

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAN

W.P.No.13140 of 2005

M.Meeran Mohideen

... Petitioner

Versus

1.The Superintending Engineer,
Purchase and Administration
Tuticorin Thermal Power Station,
Tuticorin-4.

2.The Chief Engineer/Personnel
Administrative Branch VIII Floor
800, Anna Salai, Tamil Nadu
Electricity Board,
Chennai-600 002

3. The Chairman,
Tamil Nadu Electricity Board,
800 Anna Salai,
Chennai -600 002

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or calling for the proceedings of the 2nd respondent in Memo.No.123176/55/G3/G3(1)/2002-05 dated 29.01.2005 and quash the same as illegal, arbitrary and against the service Regulations of the Respondent Board and consequently direct the respondents to effect promotion to the petitioner as JE/II Grade and Je/I grade as empanelled by the second respondent on 28.04.1995 and 12.04.2001 respectively on par with Thiru V.Shankar with all attendant benefits.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.P.R.Dhilip Kumar
(SC for EB)

ORDER

The claim of the writ petitioner is that he was found fit for promotion to the post of JE Electrical Grade-II, in the panel of the year 1995. However, his case was not considered, even after his joining in the post of Technical Assistant after returning from Saudi Arabia in the year 1998.

2. The writ petitioner was initially appointed as Technical Assistant Grade-I on 26.09.1986. The next promotion to the writ petitioner is to the post of Junior Engineer Electrical Grade-II. The name of the writ petitioner was considered in accordance with the seniority in the panel of the year 1995 and accordingly, his name was included in the panel. However, the petitioner applied for an Extraordinary leave from 10.12.1993 to 09.12.1994, for a period of one year initially and thereafter continued his leave without any permission.

3. It is brought to the notice of this Court that the writ petitioner overstayed in Saudi Arabia for the purpose of continuing his employment at Saudi Arabia. The petitioner returned back to India during the year 1998 and joined in the post of Technical Assistant on 28.12.1998. On account of his overstay and the unauthorised absence, the respondents had initiated departmental disciplinary proceedings and framed the charges. Pursuant to the charge memo, domestic enquiry had been conducted and the writ petitioner was imposed with the punishment of stoppage of increment for one year, with cumulative effect.

4. The learned counsel for the petitioner states that the name of the writ petitioner had been included in the panel of the year 1995 for promotion to the post of Junior Engineer Electrical Grade-II and therefore, the promotions cannot be stalled and the writ petitioner is entitled for retrospective promotion with reference to the panel of the year 1995.

5. The learned counsel appearing on behalf of the respondent disputed the points raised on behalf of the writ petitioner by stating that the writ petitioner remained unauthorised absent and gainfully employed in Saudi Arabia. This apart, even for getting passport, no prior permission had been obtained by the writ petitioner.

6. Further, disciplinary proceedings were initiated against the writ petitioner and he was imposed with the punishment of stoppage of increment with cumulative effect for one year, therefore, the writ petitioner was not considered for promotion to the post of Junior Engineer Electrical Grade-II.

7. The decision taken in this regard and communicated to the writ petitioner in proceeding dated 29.01.2005, is in accord with the Board proceedings and the Rules in force.

8. This Court is of an opinion that promotion can never be claimed as a matter of right. However, consideration of promotion is a Fundamental Right of an employee. All the eligible persons ought to be considered for inclusion of their respective names in the panel, if any, prepared by the establishment. Thus, consideration of the name of eligible persons are mandatory. However, promotion can never be claimed as a matter of right and all promotions sought to be provided strictly with reference to the rules in force.

9. In the present case on hand, admittedly, the writ petitioner applied for an Extraordinary leave from 10.12.1993 to 09.12.1994 for a period of one year initially and thereafter extended his leave period. However, there was no sanction in respect of subsequent leave period. The petitioner remained unauthorisedly absent and during that relevant point of time, he served in Saudi Arabia. In respect of the allegation of unauthorised absence, disciplinary proceedings were initiated and after conducting enquiry, punishment of stoppage of increment with cumulative effect for one year was imposed against the petitioner.

10. Thus, mere inclusion of the writ petitioner in the panel of the year 1995 will not confer any right on the writ petitioner to claim promotion in the year 1999 after his joining in the post of Technical Assistant Grade-II. From 1993 onwards, the petitioner was not in service in the post of Technical Assistant Grade II. He was not at all working in the Board from year 1993-1998 till he returned back from Saudi Arabia.

11. This being the factum of the case, the writ petitioner is not entitled for any retrospective promotion, as the punishment of stoppage of increment for one year with cumulative effect was imposed and during the relevant point of time, When the panel was prepared, he was not at all working in the services of the Board and he was serving in Saudi Arabia, by accepting a private employment. This being the facts now placed before this Court, this Court has no hesitation to hold that the claim of the writ petitioner for retrospective promotion deserves no merit consideration. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ska/pkn

To

1.The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin-4.

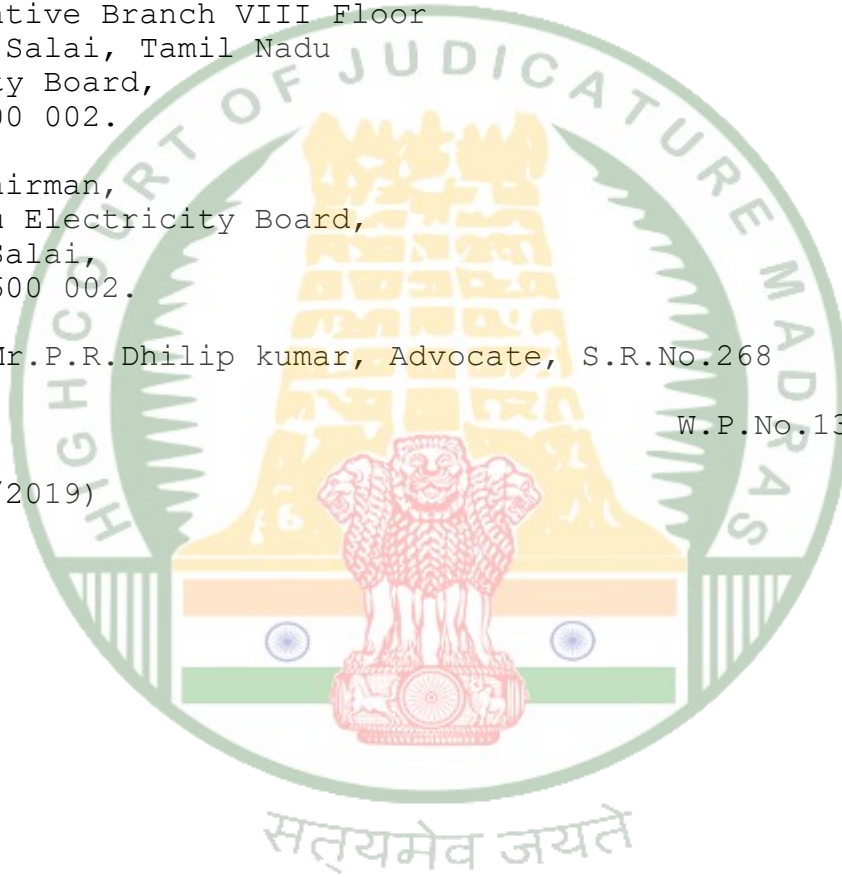
2.The Chief Engineer/Personnel
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3. The Chairman,
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800 Anna Salai,
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+1 cc to Mr.P.R.Dhilip kumar, Advocate, S.R.No.268

W.P.No.13140 of 2005

SV(CO)
SSM(30/01/2019)



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