



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)Nos.3957 & 13204 of 2015

and

M.P (MD)No.1 of 2015

W.P (MD)No.3957 of 2015:

The Secretary,
Tamil Nadu Electricity Employees Central Organisation,
1/2057-4, Muthal Nagar,
Pandian Nagar,
Virudhunagar. ... Petitioner

Vs.

The Superintending Engineer,
TANGEDCO,
Virudhunagar Distribution Circle,
65/1, Ramamoorthy Road,
Virudhunagar. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the Labour Court, Madurai, pertaining to I.D.No.43 of 2011 dated 26.11.2014 and the respondent's order in Letter No.005904 /2014/ நிழி2 /உதவி1/கோ.வாகன ஓட்டுநர் /2014 dated 03.04.2014 refusing Mr.Chandrasekaran's monetary benefits only and set aside the same and further direct the respondent to provide Mr.Chandrasekaran's entire monetary benefits from the date of his seniority.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondent : Mr.T.Sakthi Kumaran

W.P (MD)No.13204 of 2015:

The Secretary,
Tamil Nadu Electricity Employees Central Organisation,
1/2057-4, Muthal Nagar,
Pandian Nagar,
Virudhunagar. ... Petitioner



Vs.

The Superintending Engineer,
TANGEDCO,
Virudhunagar Distribution Circle,
65/1, Ramamoorthy Road,
Virudhunagar.

... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the Labour Court, Madurai, pertaining to I.D.No.60 of 2000 dated 12.10.2011 and the respondent's consequential order in Letter No.005904/2014/நிபி2/உதவி1/கோ.வாகன ஓட்டுநர்/2014 dated 03.04.2014 refusing Mr.R.Gurusamy's monetary benefits only and quash the same and further direct the respondent to provide Mr.R.Gurusamy's entire monetary benefits from the date of his restoration (re-fixation) of promotion and seniority within a stipulated period.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondent : Mr.T.Sakthi Kumaran

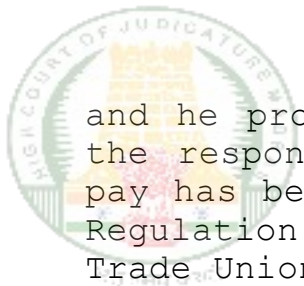
ORDER

In W.P(MD)No.3957 of 2015, the petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records of the Labour Court, Madurai, pertaining to I.D.No.43 of 2011 dated 26.11.2014 and the respondent's order in Letter No.005904 /2014/ நிபி2/உதவி1/கோ.வாகன ஓட்டுநர்/2014 dated 03.04.2014 refusing Chandrasekaran's monetary benefits and to quash the same and further directing the respondent to provide him entire monetary benefits from the date of his seniority.

2.In W.P(MD)No.13204 of 2015, the petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the entire records of the Labour Court, Madurai, pertaining to I.D.No.60 of 2000 dated 12.10.2011 and the respondent's consequential order in Letter No.005904/2014/நிபி2/உதவி1/கோ.வாகன ஓட்டுநர்/2014 dated 03.04.2014 refusing R.Gurusamy's monetary benefits and to quash the same and further directing the respondent to provide him entire monetary benefits from the date of his restoration (re-fixation) of promotion and seniority within a stipulated period.

3.The brief facts of the case in W.P(MD)No.3957 of 2015 are as follows:-

3.1.The case of the petitioner's Association is that Chandrasekaran was appointed as Helper in Regular Work Cadre of the respondent / Electricity Corporation



and he produced all the relevant records and certificates before the respondent, at the time of his appointment and his scale of pay has been fixed under the Tamil Nadu Electricity Board Service Regulation. Subsequently, he became a member of the petitioner's Trade Union.

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3.2. In the meantime, Chandrasekaran was transferred from the post of Field Helper to Vehicle Helper and thereafter, he was promoted as Lineman-vehicle driver vide proceedings dated 10.07.1995. By the said proceedings, the respondent has stated that Chandrasekaran was regularised in pursuance to the order dated 06.04.1995. Subsequently, the respondent promoted him from the post of Lineman Driver to Line Inspector Driver.

3.3. While so, on 03.06.1993, the respondent appointed one Irulapparaja as Field Helper on compassionate appointment and the said Irulapparaj was nearly two years junior to Chandrasekaran and only the said Chandrasekaran's name was found in the seniority list, which was prepared by the respondent on 01.09.1994, but, on 01.09.1994, the respondent regularised Irulapparaj's appointment by reducing his training period from three years to one year, who had completed his training on 18.06.1994 and the said order was passed subsequent to his regularisation and thereafter, the respondent promoted the said Irulapparaj as Lineman Driver without considering Chandrasekaran's seniority. Hence, he raised an Industrial Dispute under the Industrial Disputes Act and thus, no settlement was arrived at between the parties.

