection and due to which, the persons far below the rank list in the 1978 recruitment, were placed above him in the seniority list.

4. The petitioner would further contend that till the year 1986, no seniority was published for Assistant Engineers and only in the year 1987, the seniority of Assistant Engineers was published, when they sought to revise the seniority in respect of 10 Assistant Engineers, who were absorbed by private undertaking vide Memo No.105/86/E8(1)/87-2 dated 06.11.1987 of Chief Engineer (Personnel). Further, in the said list, the petitioner's name was found at Sl.No.552, the 3rd respondent's name was found at Sl.No.296 and the names of the other respondents i.e. 4 to 7 were found at Sl.No.305,334,354 and 382.

5. The petitioner would also contend that he had been continuously making representations to respondents 1 and 2 for proper fixation of his seniority at appropriate place and the same was evidenced from his representations dated 18.08.1980, 27.04.1984 and 27.10.1987, but, the respondents did not publish any seniority list of Assistant Engineers (Electrical) till 06.11.1987. Further, the petitioner would contend that the 3rd respondent came from a private electrical undertaking and he passed his B.E. degree only in the year 1978. Similarly, the 4th respondent was appointed on 09.02.1979 as Assistant Engineer (Electrical) through internal selection along with other 233 candidates. The respondents 5 to 7 were appointed as Assistant Engineers (Electrical) by direct recruitment and they joined the service on 14.02.1979, 12.12.1979 and 22.09.1979 respectively. Therefore, it is clear that the inter-se seniority among Assistant Engineers (Electrical) by direct recruitment was not fixed as per the date of joining in service and as such, the respondents 1 and 2 did not follow the ranking as per the merit.

6. The petitioner would further contend that in the above circumstances, he made representation to the respondents 1 & 2 stating that while fixing the inter-se seniority among Assistant Engineers (Electrical), the criteria provided under Regulation 97(a) of Tamilnadu Electricity Board Service Regulations had not been followed, besides, the ranking as per merit in the recruitment was also not followed. But, the respondents 1 and 2 did not reply to the said representations. Hence, the petitioner filed W.P.Nos.7126 of 2007 and 28855 of 2007, praying for a direction to the respondents 1 and 2 to dispose of his

representations with reference to his seniority. This Court, by order dated 27.02.2007 and 04.09.2007, directed the respondents 1 and 2 to dispose of the petitioner's representations regarding seniority. After the direction of this Court, the respondents 1 and 2, by impugned order dated 18.05.2007 and 12.10.2007, rejected the petitioner's representations. Hence, the petitioner, with no other alternative, has filed this Writ Petition to quash the order of the respondents 1 and 2 dated 18.05.2007 and 12.10.2007 and to direct them to revise his seniority, by fixing his seniority above the 3rd respondent in the seniority list.

7. The respondents 1 and 2 have filed a counter affidavit, wherein, it has been contended that the procedure of placing internal selectees and direct recruits in a cyclic order in the ratio of 1:1 was introduced only in the year 1986, by proceedings in B.P.Ms.(FB) No.3, Adm.Br. dated 18.01.1986. But, the petitioner herein was appointed in the year 1979 and at that time inter-se-seniority of a person in a class of service, category or grade was fixed in accordance with the rank obtained by him in the list of approved candidates drawn up. The seniority of the petitioner and the respondents fixed in Memo.No.105/86/ES(1)/87-2, dated 06.11.1987 is in order.

8. The respondents 1 and 2 would also contend that in the year 1979, internal selection was ordered on 30.01.1979 and direct recruitment of the first batch of Assistant Engineers was made on 30.01.1979. The second batch was recruited on 12.03.1979 and the petitioner herein was part of the second batch. The 3rd respondent was an Electrical undertaking employee which was taken over by the Board and the respondents 4 and 5 were appointed by internal selection on 30.01.1979. Likewise, respondents 6 and 7 were recruited on 30.01.1979 while the petitioner was recruited only on 12.03.1979.

9. The respondents 1 and 2 would further contend that the date of joining as given by the petitioner are incorrect. As per the records of the Board, the 6th and 7th respondents joined the service of the Board on 12.02.1979 and 22.02.1979 respectively and accordingly, their seniority was fixed. Moreover, the respondents would contend that the cyclic order provided in the Board's Regulation came into force only on 18.01.1986 and since the petitioner was appointed in the year 1979, the said procedure would not apply to him.

