



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.13585 of 2015

and

M.P (MD)No.1 of 2015

N.Balakrishnan

... Petitioner

vs.

- 1)The Chairman,
Tamilnadu Generation and Distribution Corporation Ltd.,
144, Annasalai,
Chennai-2.
 - 2)The Chief Engineer (Personnel),
Tamilnadu Generation and Distribution Corporation Ltd.,
144, Annasalai,
Chennai-2.
 - 3)The Superintending Engineer,
Pudukottai Electricity Distribution Circle,
Tamilnadu Generation and Distribution Corporation Ltd.,
Pudukottai.
 - 4)The Executive Engineer,
(Operation and Maintenance)
Tamilnadu Generation and Distribution Corporation Ltd.,
Pudukottai Electricity Distribution Circle,
Pudukottai.
- ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Ref.No.067668/725/G30/G301/2012-2 dated 01.10.2012 issued by the 2nd respondent in rejecting the request of the petitioner for notional promotion to the post of Assistant Accounts Officer, quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to give promotion to the petitioner as Assistant Accounts Officer with effect from 21.10.2008 as given to his junior N.Kannaiyan with notional fixation of pay and to give the consequential monetary benefits to the petitioner payable from the date of promotion to till the date of superannuation and to pay him revised terminal benefits and pension based on such notional pay and to pay the arrears together with reasonable rate of interest from the date of retirement to the date of actual settlement.



For Respondents

: Mr.J.Sakthi Kumaran

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Ref.No.067668/725/G30/G301/2012-2 dated 01.10.2012 issued by the 2nd respondent in rejecting the request of the petitioner for notional promotion to the post of Assistant Accounts Officer, quash the same as being illegal arbitrary and unconstitutional and consequently direct the respondents to give promotion to the petitioner as Assistant Accounts Officer with effect from 21.10.2008 as given to his junior N.Kannaiyan with notional fixation of pay and to give the consequential monetary benefits to the petitioner payable from the date of promotion to till the date of superannuation and to pay him revised terminal benefits and pension based on such notional pay and to pay the arrears together with reasonable rate of interest from the date of retirement to the date of actual settlement.

2.Learned counsel for the petitioner would state that the petitioner was employed as Accounts Supervisor. His next avenue of promotion is Assistant Accounts Officer. According to the petitioner, he was fully eligible on the crucial date viz., 25.03.2008 for examining the eligibility of the qualified candidates fit for promotion to the post of Assistant Accounts Officer. While so, TANGEDCO called for suitability report in respect of all 201 Accounts Supervisors on 21.10.2008 and again on 04.11.2008 in respect of 51 Accounts Supervisors. It is further submitted that on 04.11.2008, the General Secretary of NLO Trade Union made representation to the 1st respondent to defer the promotion process on the ground that 14 persons are yet to pass the Accountancy test and their names are also to be included in the panel. The petitioner made several representations seeking to promote him to the post of Assistant Accounts Officer as he was due to retire from service on 31.12.2009. The process of promotion was kept pending due to introduction of Code of Conduct for Lok Sabha Election held in May 2009. The petitioner also obtained an order for considering his representation on merits in W.P(MD)No.4568/2010 dated 07.03.2012, but the petitioner's claim was rejected by order dated 01.10.2012.

3.He would further submit that the petitioner's junior P.Chellan challenged the similar impugned order and obtained an order in W.P(MD)No.28673/2010 dated 14.03.2012 to include his name in the panel and to give notional promotion and to pay the consequential monetary benefits from 15.05.2009. The said Chellan retired from service on 31.05.2009 and the order in the above writ petition was confirmed in W.A(MD)No.510/2013 dated 09.04.2013. One another junior of the petitioner who retired from service on 31.07.2009 also obtained an order in W.P.No.27273/2010 dated 21.03.2012 to include his name in the panel and give him notional



promotion to the post of Assistant Accounts Officer and pay monetary benefits from 21.10.2008. Thus, he would submit that the petitioner's case is covered by the above orders and the two grounds based on which, the promotion was kept in abeyance namely, due to representation by Trade Union to include more names who have cleared departmental test belatedly and due to Lok Sabha Election held in May 2009, were considered in the above cases and that the TANGEDCO had not approached the election commission to get clearance for giving promotion. Thus, he would pray for setting aside the impugned order.