3.4. Since the Labour Officer submitted his report on 09.10.2010 to the Government that no settlement was arrived at between the parties, on 23.06.2011, the Labour Department, passed G.O.No.189 referred the matter to the Labour Court and it was taken on the file of the Labour Court, Madurai in I.D.No.43 of 2011.

3.5. The Labour Court, Madurai, vide order dated 26.11.2014, accepted Chandrasekaran's regularisation, but dismissed his claim of monetary benefits on the ground that he raised his claim belatedly, which is more than 15 years.

3.6. While the Industrial Dispute was pending before the Labour Court, Madurai, the respondent vide letter, dated 03.04.2014 informed Chandrasekaran that his seniority was placed prior to the said Irulapparaj, but refused to grant monetary benefits and the respondent has prepared a revised seniority list by fixing the said Chandrasekaran's seniority. Since seniority re-fixation order was passed, the petitioner's Association has filed the Writ Petition to grant monetary benefits to Chandrasekaran.



4.The brief facts of the case in W.P(MD)No.13204 of 2015 are as follows:-

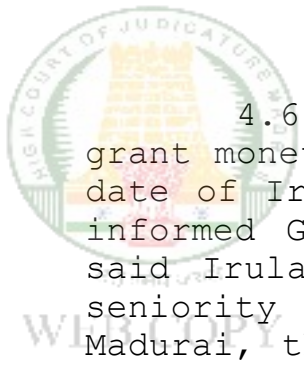
4.1.The case of the petitioner is that Gurusamy was appointed as Helper in Regular Work Establishment Cadre of the respondent / Electricity Corporation and he produced all the relevant records and certificates before the respondent, at the time of his appointment and his scale of pay has been fixed under the Tamil Nadu Electricity Board Service Regulation. Subsequently, he became a member of the petitioner's Trade Union.

4.2.In the meantime, Gurusamy was transferred from the post of Field Helper to Vehicle Helper and thereafter, he was promoted as Lineman-vehicle driver vide proceedings dated 10.07.1995. By the said proceedings, the respondent has stated that Gurusamy was regularised in pursuance to the order dated 06.04.1995. Subsequently, the respondent promoted him from the post of Lineman Driver to Line Inspector Driver.

4.3.While so, on 03.06.1993, the respondent appointed one Irulapparaja as Field Helper an compassionate appointment and the said Irulapparaj is nearly two years junior to Gurusamy and only the said Gurusamy name was found in the seniority list, which was prepared by the respondent on 01.09.1994, but on 01.09.1994, the respondent regularised Irulapparaj's appointment by reducing his training period from three years to one year, who had completed his training on 18.06.1994 and the said order was passed subsequent to his regularisation. Thereafter, the respondent promoted the said Irulapparaj as Lineman Driver and restored Gurusamy's seniority prior to the date of Irulapparaj's seniority. Subsequently in the year 1998, the respondent promoted the said Irulapparaj as Line Inspector Driver by leaving his seniority. Since the said Gurusamy's junior was promoted by keeping his senior in the same category, he raised an Industrial Dispute under the Industrial Disputes Act and thus, no settlement was arrived at between the parties.

4.4.Since the Labour Officer submitted his report on 09.08.1999 to the Government that no settlement was arrived at between the parties, on 24.01.2000, the Labour Department, passed G.O.No.42 and referred the matter to the Labour Court and it was taken on the file of the Labour Court, Madurai in I.D.No.60 of 2000.

4.5.The Labour Court, Madurai, vide order dated 12.10.2011, accepted the Gurusamy's restoration of his seniority, but dismissed his claim in respect of monetary benefits without adducing any reason.

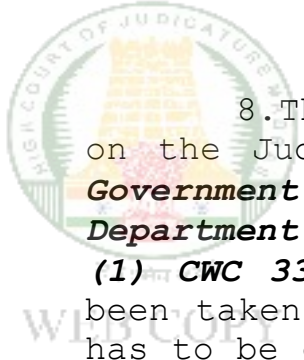


4.6.Subsequent to the representation made by Gurusamy to grant monetary benefits by restraining his seniority, prior to the date of Irulapparaj, the respondent vide letter, dated 03.04.2014 informed Gurusamy that his seniority was re-placed prior to the said Irulapparaj, but refused to grant monetary benefits. Since seniority re-fixation order was passed by the Labour Court, Madurai, the petitioner's Association has filed the Writ Petition to grant monetary benefits to Chandrasekaran.

5.The learned counsel appearing for the petitioner submitted that the said Chandrasekaran and Gurusamy were appointed in the year 1991and subsequently, the said Irulapparaj was appointed on 03.06.1993 on Compassionate ground and there is two years difference between their appointments. The learned counsel further submitted that the Labour Court ought to have considered that once seniority re-fixation order is passed, it is the duty of the respondent to provide monetary benefits to Chandrasekaran and Gurusamy.

