



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.04.2019

Pronounced on : 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.2614 of 2012

and

W.P.(MD)No.3641 of 2019

M.Ariyasamy

... Petitioner in both W.Ps

Vs

The Superintending Engineer,
Tamil Nadu Generation & Distribution Corporation Ltd.,
Thanjavur Electricity Distribution Circle,
Thanjavur.

... Respondent in both W.Ps

PRAYER in W.P.(MD)No.2614 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Memo No.5818/194/Adm.III/A1/F.Pay Fixation/2010-1/dated 27.11.2010 (revising my seniority) and impugned letter No.02258/109/பி.பி.3-உ.1-கோ.கோர்ப்புக் கை-2011-1, dated 09.02.2011 sofar as (rejecting the petitioner's claim for arrears of pay from the date of revised promotion) and quash the same as illegal and consequently direct the respondent to settle the arrears of pay and allowances from the date of revised promotion in each post instead of actual date of joining .

PRAYER in W.P.(MD)No.3641 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent in Memo No.011515/Adm.III/A.I/F.Court Case/2018, dated 28.12.2018 and quash the same and direct the respondent to revise/re-fix the petitioner's pay scale in the post of Special Grade Foreman.

(In both W.Ps)

For Petitioner : Mr.B.Vijay Karithikeyan

For Respondent : Mrs.Srimathy,
Special Government Pleader

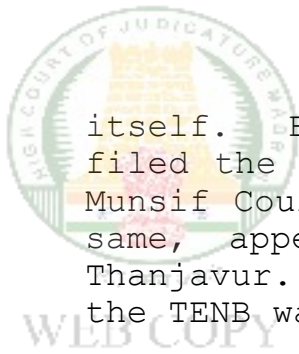
**COMMON ORDER**

The writ petitioner retired from TANGEDCO on 31.03.2009. His dispute with the employer arose way back in the year 1994. The writ petitioner was promoted to the post of Assistant Commercial Inspector in the year 1986. He wanted revision of the seniority in the said post by granting him retrospective promotion by placing him above his erstwhile juniors namely., Mr.R.Subrmanian and three others. The petitioner's request was rejected vide memo dated 24.06.1994. Questioning the same, the petitioner filed O.S.No.243 of 1994 on the file of the District Munsif Court, Thiruvaiyaru. He succeeded in the civil proceedings and the same was confirmed by the Principal Seat of Madras High Court by judgment and decree dated 19.09.2007 in S.A.No.1591 of 1997. Though the said decree was passed in his favour was implemented by the employer, the petitioner's grievance was that it was not implemented in toto. According to him, even though his seniority was revised and he was placed above Mr.R. Subrmanian and three others, only notional benefits were conferred and actual monetary benefits were paid only from the date when he joined in the respective posts. Challenging the said stand taken by the employer, vide memo dated 27.11.2010, the petitioner filed W.P.(MD)No.2614 of 2012.

2.The petitioner has one more grievance that Mr. Subrmanian retired from service in the year 2005. At the time of retirement, he was holding the post of Junior Engineer Grade-II. In fact, he was promoted to the post of Junior Engineer Grade-II on 30.06.2005 and he retired on the same day. The post of Special Grade Foreman is a promotional post and it was created in the year 2006. Since Mr.R.Subrmanian retired in the year 2005, he could not be promoted as Special Grade Foreman. According to the petitioner, if Mr.R. Subrmanian had been in service in the year 2006, he would have become the Special Grade Foreman and hence he should be treated as Special Grade Foreman and his pay should be refixed accordingly. Since the prayer was rejected vide memo dated 28.12.2018, the petitioner filed W.P.(MD)No.3641 of 2019.

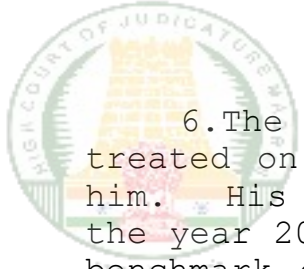
3.Heard the learned counsel on either side.

