

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5663 of 2010

V.Subramanian

.. Petitioner

Vs.

1. Tamil Nadu Electricity Board,
Rep. by its Chief Engineer,
(Personnel),
800, Anna Salai, Chennai - 600 002.

2. The Superintending Engineer (P&A),
Mettur Thermal Power Station,
Mettur Dam-6, Vellore District.

3. S.Babu,
Special Grade Foreman/Driver,
CHP-II Division,
Mettur Thermal Power Station,
Mettur Dam, Vellore District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 23.01.2009 passed by the 2nd respondent in Memo No.048/Ni.Pi.2/Uul/09 revising the petitioner seniority to his detriment and also the orders dated 23.01.2009 in Memo.No.046/Adm.2/A1/F Panel/2009 publishing the panel for promotion to the post of Special Grade Foreman/Driver and the order dated 23.01.2009 in Memo No.049/Adm.1(1)/F.Pro/2009 granting promotion to the 3rd respondent to the post of Special Grade Foreman/Driver, quash the same and consequently direct the respondents 1 and 2 to promote him to the post of Special Grade Foreman/Driver based on the petitioner original seniority from the date on which the 3rd respondent was given promotion with arrears and all other consequential benefits.

For Petitioner : Mr.V.Ajay Khose

For Respondent : Mr.P.R.Dhilip Kumar for TNEB (R1 & R2)

O R D E R

The petitioner by this writ petition prays for a certiorarified mandamus calling for the records pertaining to the order dated 23.01.2009 passed by the 2nd respondent in

Memo No.048/Ni.Pi.2/Uul/09 revising the seniority of the petitioner to his detriment. The petitioner challenges the order dated 23.01.2009 in Memo.No.046/Adm.2/A1/F Panel/2009 publishing the panel for promotion to the post of Special Grade Foreman/Driver and the order dated 23.01.2009 in Memo No.049/Adm.1(1)/F.Pro/2009 granting promotion to the 3rd respondent to the post of Special Grade Foreman/Driver and consequently to direct the respondents 1 and 2 to promote the petitioner to the post of Special Grade Foreman/Driver based on the original seniority of the petitioner from the date on which the 3rd respondent was given promotion with arrears and all other consequential benefits.

2. The petitioner joined service of the Tamil Nadu Electricity Board as a temporary casual labour on 08.10.1971. He was thereafter appointed as Transport Helper with effect from 01.01.1973. He was then appointed to the post of TTHV Driver on 30.09.1993. A common seniority list for the employees in the category of Foreman Grade-II and it is equivalent grades in the time scale of pay of Rs.1250-45-1475-50-3335 was prepared on 01.10.1999, in which the petitioner was placed at Sl.No.14 and the 3rd respondent herein was placed at Sl.No.18. At that point of time, the petitioner was working as TTHV driver from 30.09.1993 and the 3rd respondent was working as senior grade driver with effect from 19.06.1996. This seniority list attained finality. Another seniority list was prepared on 31.10.2006, for the employees in the time scale of pay of Rs.5600-175-10150. The petitioner was once again shown senior to the 3rd respondent. The relevant columns read as under:-

METTUR THERMAL POWER STATION

SENIORITY LIST OF EMPLOYEES IN THE CATEGORY OF SPECIAL GRADE FOREMAN (DRIVER) AND ITS EQUIVALENT IN THE TIME SCALE OF PAY OF RS.7225-225-13525

Sl .N o	Sr .N o.	Name	Date of Birth	Education al Qualifica tion	Date of First Entry in Board Servi ce	Date of Appoi ntmen t n RWE Scader	Date of Joini ng in the Prese nt post	Divis ion in which now worki ng	Prese nt Desig nation	Remar ks
SENIORITY LIST OF EMPLOYEES IN THE CATEGORY OF HEAVY VEHICLE DRIVER IN THE TIME SCALE OF PAY OF Rs.5600-175-10150										
1	6	V.Sub raman ian	12.06. 1952	7th Std failed	08.1 0.19 71	01.0 1.19 77	23.0 6.20 05	CHP II	Heav y Vehi cle Driv er	

