

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No.10152 of 2005

D.Santhanam

..Petitioner

Vs

1.The Tamil Nadu Electricity Board
rep. by its Chairman
No.800, Anna Salai
Chennai-600 002

2.Chief Engineer (Personal)
Tamil Nadu Electricity Board
850, Anna Salai
Chennai-600 002

3.The Superintending Engineer
Tamil Nadu Electricity Board
Cuddalore
Cuddalore District

..Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, praying for a Writ of certiorarified mandamus relating to the order passed by the 3rd respondent in Letter No.03884/0108/NP2/No.2/KO File/2003 dated 03.05.2003 and quash the same and direct the respondents to give notional promotion to the petitioner on par with his service with his juniors T.Palanivelu, Check No.1240 and P.Ranganathan Check No.1234 and to give all consequential monetary benefits.

For Petitioner : Mr.S.Chandrabose

For Respondent : Mr.Fakkir Mohideen S.C for TNEB
for R1 to R3.

ORDER

The Petitioner was appointed as NMR in the respondent Board in the year 1957. Subsequently, by order dated 15.12.1959, he was promoted as Luskar Grade-II. According to the petitioner, based on certain allegations, he was removed from service on 13.10.1964. However, thereafter on consideration of the petitioner's explanation, he was reinstated into service on 01.03.1967 as NMR. The period of removal from service was treated as leave on loss of pay. The grievance of the petitioner is that his juniors vi., Palanivel and Renganathan were promoted and he was not considered for

promotion. Petitioner sent a representation on 18.03.1978 to the respondents seeking promotion as wireman. The respondents replied that his name will be considered in future. Therefore, the petitioner raised an Industrial Dispute before the Labour Commissioner through Union and that application was rejected. Aggrieved by the same, the petitioner filed I.D.No.597/1992 before the Labour Court, Cuddalore. The Presiding Officer, Labour Court, Cuddalore, by Award dated 21.11.2000, held that since the request of the petitioner is under consideration before the respondent, the reference is not justified. In the affidavit filed in support of the writ petition, the petitioner stated that he was promoted as Foreman Grade-I on 30.11.1999. According to the petitioner, he has been given promotion only at the fag end of retirement, therefore, seeking notional promotion on par with his juniors Palanivel and Renganadhan, the petitioner filed W.P.No.198 of 2002 and this court by order dated 06.01.2003 directed the respondents to consider the claim of the petitioner and pass suitable orders. On 03.05.2003, the 3rd respondent rejected the claim of the petitioner, stating he was terminated in the year 1963 and reinstated in 1967 and in the said period, his juniors who were appointed as Laskar Grade II were considered for promotion.

2. The main contention of the petitioner is that after reinstatement on 01.03.1967, the period of absence due to termination was considered as leave on loss of pay and therefore, his seniority ought to have been revised based on the continuity of service. The learned counsel for the petitioner thus prayed for setting aside the impugned order passed by the 3rd respondent.

3. Though the contention of the petitioner is that the petitioner was appointed as NMR in the year 1957 and was promoted as Laskar Grade-II on 15.12.1959, after termination he was reinstated into service on 01.03.1967 and therefore, his seniority has to be refixed, in the impugned order passed by the 3rd respondent, it is clearly stated in paragraph 8 that though Palanivel and Renganadhan are juniors to the petitioner at the time of joining into service, petitioner was terminated and again reinstated on 15.03.1967, but those two juniors have been promoted as Laskar Grade II on 01.01.1960 and their services have been regularised and therefore, they were promoted to the next cadre.

4. Admittedly, the petitioner approached Labour Court and thereafter approached this court by filing W.P.No.198/2002, wherein, this court directed the respondents to consider the claim of the petitioner. However, the petitioner's claim was rejected pointing out that the petitioner has not claimed for refixation of seniority within three years of reinstatement.

5. In the considered opinion of this court, the rejection of the claim of the petitioner cannot be interfered with for the reason that the petitioner after termination, reinstated only on 15.03.1967 and the order of reinstatement has not been

challenged. Further, the petitioner's absence during the period of termination was considered as leave on loss of pay and the said continuity of service can be counted only for the purpose of pension and other terminal benefits but not for seniority.

6. Earlier, the petitioner has not challenged the reinstatement order wherein his absence during the period of termination was treated only as leave on loss of pay,. Further the challenge now made by the petitioner against the impugned order dated 03.05.2003 passed by the third respondent, is not maintainable since by efflux of time, without challenging the order of reinstatement cannot ask for refixation of seniority, for the sole reason that his juniors Palanivel and Renganadhan were promoted.

7. In view of the foregoing reasonings, there is no merit in the writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Nvsri

To

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KV (CO)
GN(03/02/2021)