10. Furthermore, the respondents would contend that the representation of the petitioner was considered as per the direction of this Court on 22.02.2007 and 04.09.2007 and an order was passed which is in accordance with the Rules. Hence, there is no error in the fixation of seniority of the petitioner and sought for dismissal of the above Writ Petition.

11. On perusal of the order dated 18.05.2007 of the respondents, it could be seen that there is no provision in the regulation to revise the petitioner's seniority after taking the date of joining as main criteria for fixing the seniority as requested by him, since, in Tamil Nadu Electricity Board Service Regulation, the following are the norms for fixing seniority.

"97(a). The Seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Board or other appointing authority, as the case may be. The date of commencement of his probation shall be the date on which he joins duty irrespective of his Seniority.

Provided that the seniority of Assistant Engineers (Electrical) / (Civil) / (Mechanical) recruited both by Internal Selection and direct recruitment in the ratio of 1:1 in a particular calendar year shall be fixed in the following cyclic order:

(1) Internal Selection

(2) Direct Recruitment

(b)

(c)

(d) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. The shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."

12. It could be further seen from the order dated 18.05.2007 of the respondents that the petitioner's request for counting his earlier services rendered in Government Polytechnic, Trichy, from 23.09.1977 to 07.04.1979 for fixing seniority in the post of Assistant Engineer/Electrical in Tamil Nadu Electricity Board on par with Thiru B.Subramaniam, who has joined in Tamil Nadu Electricity Board as Assistant Engineer/Electrical on 05.11.1977, was rejected by the respondents for the following reasons.

(i) As per orders issued in (Per.) B.P.(FB) No.56 (Secretariat Branch) dated 12.10.1992 the services rendered the Polytechnic can be taken only for the pensionary benefits and not for fixation of seniority and the case of Thiru B.Subramaniam as referred by the individual could not be taken into consideration as he has joined much earlier than the individual as Assistant Engineer/Electrical in Tamil Nadu Electricity Board (i.e.11.4.1979).

13. Furthermore, it could be seen from the above order dated 18.05.2007 that the petitioner was informed that his claim for fixing seniority with reference to the annual list of Class-I officers as on 01.01.2006 as referred by the individual in his representation dated 22.12.2006 could not be entertained, since in the list itself it has been printed "A WORD OF CAUTION" The list is only an establishment list and not a seniority list of Officers and under any circumstances, this should not be treated as a document conveying authority in respect of pay and allowances or seniority.

14. On 18.07.2018, this Court had directed the learned counsel for the respondents 1 and 2, to produce the proceedings of the Board dated 18.01.1986. Accordingly, the learned counsel for TNEB, has produced the proceedings of the Board dated 18.01.1986, which reads as follows:

"The Board in its B.P. cited issued orders fixing a ratio of 1:1 between internal and direct recruitment in the matter of appointment to the posts of Assistant Engineer (ElecI./MechI./Civil).

2. According to Regulation 97 of Tamil Nadu Electricity Board Service Regulation, the seniority of a person in a class of service, category of grade shall be determined by the rank obtained by him in the list of approved candidates drawn up. When the appointments to the posts of Assistant Engineers are by more than one method and such selections could not be made simultaneously owing to certain practical difficulties, determining seniority on the basis of ranking in the panel drawn up on different occasions does not confirm to the principle of appointments on the basis of ratio.

3. After careful consideration of the matter, the Board directs that with reference to ratio of 1:1 fixed in the matter of appointments to the posts of Assistant Engineer (Electrical/Mechanical/Civil) by internal selection and by direct recruitment the

appointment made to these categories in a particular year be in the following cyclical order:-

1. Internal Selection
2. Direct Recruitment

4. Necessary amendments to Service Regulation will be issued from the Board Secretariat Branch.

15. It could be seen from the counter affidavit filed by the respondents 1 & 2 that the respondents 4 to 7 were recruited through first batch of Assistant Engineers and they joined the service during February 1979, prior to the petitioner, who was recruited through second batch of Assistant Engineers and joined during April 1979.

16. Apart from that, the memo dated 06.11.1987 reads as under:-

The S.M.E.S.C undertaking was taken over by the Board in the year 1973. But the question of absorbing its employees in the service of the Board was finalised in the year 1978 in B.P.Ms.No.1650 dated 5.11.78. This B.P clearly mentions that the workmen of the S.M.E.S.C shall be treated for all purpose as any other workmen of Tamil Nadu Electricity Board on and from 1.12.74.