4.No counter affidavit is filed by the respondents. Learned counsel for the respondents drew the attention of this Court to the impugned order and would state that apart from the introduction of Code of Conduct for Lok Sabha Election 2009, there were other reasons for keeping the promotion pending. Adding further, he would submit that after the election 2009, the next crucial date 25.03.2009, had reached and the seniors who passed the Accountancy Higher Grade examination subsequently during February 2009 had also represented to include their names in the proposed panel and in the meanwhile, the Government had also passed G.O.No.107, dated 18.08.2009 regarding appointment and promotion to be given in case of persons who acquired degree through open university and pursuant to the said G.O., the report of Accounts Supervisors who have passed +2 examinations before obtaining the degree through open university, was called for vide letter dated 29.10.2009 and after observing the rules and procedure, a panel containing a list of 100 Accounts Supervisors fit for promotion as Assistant Accounts Officer was drawn only on 11.01.2010 and since the petitioner retired on 31.12.2009, his name could not be included in the said promotional panel. Thus, he would pray for dismissal of the writ petition.

5.Heard both sides.

6.Perusal of record shows that the petitioner's junior P.Chellan who was on similar footing and retired on 31.05.2009, has challenged the similar impugned order in W.P.No.28673/2010, wherein, the Writ Court has passed the following order:-

'10.The perusal of the impugned order dated 20.11.2010 also reveals that the petitioner does not suffer from any disqualification and he has already reached the zone of consideration for promotion to the post of Assistant Accounts Officer. It is pertinent to note that the perusal of the impugned order further discloses that the supplementary panel was to be prepared on 25.03.2008 and the process was kept lie over due to Lok Sabha elections in the year 2009 as Code of Conduct. It is fairly submitted by the learned standing counsel for the respondents before this Court that the panel was prepared on 15.05.2009 and the petitioner's name was not considered only on the ground of his retirement on 31.05.2009. I am

<https://hcservices.courts.gov.in/hcservices/> considered view that there is absolutely no



impediment to promote the petitioner and the panel for promotion was prepared on 15.05.2009 and on that crucial date, the petitioner was very much in service and there is absolutely no justification to deny such benefit to the petitioner in spite of the admitted fact that the petitioner is fully qualified for such promotion.

11. In view of such sequence of events and the admitted facts, this Court is of the considered view that deprivation of the benefit of promotion to the petitioner is wholly unjustified and the reason assigned for rejecting the representation of the petitioner dated 30.04.2009 is untenable. The second respondent ought to have at least considered the representation of the petitioner dated 05.06.2009 which was given prior to the passing of the impugned order dated 20.11.2010 and nothing prevented the second respondent to consider the said representation wherein, the petitioner has sought for the relief of notional promotion with consequential monetary benefits. It is very unfortunate to note that the said representation is not all referred in the impugned order dated 20.11.2010.

12. In view of the aforesaid reasons, this court has come to the irresistible conclusion that the impugned order is unsustainable in law. Accordingly, the writ petition is allowed and the impugned order passed by the second respondent dated 20.11.2010 vide Proceedings in Lr.No.100224/G30/G301/2008 is hereby set aside. Consequently, the second respondent is hereby directed to give notional promotion to the petitioner and pay the consequential monetary benefits with effect from 15.05.2009, the date on which the panel was approved, with all other attendant benefits. It is made clear that the above said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.'

7. One another junior of the petitioner namely, N.Kannaiyan who retired on 31.07.2009, also filed W.P.No.27273/2010 challenging the similar impugned order and the Writ Court relying on the order made in W.P.No.28673/2010, dated 14.03.2012, allowed the writ petition quashing the similar impugned order challenged therein. It is also stated that against the orders passed in the above two writ petitions, writ appeals were filed and the same were dismissed and the above persons were also given notional promotion and monetary benefits and therefore, there cannot be any different treatment to the petitioner.

8. Thus, in my considered opinion, the above orders are squarely applicable to the present petitioner also. Accordingly, following the above orders, the order impugned in Ref.No.067668/725/G30/G301/2012-2 dated 01.10.2012 issued by the 2nd respondent is hereby set aside and the 2nd respondent is directed to give



notional promotion to the petitioner to the post of Assistant Accounts Officer and to pay the consequential monetary benefits to him with effect from 21.10.2008, the date on which the panel was approved, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2020

Sub Assistant Registrar(CS)

To

1)The Chairman,
Tamilnadu Generation and Distribution Corporation Ltd.,
144, Annasalai,
Chennai-2.

2)The Chief Engineer (Personnel),
Tamilnadu Generation and Distribution Corporation Ltd.,
144, Annasalai,
Chennai-2.

3)The Superintending Engineer,
Pudukottai Electricity Distribution Circle,
Tamilnadu Generation and Distribution Corporation Ltd.,
Pudukottai.

4)The Executive Engineer,
(Operation and Maintenance)
Tamilnadu Generation and Distribution Corporation Ltd.,
Pudukottai Electricity Distribution Circle,
Pudukottai.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-104912[F] dated 13/12/2019)

+1 CC to M/s.A.RAHUL, Advocate (SR-104951[F] dated 13/12/2019)

ORDER MADE IN
W.P(MD)No.13585 of 2015
DATED : 13.12.2019

_KK/SAR/09.01.2020/5P-7C/