4.It is seen from the plaint averments in O.S.No.243 of 1994, filed on the file of the District Munsif Court, Thiruvaiyaru that the writ petitioner was appointed as Assistant on 12.07.1970 on daily wages basis. He was made permanent on 08.10.1973. Following the acquisition of the private electricity undertakings, TNEB took over Kumbakonam Electricity Supply Company on 07.01.1974. One R.Subramaninan and there others were holding the post of Assistants, when the said company was taken over by TNEB. The petitioner became a Commercial Assistant on 01.07.1974. However, the said Mr.R.Subrmanian and three others become Commercial Assistants only on 01.12.1980. The petitioner was promoted as Assistant Commercial Inspector on 22.05.1986. The petitioner contented that he should have been made as Assistant Commercial Inspector on 01.04.1980



itself. But the request was rejected. Challenging the same, he filed the aforesaid O.S.No.243 of 1994 on the file of the District Munsif Court, Thiruvaiyaru. The suit was decreed. Questioning the same, appeals were filed before the Principal District Judge, Thanjavur. Appeals were dismissed. S.A.No.1591 of 1997 filed by the TENB was dismissed on 30.09.2009.

5. After losing the second appeal, employer chose to implement the order passed in favour of the writ petitioner. But the petitioner's contention is that the implementation was not in total. It was only partial compliance of the civil court proceedings. If the petitioner's case was that the Civil Court's decree was not complied with in toto, he could have as well filed an execution petition. It is not known as to why the petitioner after initiating civil proceedings, chose to change gear and moved writ proceedings. Be that as it may, it is seen that after declaring the memo dated 24.06.1994 issued by the employer is illegal and unenforceable, the Civil Court directed the employer to give promotion to the writ petitioner as Assistant Commercial Inspector and place him above Mr.R.Subrmanian in the seniority list and in all other higher post also. The Civil Court did not give any other relief to the writ petitioner. This decree of the Civil Court has been complied with in toto by the employer. The date of promotion to the post of Assistant Commercial Inspector and upto the post of Junior Engineer Grade-II had been revised on par with the date of joining of Mr.R. Subrmanian. Thus the date of promotion to the post of Assistant Commercial Inspector was changed from 22.05.1986 to 22.03.1981. He was deemed to have been promoted as Commercial Inspector from 01.03.1990 instead of 05.12.1994. He was deemed to have been promoted to the Special Foreman Grade-I from 21.11.1994 instead of 04.10.1999. He was deemed to have moved to selection Grade Foreman with effect from 21.11.2003 instead of 25.06.2007. He was deemed to have been promoted as Junior Engineer Grade-II from 30.06.2005 instead of 13.03.2009. Thus it is seen that the employer has scrupulously complied with the Civil Court's decree and placed the petitioner above Mr.R.Subramanian not only in the post of Assistant Commercial Inspector but also in all subsequent promotional posts upto the post of Junior Engineer Grade-II. The pay of the petitioner was also notionally revised and annual increments were also accordingly sanctioned. However, the actual monetary benefits were directed to be paid with effect from the respective dates when the petitioner joined in the respective posts. The authorities have only applied the principle of 'no work no pay'. However, the notional benefits have been granted. It is not as if that the petitioner got benefits only on paper. He was actually given not only promotion but also pay arrears. In fact the petitioner had accepted the pay arrears. Thus I hold that the decree passed by the Civil Court has been complied with and there is no cause of action for maintaining W.P.(MD)No.2614 of 2012 and it is dismissed accordingly.



6.The petitioner has all along been claiming that he should be treated on par with Mr.R.Subramanian and placed immediately above him. His specific contention is that Mr.R.Subramanian retired in the year 2005 itself and therefore he should no longer be treated as benchmark or reference point. I am unable to agree with the said submission. It is true that the writ petitioner was holding the post of Special Grade Foreman with effect from 25.06.2007. However, Mr.R.Subramanian was not holding the post of Special Grade Foreman. He was only holding the post of Selection Grade Foreman on completion of ten years in the post of Grade-I Foreman in the year 2003. But then, he was promoted as Junior Engineer Grade-II on 30.06.2004 and retired on the same day. When the petitioner had all along contended that he should be given the same benefit which was extended to Mr.R.Subramanian and placed above him in the seniority list, he cannot now take a different stand. The authority rightly held that his request for revision of pay to the post of Special Grade Foreman is not feasible of compliance. The authority was absolutely justifying in holding that pay in the post of Junior Engineer Grade-II cannot be revised. There is no absolutely no merit in the writ petitioner's contention. W.P.(MD)No.3641 of 2019 stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar(CS-)

+2 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate
(SR-66993[F] dated 06/06/2019)

+1 CC to M/s.SPL GP (SR-67052[F] dated 06/06/2019)

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