Sl .N o	Sr .N o.	Name	Date of Birth	Education al Qualifica tion	Date of First Entry in Board Service	Date of Appoi ntmen t n RWE cadet	Date of Joini ng in the Prese nt post	Divis ion in which now worki ng	Prese nt Desig nation	Remar ks
2	7	S.Babu	01.07.1952 as per MC	NIL	01.03.1967	01.01.1973	27.06.2005	CHP II	Heavy Vehicle Driver	

3. The petitioner and the 3rd respondent were working as heavy vehicle driver, when the seniority list was prepared on 31.10.2006. A panel was prepared for promotion to the post of Special Grade Foreman and the 3rd respondent was shown as senior to the petitioner. The petitioner states that this was not in accordance with law. The petitioner states that there was no occasion to revise the seniority. In view of the revised seniority, the 3rd respondent Mr.S.Babu was promoted and appointed as senior grade foreman/driver on the time scale of pay of Rs. 7225-225-13525 superseding the petitioner.

4. The petitioner therefore challenges the order by which the 3rd respondent was promoted and appointed to the post of Special Grade Foreman/Driver superseding the petitioner who had been shown senior to the 3rd respondent in the previous seniority list.

5. The respondents have filed their counter. In the counter, the respondents have taken a stand that after being promoted as TTHV driver on 30.09.1993, the petitioner was given the post of Special Grade Driver from 03.05.2000 and therefore, the petitioner lost his seniority as driver. On the other hand, the 3rd respondent continued to be in the list of drivers and therefore became senior. It is stated that the 2nd respondent/the Superintending Engineer, Purchase and Administration, Mettur Thermal Power Station had sent a letter seeking clarification from the Chief Engineer/Personnel, TANGEDCO Ltd, Chennai and the 1st respondent/ the Chief Engineer/Personnel, clarified by his letter stating that the 3rd respondent is senior to the petitioner and consequently the 3rd respondent was kept senior to the petitioner.

6. Heard the counsel for the parties.

7. Regulation No. 97 of the Tamil Nadu Electricity Board Service Regulations, lays down as to how the seniority of the employee of the Electricity Board to be reckoned. Regulation No. 97 of the Tamil Nadu Electricity Board Service Regulations, reads as under:-

"97 SENIORITY:

(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 maybe. 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) The transfer of a person from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this Sub-Regulation, seniority shall be determined by the appointing authority.

(a) Where a member of a class of service, category or grade is reduced to a lower class of service, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower class of service, category or grade, next below any specified member thereof.

(b) 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. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."

8. In the original seniority of employee in the category of Foreman Grade-II in the time scale of pay of Rs.4200-1300-7060, the petitioner was shown senior to the 3rd respondent. The same reads as under:-

COMMON SENIORITY LIST OF EMPLOYEES IN THE CATEGORIES OF FORMEN
II GRADE AND ITS EQUIVALENT IN THE TIME SCALE OF PAY OF
RS.4200-130-7060

S l . N o	Name	Date of Birth	Educational Qualification	Date of First Entry in Board's Service	Date of Appointm ent in RWE cadr e	Date of Join ing in the Pres ent post	Division in which now working	Present Designat ion	Remarks
14	V.Subramanian	12.06.52	7th Std failed	08.10.71	01.01.77	23.06.05	CHP II	TTHV Driver	
18	S.Babu	01.07.1952 as per MC	NIL	01.03.67	01.01.73	27.06.05	CHP II	Senior Grade Driver	

9. The petitioner was therefore senior to the 3rd respondent as much as working from 30.09.1993 in the category of Foreman Grade-II and the 3rd respondent was working only from 19.06.1996 in the category of Foreman Grade-II. The petitioner was working as heavy vehicle driver and the 3rd respondent was working as senior grade driver. Therefore on 12.11.1999 when the seniority list was prepared for the category of Foreman Grade-II and it is equivalent post in the time scale of pay of Rs.4200-130-7060. The petitioner was shown as senior to the 3rd respondent. Similarly, in the seniority list prepared in the category of heavy vehicle driver in the time scale of pay of Rs.5600-175-10150 (extracted supra). The petitioner had joined the service earlier to the 3rd respondent. Both were working as heavy vehicle drivers. A perusal of the office order No.304/Admn/A2/F.SL/95-1 dated 02.03.1995, which is the R.W.E.Seniority list of R.W.E.Workmen in M.T.P.S as on 28.02.1995 has not show the name of the 3rd respondent. This means that the 3rd respondent had not been appointed in the Electricity Board before the petitioner.