6.The respondent has filed the counter-affidavit in W.P(MD) No.3957 of 2015 and stated that Chandrasekaran was appointed as Field Assistant from 25.09.1991 and subsequently, as per his request, he was transferred as vehicle Assistant from 02.02.1994, since he possessed driving licence. It is stated that since the cases relating to contract labourers were pending before the Apex Court, the regularisation of staff like Chandrasekaran, who were appointed on the basis of Khalid Commission, the Chief Engineer vide order dated 24.06.1995 has regularised the service of many such contract labourers like Chandrasekaran. Hence, he was given promotion on 15.07.1995. In the meanwhile, another person Irulapparaj was also given promotion, whose services got regularised earlier than Chandrasekaran.

7.In the counter-affidavit it is further stated that thought the said Chandrasekaran was given promotion on 15.07.1995, he preferred an appeal before the respondent only on 07.08.2006 ie., after a lapse of 11 years. As per Service Regulation 97(d), his appeal was rejected by Chief Engineer. Aggrieved over the same, the said Chandrasekaran preferred an Industrial Dispute in I.D.No.43 of 2011 through the petitioner's Association. However, based on the decision passed by the Labour Court, Madurai in I.D.No.60 of 2000, the seniority of Gurusamy and the similarly placed persons, like that of the petitioner herein, were fixed as claimed in I.D.No.43 of 2011. It is further stated that the said Chandrasekaran is not entitled to monetary benefits on the principle of 'No Work No Pay'. The request of the petitioner to revise the seniority was considered even prior to I.D.No.43 of 2011.

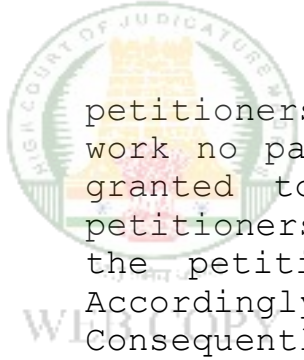


8.The learned counsel appearing for the petitioners relied on the Judgment of this Court in **G.Easwaran and others Vs. The Government of Tamil Nadu, rep. by the Secretary, School Education Department, Fort St. George, Chennai and others** reported in **2015 (1) CWC 337**, wherein this Court has held that when a policy has been taken by the Government to extend certain benefits, the same has to be extended to the eligible persons as per the Scheme. Such extension of benefits may be by automatic process by the Government itself or at times in deserving cases, the beneficiaries also may approach this Court and seek for the relief. It is further held that mere laches on the part of the petitioners would not deprive the benefits as per the Scheme. At the same time, this Court has concerned with the State exchequer in payment of arrears.

9.The learned counsel appearing for the respondent relied on the Judgment of the Supreme Court in **Reserve Bank of India Vs. Gopinath Sharma and another** reported in **(2006) 6 SCC 221**, wherein the Supreme Court has held that the case of **Sudamdih Colliery of Bharat Coking Coal Limited Vs. Workmen** reported in **(2006) 2 SCC 329** in turn, refers to the Judgments in **Nedungadi Bank Limited Vs. K.P.Madhavankutty** reported in **(2000) 2 SCC 455** and **S.M.Nilajkar Vs. Telecom District Manager** reported in **(2003) 4 SCC 27**, this Court held that even though there is no limitation prescribed for reference of a disputes to an Industrial Tribunal, even so it is only reasonable that the disputes should be referred to as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen. This Court has held that a delay of four years in raising the dispute even after re-employment of most of the old workmen was held to be fatal. In **Nedungadi Bank Limited case**, cited supra, this Court held that a delay of seven years to be fatal and dis-entitled the workmen to any relief.'

10.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

11.From the materials available on record, it is seen that the petitioner's Association has not stated any valid reason for filing the Industrial Dispute petitions. It is clear that the parties have approached the Association and the Association has passed a resolution only on 27.12.1998. Since no steps have been taken to approach the authorities immediately after the promotion viz., 15.07.1995, the petitioner's Association cannot now come and canvass their case. The petitioners were not vigilant enough to proceed further in these matters and waiting for their Association to take steps and maintained the Industrial Dispute Petitions, which is not convincable. This Court is of the view that since the



petitioners have not worked for the said period, the theory of 'no work no pay' has to be applied and accordingly, no salary can be granted to them. As there is a delay on the part of the petitioners, the Court below has rightly rejected the request of the petitioner and no interference by this Court is needed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ps

To

The Superintending Engineer,
TANGEDCO,
Virudhunagar Distribution Circle,
65/1, Ramamoorthy Road,
Virudhunagar.

+2 CC to M/s.T.SAKTHIKUMARAN, Advocate (SR-10080 & 10082[F] dated 04/03/2020)

+2 CC to M/s.S.M.ANANTHA MURUGAN, Advocate (SR-10170 & 10171[F] dated 05/03/2020)

Order made in
W.P. (MD)Nos.3957 & 13204 of 2015
Dated:04.03.2020

AC(CO)
TR(20.03.2020) 7P C