

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 4011 OF 2013

G.Krishnamurthy

.. Petitioner

- Vs -

1. The Chairman
Tamil Nadu Electricity Board
No.800, Anna Salai, Chennai 600 002.
2. The Superintending Engineer
Tamil Nadu Electricity Board
Electricity Distribution Circle, Tiruvannamalai.
3. The Executive Engineer
Tamil Nadu Electricity Board
Operation & Maintenance.
4. The State of Tamil Nadu rep. by
its Secretary to Government
Co-operative Food & Consumer Protection
Chennai 600 009.
5. The Registrar of Co-operative Society
No.170, Periyar EVR High Road
Kilpauk, Chennai 600 010.
6. The Joint Registrar of Co-operative Dept.
Tiruvannamalai, Tiruvannamalai Dt.
7. The Dy. Registrar of Co-operative Dept.
Tiruvannamalai, Tiruvannamalai Dt.
8. The Labour Inspector
Gandhi Nagar, Tiruvannamalai. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the concerned records in his proceedings Memo No.051371/02/G.441/2002-4 dated 10.06.08 passed by the respondent No.1 herein and quash the same and consequently direct the respondents to appoint/absorb the petitioner herein

as permanent employee of the Tamil Nadu Electricity Board (TNEB) in the same cadre with all consequential benefits from the date of termination of his service, i.e., from 20.9.05.

For Petitioner : Mr. Arumugam

For Respondents: Mr. Anand, for M/s.T.S.Gopalan

for RR-1 to 3

Mr. L.P.Shanmugasundaram for RR-4 to 6

ORDER

The petitioner was appointed by the erstwhile Vandavasi Rural Electric co-operative society Ltd. The said society was started in the year 1985 by receiving subsidy from State and Central Governments. Societies such as this one was functioning in Kumbakonam and Thirumayam, and these societies cater to the supply of electricity to the villages which fall within their jurisdiction. The society and the other societies were taken over by the Tamil Nadu Electricity Board and had been functioning under it with effect from 6.4.02. The petitioner was appointed in the erstwhile society as Office Assistant and he was made permanent employee of the society with effect from 1.7.00 by converting his post from Office Assistant to Helper cadre and he was receiving his monthly salary and other allowances. The petitioner was also discharging his duties to the satisfaction of the superiors.

2. Whiles, on the 1st respondent taking over all the societies, a show cause notice was issued on 19.2.05 and ten days time was given to the petitioner to submit explanation. Accordingly, the petitioner submitted his explanation on 7.4.05, but the respondent/Board, without properly considering his explanation even as per the provisions of the Industrial Disputes Act, as the petitioner had put in more than 240 days of continuous employment in the society, terminated the services of the petitioner 20.9.05. Challenging the said order of termination, the petitioner filed W.P. No.32386/05 before this Court and this Court, vide order dated 5.3.08, while disposed of the petition, however, granted liberty to the petitioner to submit a representation to the respondents for consideration. Accordingly, in compliance with the said order, the petitioner submitted his representation on 9.5.08. However, without considering the representation in proper perspective, the respondents rejected the said representation on 10.6.08, challenging which the present petition has been filed.

3. Learned counsel appearing for the petitioner submits that though the petitioner was appointed in the year 2000, he was made permanent immediately after five months during July, 2000 and he was continuously serving the society and receiving salary and was even continuing after taking over of the society by the Electricity Board. It is the submission of the learned

counsel for the petitioner that the termination of the petitioner on the ground that his appointment was not against cadre post is wholly unsustainable when persons, who were junior to him have been absorbed in the Electricity Board. In this regard, learned counsel placed reliance on the judgment of this Court in W.P. No.21663/02, wherein, in the petition filed by similarly placed persons, this Court, vide order dated 3.8.11, had directed the Electricity Board to regularise their services. Learned counsel for the petitioner drew aid from the Government Order in G.O. Ms. No.86 dated 12.3.01, where the Government had permitted absorption of persons such as the petitioner, which has also received the seal of approval from the Division Bench of this Court. In such circumstances, learned counsel prayed for allowing the present petition.

