

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.166 of 2012

M.Thangarajan

.. Petitioner

Vs.

1.The Chief Engineer (Personnel),
TANGEDCO,
NPKRR Malagi,
144, Anna Salai, Chennai 600 002.

2.The Superintending Engineer, (P & A),
Mettur Thermal Power Station (MTPS),
Mettur Dam, Salem 636 406.

3.The Secretary,
TNEB Administrative Staff and Officers Association,
No.2/1, Bootha Perumal Street,
Anna salai, Chennai 600 002.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in the proceeding in Memo No.122684/G35/G352/2008-1 dated 25.05.2009 and the proceedings in Memo No.081769/G35/G352/2009-6 dated 16.05.2011 in respect of the condition "with a request to serve the memo to the individuals and to fix their pay as note (2) 37 of service regulations and to sanction the monetary benefits as on the actual date of joining" on the file of the 1st respondent and quash the same consequently, direct the respondent Board to fix my seniority between Sl.No.532 Shri A.Manickam (29.05.1971) and Sl.No.533 Smt.C.Jothi (25.04.1976) as on 01.08.2010.

For Petitioner : Mr.B.Manoharan

For RR1 & 2 : No appearance

For R3 : No appearance

O R D E R

The petitioner is challenging the proceedings of the 1st respondent in Memo No.081769/G35/G352/2009-6 dated 16.05.2011, fixing seniority of the petitioner between one A.Manickam and C.Mony and to quash the same and consequently, direct the respondent Board to fix his seniority between Sl.No.532 Shri A.Manickam (29.05.1971) and Sl.No.533 Smt.C.Jothi (25.04.1976)

as on 01.08.2010.

2. According to the petitioner, he joined as Contract Labour in respondent Board in the year 1989 and posted at Mettur Thermal Power Station, Mettur. The petitioner was selected as Junior Assistant through internal selection of the 1st respondent dated 05.05.2007. Along with the petitioner, two other persons N.Yuvaraj, Helper and A.Manickam, Helper working at Mettur Thermal Power Station were also selected as Junior Assistant. They were posted at Chennai Electricity Distribution Circle (West) by the proceeding dated 16.05.2007. Subsequently, the said order was canceled and petitioner was posted at Mettur by proceedings dated 13.06.2007. The 2nd respondent even after receipt of the said order, only on 12.12.2007, directed the petitioner and others to report for duty to the Assistant Administrative Officer, Mettur Thermal Power Station. Even though the petitioner joined duty on 11.02.2008, no posting order was issued to the petitioner. On 21.08.2008, the 2nd respondent directed the petitioner to join as Junior Assistant at the office of the Assistant Executive Engineer, Tharamangalam (O & M). The petitioner joined duty on 26.08.2008. The petitioner was selected as Junior Assistant on 05.05.2007, but his selection was taken into account only from 26.08.2008. It is not the fault of the petitioner that he did not join as Junior Assistant along with N.Yuvaraj and A.Manickam who were also selected by the proceedings dated 05.05.2007. The petitioner is entitled to be fixed in seniority between Sl.No.532 Shri A.Manickam (29.05.1971) and Sl.No.533 Smt.C.Jothi. In the impugned order, the petitioner's seniority was wrongly fixed between A.Ignitius and C.Mony and hence, the petitioner has come out with the present Writ Petition.

3. When the matter is called up for hearing, there is no representation for the respondents. The respondents filed counter affidavit and stated that the seniority will be taken into account only from the date of joining duty. The petitioner joined duty only on 26.08.2008. In the panel prepared for the year 2009, for promotion to the post of Assistant [Administration], the name of the petitioner along with others were placed in a non-selected list as they suppressed the fact that they were holding ITI Certificate. The petitioner was reverted to the post of Helper, but subsequently, by the proceedings dated 14.03.2010, the said reversion was recalled as the Commissioner, Employment and Training Department, Chennai clarified in his letter dated 25.08.2010 that petitioner did not possess ITI Certificate. As per the Board Proceeding No.733 dated 16.06.1975, orders were issued regarding fixation of seniority in the post of Assistants and as per the Board Proceeding, the date of commencement of Probation as Junior Assistant will be the basis for assigning the seniority for the

purpose of promotion as Assistant. As per the said proceeding, the petitioner's seniority was rightly fixed as 80 (b) in the post of Junior Assistant in between A.Ignitius and C.Mony and all the monetary benefits were sanctioned to the petitioner in the post of Assistant [Administration] as the petitioner was promoted as Assistant on 16.05.2007. The petitioner joined as Junior Assistant only on 26.08.2008. In view of the same, the petitioner is not entitled to claim seniority on par with Sl.No.532 Shri A.Manicakam (29.05.1971) and Sl.No.533 Smt.C.Jothi and prayed for dismissal of the Writ Petition.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on record. There is no representation for the respondents.

5.The grievance of the petitioner is that his date of joining as Junior Assistant is wrongly fixed as 26.08.2008. According to the petitioner, he along with two other persons who were working in Mettur Thermal Power Station were selected on 05.05.2007. The persons who were selected along with the petitioner were posted as Junior Assistant in Mettur Thermal Power Station itself. The petitioner was posted as Junior Assistant at Chennai Electricity Distribution Circle (West). Subsequently, the petitioner was posted at Mettur Thermal Power Station by B.P.No.270 dated 05.09.2007. The contention of the learned counsel appearing for the petitioner that even after allowing the petitioner to work as Junior Assistant with effect from 05.09.2007, he was not issued any posting order. According to the learned counsel appearing for the petitioner, the posting order was issued to the petitioner on 21.08.2008 and he joined on 26.08.2008 at the office of Assistant Executive Engineer at Tharamangalam (O & M). The further contention of the learned counsel appearing for the petitioner is that seniority of the petitioner in the post of Junior Assistant must be fixed between A.Manicakam (29.05.1971) and C.Jothi, who were selected as Junior Assistant along with the petitioner on 05.05.2007. The respondents in the counter affidavit denied the said contention on the ground that the petitioner joined as Junior Assistant only on 26.08.2008 and his seniority can be counted only from that date as per the Board Proceeding and seniority of the petitioner was rightly fixed between A.Ignitius and C.Mony as Serial No.80 (b). The said contention is without merits.