10. The only reason which the Government has given in the counter affidavit for showing the 3rd respondent as senior to the petitioner is in paragraph.No.5, which reads as under:-

"4. I state that the averments as stated by the

petitioner in Paragraph 15 to 16 are incorrect and it is true to state that the petitioner has given the representation dated 02.06.2008 and 27.06.2008 and requested to promote him as Special Grade Foreman post. The 3rd respondent Babu has also given a representation dated 21.05.2008 and requested to promote him as Special Grade Foreman Driver stating that he has joined as Temporary Casual Labour (TCL) on 01.03.1967 in the TNEB and regularised as Helper on 01.01.1973. Subsequently, the 3rd respondent was promoted as Vehicle Driver on 19.06.1979 and promoted as Senior Driver on 19.06.1996 and thereafter the 3rd respondent was promoted as TTHV Driver on 27.06.2005 F.N. But the petitioner has entered into the Board Service on 08.10.1971 as Temporary Casual Labour (TCL) and promoted as Helper on 01.01.1977. Subsequently promoted as Vehicle Driver on 27.12.1990 and promoted as 1 FH\ Driver on 30.09.1993. Whereas the Petitioner has received the post transfer as Special Grade Driver from TTHV Driver on 03.05.2000 F.N. Hence the Petitioner has lost his Driver Seniority in the Driver seniority list. In the meantime, the 3rd respondent has requested for his seniority to the Driver seniority list in lieu of the Petitioner has lost his driver seniority. Hence the 2nd respondent has sent the clarification letter to the 1st respondent. The Chief Engineer / Personnel / Chennai based on request the both employees representation vide SE / P&A /MTPS Lr.No.382 / Adm.II / A(1) / F.Dkt./ 2008, dt. 14.07.2008 in Tamil. As well as the 2nd respondent has sent the comparative statement to the 1st respondent The Chief Engineer Personnel Chennai in respect of the petitioner and the 3rd respondent vide SE / P&A MTPS. Lr.No. 043064 / 644 / Admin.II (4) / F. Driver/ 2008, dt. 08.09.2008 and SE/ A . MTPS Lr.No.51046/694/ Adm.II (1) dt. 17.11.2008 in Tamil."

Coupled with these, it is stated that the decision was taken on the basis of the clarification given by the 1st respondent/ Chief Engineer (Personnel). The clarification and the reason given by the State are completely contrary to Regulation No.97 of the Tamil Nadu Electricity Board Service Regulations. The petitioner joined the respondent Board before the 3rd respondent. He was shown senior in the category of Foreman Grade-II to the 3rd respondent. He was also shown senior in the common seniority list dated 12.11.1999.

11. There was no justification to show that the 3rd respondent is senior to the petitioner and grant him promotion. Even though the petitioner's representation dated

03.03.2009, has not been decided till date. This Court is of the view that, instead of directing the respondents to consider the representation of the petitioner at this length of time, and in view of the fact that there is a clear violation of Regulation No.97. The Writ as prayed must be granted. The petitioner has attained his superannuation.

12. The respondents are therefore directed to promote the petitioner from the date of which the 3rd respondent have promoted and calculate the monetary benefits due and payable to the petitioner. The respondent No.1 and 2 are directed to calculate the monetary benefits given to the petitioner within a period of 12 weeks from the date of the receipt of a copy of this order. Writ petition is allowed. No Costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Chief Engineer,
Tamil Nadu Electricity Board,
(Personnel),
800, Anna Salai, Chennai - 600 002.

2. The Superintending Engineer (P&A),
Mettur Thermal Power Station,
Mettur Dam-6, Vellore District.

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No. 88429

W.P.No.5663 of 2010

GP (CO)
GN(27/11/2019)

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