4. Per contra, learned counsel appearing for respondents 2 and 3 submitted that the order passed in the earlier round of litigation filed by the petitioner in W.P. No.32386/05 acts as res judicata for filing the present petition. It is the submission of the learned counsel for the petitioner that this Court had merely granted liberty to the petitioner to submit a representation to the respondent, while not granting the relief prayed for by the petitioner, which clearly shows that the petitioner was not entitled for the relief. That being the case, the petitioner cannot reagitate his rights once over by taking shelter under the liberty given to the petitioner. It is the further submission of the learned counsel that though the representation submitted by the petitioner on the basis of the liberty granted was rejected by the respondents way back in the year 2008, however, the petitioner kept silent and had come before this Court after a lapse of five years in the year 2013 and the delay in filing the petition has not been properly explained by the petitioner. Absence of proper explanation by the petitioner for the delay has to be definitely held against the petitioner.

5. It is the further stand of the respondents that the petitioner cannot equate himself with the persons, who were beneficiaries under W.P. No.21663/02, as those persons, though junior to the petitioner, were appointed against cadre posts in the regular course of recruitment. Subsequently, increase in cadre strength had entailed their absorption on the basis of the order passed by this Court. It is the further submission of the learned counsel that those persons had obtained an interim order from this Court and were all along continuing in the said posts and pursuant to the order passed by this Court, their services were regularised. However, the appointment of the petitioner being irregular and not against a cadre post, the petitioner cannot seek for absorption and, accordingly, prayed for dismissal of the writ petition.

6. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

7. It is not in dispute that this is the second round of litigation by the petitioner. On an earlier occasion, the petitioner had filed W.P. No.32386/05 seeking the relief of absorption in the services of the respondent, which relief is identical to the relief claimed in the present writ petition. This Court vide order dated 5.3.08, on the request of the petitioner, had disposed off the writ petition giving liberty to the petitioner to submit a representation and the respondents were directed to consider and dispose of the same in accordance with law.

8. It is to be pointed out at this juncture that even in the said petition, the respondents therein had brought to the notice of the court an order passed by this Court in an identical case and at that juncture, representation was made by the petitioner to grant liberty for submitting a representation. This clearly shows that even in the earlier round of litigation, the petitioner was not inclined to be visited with an order on merits, which could be only inferred that the identical order passed by this Court in another case, which was pointed out, may have been a reason for restricting the relief. So, in such a backdrop, the only inference that could be drawn by this Court is that the earlier order passed by this Court definitely acts as res judicata for filing the present petition.

9. Further, pursuant to the liberty granted, the petitioner submitted a representation to the respondent, which was dismissed way back in the year 2008. However, the petitioner kept silent all along and only in the year 2013 has come before this Court filing the present petition. The petitioner has not given any explanation for not coming before this Court at the earliest point of time once the representation was rejected. Proper explanation is a sine qua non for accepting the bona fides of the petitioner. However, a careful perusal of the entire materials available on record reveals that the petitioner has not given any explanation which could aid this Court to consider the bona fides of the petitioner. Definitely, the delay in filing the petition after the rejection of the representation not only downgrades the bona fides of the petitioner but also goes against the case of the petitioner.

10. The petitioner has laid much stress on the order passed by this Court in W.P. No.21163/02, wherein, this Court, vide order dated 3.8.11, allowed the petition filed by persons,

identically placed like the petitioner and also junior to the petitioner. However, a careful perusal of the order reveals that those persons had come at the earliest point of time, before their termination, before this Court and had obtained an order of interim injunction and had been continuing in service till their petition was allowed. The order further reveals that those persons were appointed against cadre posts and in some cases, the cadre strength was increased and they were absorbed in the said post, pursuant to the request of the Electricity Board. However, in the case of the petitioner, it is borne out by record that the appointment of the petitioner was not against any cadre post, but the appointment itself was irregular. Therefore, the petitioner, trying to take aid of the said order passed by this Court, is per se not sustainable, when the whole gamut of the facts are not identical, except for the post which was held by the incumbents therein and the petitioner.

11. G.O. Ms. No.86 dated 12.3.01 on which much stress was laid and which was stated to have been confirmed by the Division Bench as conferring right on the petitioner for absorption also does not come in aid of the petitioner as the said Government Order, in no way gives the benefit of absorption to the petitioner. The Government Order only spells out the modalities to be adopted during adoption and the criteria to be fulfilled by the persons, who are to be absorbed. Therefore, the said Government Order cannot be put in issue to further the case of the petitioner.

12. For all the reasons aforesaid, this Court is of the considered view that the writ petition is totally devoid of merit and deserves to be dismissed. Accordingly, the writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

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

2. The Superintending Engineer
Tamil Nadu Electricity Board
Electricity Distribution Circle
Tiruvannamalai.

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Gandhi Nagar, Tiruvannamalai.

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A.SK(04/08/2020)



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