5(i). It is not in dispute that the petitioner was selected on 05.05.2007 and by the order dated 16.05.2007, he was posted as Junior Assistant at Chennai Electricity Distribution Circle (West). He did not join at the place of posting, but requested posting at Mettur only. The 1st respondent by B.P.No.270 dated 13.06.2007, posted the petitioner at Mettur Thermal Power Station. The respondents have not explained as to why the

petitioner was not issued any posting order to join as Junior Assistant after reallocated to Mettur Thermal Power Station, Mettur. The respondents also did not deny that on 12.12.2007, the petitioner along with others were directed to report duty to Administrative Office, Mettur Thermal Power Station and petitioner was working as Junior Assistant from 11.02.2008. The respondents have also not explained as to why the petitioner was issued a posting order only on 21.08.2008. Considering the above dates and events, the contention of the learned counsel appearing for the petitioner that the respondents erred in fixing the date of joining of the petitioner as Junior Assistant on 26.08.2008, is acceptable. The petitioner was promoted as Junior Assistant by the order of the 1st respondent dated 05.05.2007 along with N.Yuvaraj and A.Manickam. The petitioner is entitled to seniority below A.Manickam as per the order dated 05.05.2007. The respondents having failed to explain the delay in issuing posting order to the petitioner from 13.06.2007, when he was reallocated to Mettur Thermal Power Station, it is not open to the respondents to contend that seniority of the petitioner must be fixed as Junior Assistant, only from 26.08.2008. The respondents erred in fixing seniority of the petitioner as Junior Assistant as 80 (b) in between A.Ignitius and C.Mony taking into account the date of joining as 26.08.2008.

6. For the above reason, the order of the 1st respondent dated 16.05.2011 in Memo No.081769/G35/G352/2009-6 is set aside and the Writ Petition is allowed, directing the respondents Board to fix seniority of the petitioner between Sl.No. 532, Shri. A.Manickam and Sl.No. 533, Smt. C. Jothi as on 01.08.2010. No costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

gsa
To

1. The Chief Engineer (Personnel),
TANGEDCO,
NPKRR Malagi,
144, Anna Salai, Chennai 600 002.

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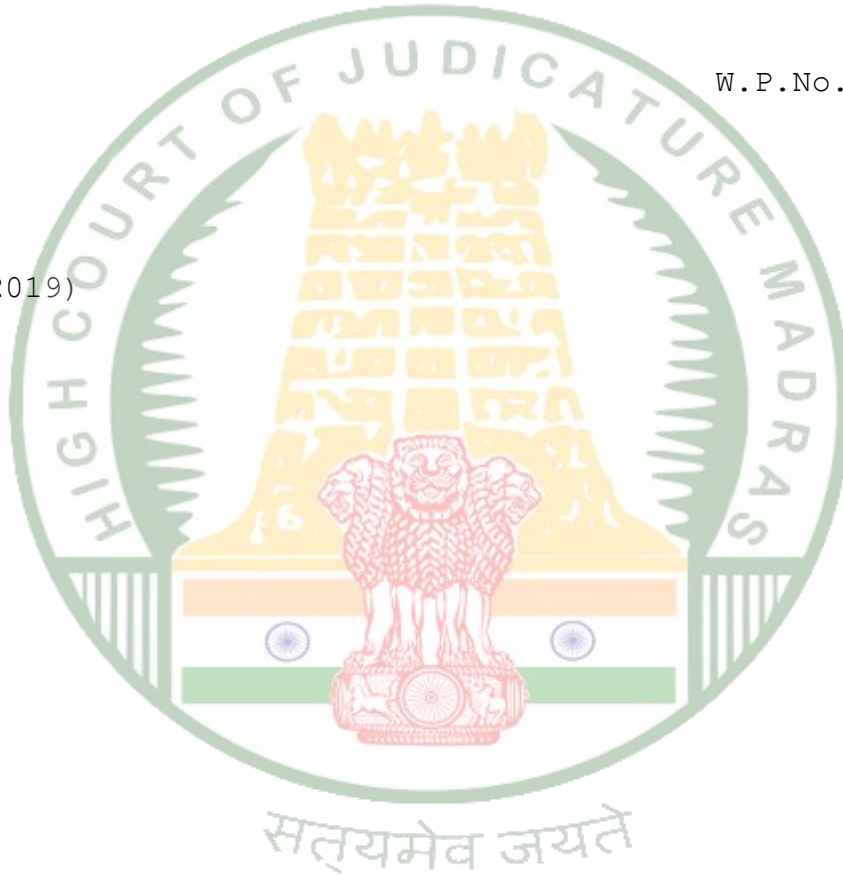
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Mettur Dam, Salem 636 406.

3.The Secretary,
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+1 CC to Mr.P.R. Dhilip Kumar, Advocate sr 75954.

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VGII (CO)
SP (25/11/2019)



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