

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.11370 of 2005

M.Chokkalingam

...Petitioner

Vs

1.The Chairman,  
Tamil Nadu Electricity Board,  
Anna salai, Chennai-2

2.The Chief Engineer (Personnel),  
Tamil Nadu Electricity Board,  
Anna Salai, Chennai-2.

3.The Superintending Engineer,  
Kanchi Electricity Distribution Circle,  
Anna Maaligai/Olimuhamedpet,  
Kanchipuram-2.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the third respondent in Letter No.00742/33-2/Adm.I/A.2/F.D./JE-I Gr/2004 dated 25.05.2004 and quash the same, and direct the respondents to promote the petitioner as Assistant Executive Engineer from the date on which his junior was promoted.

For Petitioner : Mr.P.Ganesan

For Respondents: Mr.P.R.Dhilip Kumar, SC

O R D E R

On a set of charges, the petitioner was awarded with two punishments dated 26.03.1993, wherein stoppage of his next annual increment for one year without cumulative effect was awarded and in the order dated 29.11.1993, stoppage of annual increment for two years with cumulative effect was awarded. Subsequently, the petitioner was convicted for a criminal offence on 30.10.1995 and was dismissed from the services on 01.12.1995. He came to be acquitted from the case on 02.08.2002, pursuant to which the petitioner came to be reinstated 21.12.2002.

2. By the impugned order dated 25.05.2004, the respondents had observed that the petitioner has undergone punishment period from 01.04.1993 to 2004, by taking into account the period of his suspension and dismissal between 24.11.1993 to 27.12.2002, also.

3. When the respondents had rejected the petitioner's claim to exclude the period of suspension and dismissal for the purpose of computing the pension and other terminal benefits, he had filed a writ petition in WP.No.2666 of 2009, challenging such a decision taken and this Court by an order dated 12.08.2009 had held as follows:

"6. In so far as the second writ petition is concerned, the petitioner was not only acquitted in the criminal case, but also succeeded in the departmental enquiry. While the respondents have a right to deprive the petitioner all the pay and allowances for the period during which he was out of employment, the respondents cannot refuse to treat the period of absence as duty period for all other purposes. Just as the petitioner became bound by the observation of this Court in the criminal appeal, the respondents are also equally bound. Therefore, I am of the considered view that the petitioner is entitled to have the period of absence from duty, treated as duty period for all purposes other than the payment of pay and allowances."

4. This order has become final. Thus, it is seen that the respondents were directed by this Court to consider the petitioner's period of absence from duty, as duty period for all purposes other than the pay and allowances. In other words, the period between 24.11.1993 to 27.12.2002 was required to be treated as duty period. Consequently, the respondents had also passed an order dated 31.10.2009, whereby the petitioner's period of absence was regularised as duty for all purposes other than the pay and allowances.

5. The grievance of the petitioner herein now is that in the promotion panel dated 07.12.2001 for the post of Assistant Executive Engineer, the Assistant Engineers from Sl.No.184 till 227 were juniors to him and as such, the petitioner is also entitled to be promoted from the date, when his juniors were promoted. Since the respondents had already regularised the petitioner's period of absence as duty for all purposes other than pay

and allowances, it automatically follows that the petitioner is also entitled to be notionally promoted from the date, when his juniors were promoted, i.e., from 07.12.2001.

6. In the light of all the above observations and also taking into account that the respondents themselves have regularised the service of the petitioner herein during the period of absence when the writ petition was pending, it would be appropriate to direct the respondents to notionally promote the petitioner from 07.12.2001 and consequently direct them to pay the increments for which the petitioner would be entitled to. It is now submitted that the petitioner has reached the age of superannuation on 30.06.2005.

7. For all the foregoing reasons, the impugned order passed by the third respondent in Letter No.00742/33-2/Adm.I/A.2/F.D./JE-I Gr/2004 dated 25.05.2004, is set aside. Consequently, the second respondent is directed to notionally promote the petitioner from 07.12.2001 onwards to the post of Assistant Executive Engineer and consequently grant all the monetary and pensionary benefits to which the petitioner may be entitled to. Such an exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order.

8. Accordingly, the Writ Petition stands allowed. No Costs.

jrs/hvk

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman,

Tamil Nadu Electricity Board,Anna salai, Chennai-2

2.The Chief Engineer (Personnel),

Tamil Nadu Electricity Board,Anna Salai, Chennai-2.

3.The Superintending Engineer,

Kanchi Electricity Distribution Circle,

Anna Maaligai/Olimuhamedpet,Kanchipuram-2.

+1cc to Mr.C.S.Associates, SR.No. 24348

+1cc to Mr.P.R.Dhilip Kumar , Advocate SR.No. 24250

WP.No.11370 of 2005

A.SK(09/04/2019)