

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.01.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.26188 of 2008

M.Palanivel

... Petitioner

Vs.

1. The Superintendent Engineer,
Salem Electricity Distribution Circle,
T.N.E.B.,
Udayapatty, Salem District.

2. Stalin Raj

... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to effect the promotion of the petitioner as Special Grade Foreman over and above his junior by name T.Stalin Raj and extend all consequential benefits.

For Petitioner : Mr.S.Doraisamy

For 1st Respondent: Mr.Karthick Rajan
Standing Counsel for TNEB

ORDER

The prayer sought for herein is a writ of mandamus directing the first respondent to effect the promotion of the petitioner as Special Grade Foreman over and above his Junior by name Stalin Raj, the second respondent herein and extend all consequential benefits.

2.The case of the petitioner is that, he was appointed as Helper on 01.01.1973 at respondent organisation. Thereafter, he was given promotion as Wireman and Line Inspector, accordingly, he was serving in that capacity as on 31.03.2003. Thereafter, it seems that, the second respondent, who happened to be the junior of the petitioner as he joined in service only on 02.04.1973, whereas the petitioner joined in service on 01.01.1973, since had been given promotion to various higher category and the said promotional avenues have not been shown to the petitioner, he had given a detailed request to consider his candidature for

promotion to the next higher categories on par with his junior, who got promotion already and accordingly, he has given a representation dated 28.04.2008, however, since the same has not been considered, the petitioner was constrained to file this writ petition with the aforesaid prayer.

3.I have heard Mr.S.Doraisamy, learned counsel appearing for the petitioner, who would submit that, the petitioner, after having put in several years of service as he was originally appointed as Helper on 01.01.1973, though had been considered for initial promotion, as stated above, had not been considered for subsequent promotion, whereas junior to the petitioner i.e., the second respondent had been considered for promotion to various higher categories, therefore, the said aspect since has been pointed out and accordingly, the seniority of the petitioner on the inter se along with second respondent as well as similarly placed persons, have to be fixed and correspondingly the petitioner's promotion avenue should be explored and accordingly promotion to be given, however they have not considered those aspects and despite a detailed representation or request had been given in this regard by the petitioner on 28.04.2008, that was also not considered. Therefore, having no other option, the petitioner has filed this writ petition with the aforesaid prayer, hence, he seeks to give suitable direction to the first respondent.

4.However, on the other hand, Mr.Karthick Rajan, learned Standing Counsel appearing for the respondent TNEB would submit that, at every stage, promotion would be given to the eligible person to the feeder category, by considering various aspects. In this regard, subsequently the petitioner cannot seek any promotion by quoting the second respondent, who might have been promoted on the basis of seniority subsequently he earned. In subsequent years, at every cadre, a separate seniority would be maintained and each such promotional avenue, when it is explored the relevant regulations with regard to the educational qualification, experience etc. would be considered and based on which only promotion would be given and therefore, the learned Standing Counsel would submit that, merely because the second respondent had been considered for further promotion, the petitioner also can be considered for promotion as it cannot be asked for as a matter of right. However, since the petitioner has given a detailed request on 28.04.2008 for seeking such promotion on par with the second respondent, the said request certainly would be considered on merits and in accordance with law and in this regard, after having considered the extant Rule especially the Service Regulations and the Board proceedings issued from time to time, the claim made by the petitioner would be decided within a time frame that may be stipulated by this Court.

5.I have considered the said submissions made by the learned counsel appearing for both sides and having perused the materials placed before this Court, this Court is of the view that, the claim made by the petitioner through his representation dated 28.04.2008 for getting promotion since has not been so far considered and it has been kept pending and in the meanwhile, the petitioner also on superannuation retired from service on 30.06.2008, if at all the petitioner is eligible to get any promotion as he claimed in his request, such kind of promotion can only be given to him notionally for the purposes of service benefits like pension etc. and therefore, this aspect has to be gone into by the respondents, as stated by the learned Standing Counsel appearing for the first respondent, by applying the relevant Service Regulations as well as the Board proceedings issued from time to time and accordingly, a decision can very well be taken by the first respondent within a time frame.

6.In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the first respondent is hereby directed to consider the representation / request of the petitioner dated 28.04.2008 and accordingly decide the same on merits and in accordance with law and ultimately, if the petitioner is deserving for consideration for promotion, as claimed by him, the same can be given to him, of course notionally and this aspect can very well be decided only by the respondent and in this regard, this Court not expressed any view about the merits of the claim made by the petitioner and final order to that effect shall be passed by the first respondent within a period of twelve weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall, along with the copy of this order, send the copy of the representation dated 28.04.2008 also and on receipt of the same, the needful as indicated above shall be undertaken by the first respondent.

7.With these directions, the Writ Petition is disposed of.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To
The Superintendent Engineer,
Salem Electricity Distribution Circle,
T.N.E.B.,
Udayapatty, Salem District.

+1 cc to M/s.S.Doraisamy, Advocate Sr.No. 656
+1 cc to M/s. Karthik rajan, Advocate Sr.No. 1069

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SR(CO)
RMP(22/01/2021)



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