During the intervening period, the Board resorted to internal selection from among its employees having required qualification for the post of Assistant Engineer and selected 234 candidate besides direct recruitment of 374 candidates. Though the above 10 employees were possessing the requisite qualification, for Internal Selection in the year 1976, they were not considered for selection on the ground that they were not employees of the Board at that time and categorisation was not decided. However, they were subsequently selected as Assistant Engineers in the year 1979.

The above officials have represented that their non-selection as Assistant Engineers in the year 1976 is only due to administrative delay in the issue of orders of absorption of S.M.E.S.C. employees and in as much as the order itself provides for considering the Ex. S.M.E.S.C. employees as employees of the Board for all purposes with effect from 1.12.74 their seniority should be refixed considering as if they were selected in the year 1976 itself. They have also stated that they are willing to give an undertaking to this effect that they will not claim back ways consequent to the revision of seniority.

Taking into account the various facts and considering merit of the case and with a view to render justice to them, it has been proposed to revise the seniority of the 10 Assistant Engineers mentioned in para 1 above as in Annexure I of this Memo (i.e.1,2,3,105,106,107,197,209,259 and 269). The Assistant Engineers mentioned in the Annexure I (other than those lose 1,2,3,105,106,107,209,258 and 264) are directed to file their objection if any for the above proposed revision of seniority within the period of two months from the date of communication of this memo.

if no reply is received from them within the said period of 2 months it will be presumed that they have no objection for the above revision of seniority and further action will be taken accordingly.

17. From the perusal of the Annexure - I to the said memo dated 06.11.1987, it could be seen that the name of the petitioner was shown at Sl.No.552 and the name of the 3rd respondent at Sl.No.264, taking into account the non-selection of Assistant Engineers (S.M.E.S.C employee) in the year 1976 and also considering that the order itself provides for considering the Ex.S.M.E.S.C employees as employees of the Board for all purposes with effect from 01.12.1974, and therefore, their seniority was refixed, as per the Annexure - I. But, the petitioner has not challenged the said memo dated 06.11.1987 till date.

18. The learned counsel for TNEB has produced the Establishment List of Assistant Engineer (Electrical), Class II Service, as on 01.01.1989, whereby, the 4th respondent herein, namely, N.P.Nesamani (DOJ: 09.02.1979), has been placed at 35th place and the 5th respondent, namely, R.Murugan (DOJ: 14.02.1979), has been placed at 47th place in the seniority list. Similarly, the 6th respondent, namely, Mrs.Brindha Shankar (DOJ: 12.02.1979), has been placed at 70th place and the 7th respondent (DOJ: 22.02.1979), namely, K.Ezhilarasan, has been placed at 116th place in the seniority list. The petitioner, namely, T.S.Sudarsan, who joined the service only on 11.04.1979 i.e. later to the respondents 4 to 7, was placed at 268th place in the seniority list. But, in the said list, the name of the 3rd respondent was not found, for which, the learned counsel for TNEB submitted that the seniority of the 3rd respondent was fixed as if he was selected in the year 1976 itself, as the S.M.E.S.C undertaking was taken over by the Board in the year 1973 and the order of the Board in B.P.Ms.No.1650 dated 05.11.1978 mentions that the Workmen of S.M.E.S.C. shall be treated for all purpose as any other workmen of TNEB on and from

01.12.1974, which is evidenced from Memo dated 06.11.1987. Therefore, the contention of the petitioner that his juniors have been placed before him and his name to be placed above them in the seniority list cannot be accepted. Besides, the proceedings in B.P.Ms.(FB) No.3, was published by the Board only in the year 1986. But, the petitioner herein had joined the service in the year 1979, hence, the said proceedings will not be applicable to the petitioner.

19. In view of the above facts and circumstances of the case, there is no irregularity or illegality in the order of the respondents dated 18.05.2007 and 12.10.2007. Hence, this Court is not inclined to quash the same. Accordingly, the Writ Petition is dismissed and the impugned orders are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer/Personnel,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.

+1 cc to M/s.P.R.Dhilip Kumar, Advocate Sr.No.48996

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W.P.No.281 of 2008
and
M.P.Nos.1 & 2 of 2008

CP(CO)
CSL/27.11.2018