



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.9410 of 2009

Tmt.Gracy Darling

.... Petitioner

Vs

1. Tami lNadu Electricity Board,
rep. by its Secretary, Secretariat Branch,
No.144, Anna Salai, Chennai - 600 002.
2. The Chairman,
Tami lNadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.
3. The Deputy Secretary, (Personal)
Secretariat Branch,
Tami lNadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.
4. R.Bhagavathi Ammal
5. S.B.Selvi
6. S.Usha Rani

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent made in Memo (per) No.051130/A8/A81/2009-3 dated 18.04.2009 and consequential office order No.753 dated 11.05.2009 of 3rd respondent and quash the same and direct the respondents 1 to 3 to restore the original seniority placing the 4th respondent below the petitioner in the post of Personal Assistant and direct to promote the petitioner to the post of Private Secretary from the date of the order of 3rd respondent with all attendant benefits.



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For Petitioner : Mr.Balan Haridas

For Respondents : Mr.P.Subramanian
Standing Counsel- R1 to R3

Mr.Jagannathan
for Mr.Jenasenan - R4 to R6

ORDER

The petitioner joined the services of the Tamil Nadu Electricity Board (in short 'TNEB/Board') as steno-typist on 21.10.1995. Respondents 4 to 6, i.e., private respondents, entered service of the TNEB on 12.02.1999, 05.11.1999 and 30.04.2001 respectively, admittedly, after the date of joining of service of the petitioner. Seniority, inter se, was fixed based on the date of joining of the petitioner and private respondents at serial No.1, 2, 3 and 4 respectively.

2. Though respondents 5 and 6 have been arrayed as private respondents, no case has been made out as against them and in fact, the impugned order only fixes seniority qua the petitioner and R4. Thus, and seeing as no dispute is made out as regards fixation of seniority of R5 and R6, this Writ Petition is dismissed as against R5 and R6 and is restricted to the dispute that arises between the petitioner and R4.

3. While the petitioner and private respondents were in service, the Board, in its proceedings bearing No.55 dated 09.10.1992 created posts of Personal Clerk, Personal Assistant and Private Secretary. Pending Writ Petition, I am given to understand that two more escalated posts were created, that of Additional Senior Private Secretary and Senior Private Secretary.

4. The Board provided for an exercise of option by the employees for transfer and posting in the Board Office Secretariat and both the petitioner and R4 exercised such option, which is stated to be final. The fixation of seniority at the time of absorption in the Board Office Secretariat was to the effect that the petitioner was senior to R4. R4 did not challenge the same. Thereafter, the first avenue of promotion was to the post of Personal Assistant and both the petitioner as



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well as R4 were promoted to the post of Personal Assistant on 30.06.2004, the petitioner being placed in seniority above R4. Fixation of seniority, at this juncture, was also not disputed by R4.

5. Admittedly, in order to eligible for appointment of Personal Assistant, it was incumbent upon the candidate to hold qualifications in shorthand Senior Grade in English and Tamil. While the petitioner lacked the aforesaid qualifications, R4, admittedly, possessed both as on the date of promotion. The promotion of both persons to the post of Personal Assistant and the fixation of seniority of the petitioner above R4 was presumably, bearing in mind the vast experience of the petitioner and the fact that her entry into service in the Board was in 1995, four years prior to R4.

6. At the time of promotion to the post of Personal Assistant, a condition was laid upon the petitioner to state that additional qualifications of shorthand Tamil and English should be acquired by her within a period of two years from date of promotion. If she so failed to acquire the aforesaid qualifications within the timeline as stipulated, she was to be reverted to the post of Personal Clerk. It is the say of R4 that the petitioner has made several attempts to acquire the qualification, but did not succeed.

7. Be that as it may, the conditions imposed upon the petitioner as well as other candidates who were also promoted without the requisite qualifications came be withdrawn by the Board by its orders passed on various dates, in the case of the petitioner, on 16.07.2007.

8. The counter filed by the Board states at paragraph 6 that the condition imposed upon the petitioner as per paragraph 5 of Office Order dated 30.06.2004 was withdrawn from 01.07.2006. The aforesaid date, does not however figure in order dated 16.07.2007, and proceedings in Memorandum (Permanent) No.56077/A11/A111/2007 dated Nil, July 2007 reflects that the effective date of the order is upon completion of extension period of two years, that is, from 01.07.2006.

9. Thereafter, by order dated 06.12.2008, both the petitioner as well as R4 were temporarily appointed as Private



Secretaries in Category 2, Division I, Class II of the Tamil Nadu Electricity Board Service Regulations, with effect from their date of joining duty. These proceedings also fix seniority of the petitioner above that of R4 and have been accepted by R4.

10. By Office Order No.311 dated 02.03.2009, both the petitioner and R4 stood reverted to the position of Personal Assistants, with effect from the afternoon of 28.02.2009 for want of vacancies. On reversion, they were to be retained in the same position until further orders. So far so good, and it is to be noted that there has been no whisper by R4 challenging the fixation of seniority in the Board Office Secretariat, at any juncture or stage in the proceedings thus far.

11. The counter filed by the official respondents, at paragraph 7 states that the 4th respondent was making representations to the Management to revert the petitioner pointing out her failure to acquire the prescribed qualification within the time frame allowed to her and to revise her seniority placing her above the petitioner in the post of Personal Assistant.

12. This appears to have found favour with the Board which vide Office Memo (Per.) No.051130/A8/A81/2009-3 dated 18.04.2009, concluded that since the petitioner did not possess the requisite qualifications at the time of her posting, the exemption granted to her would only have prospective effect. As R4 was qualified from inception, she was assigned seniority above the petitioner. Hence, the present writ petition.

13. The impugned proceedings dated 18.04.2009 refers to representations filed by R4 dated 04.07.2007, 05.12.2007 and 04.02.2009 as well as representation filed by the petitioner dated 10.10.2008, all presumably on the subject of fixation of seniority.

14. The question that arises for consideration is as to whether the fixation of seniority would be retrospective from date of promotion of the petitioner to the post of Personal Assistant, being 30.06.2004, or prospective from the date stated in the Board Proceedings dated Nil July, 2007 fixing the date as 01.07.2006.



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15. Learned counsel for R4 would, in this connection, take me through the judgment of the Hon'ble Supreme Court in the case of Shitla Prasad Shukla V. State of U.P. and others (1986 (Supp) Supreme Court Cases 185) .

16. That case concerns the promotion of a Teacher in a school. Though the petitioner had sought appointment in the post of Lecturer (Hindi), his application for promotion was not considered having regard to the prohibition contained under Section 16 of the (U.P.) Intermediate Education Act, 1921 which prescribed certain conditions as mandatory for such promotion.

17. Ultimately, he was granted exemption by the Board of High School and Intermediate Education, U.P. on July 23, 1963 and promoted to the post of Lecturer (Hindi). That petitioner's case was that his promotion should take effect from date of his application and not from date of exemption which proposition came to be rejected by the High Court and confirmed by the Hon'ble Supreme Court.

18. Substantial reliance is placed by learned counsel for R4 upon the observations contained at paragraphs 8,9 and 10 of the aforesaid judgment, wherein the Hon'ble Court states as follows:

'8. Thus it is clear that the Board was not inclined to grant the exemption to the appellant and had insisted on the appellant securing the requisite qualification by appearing in an examination, from an appropriate institution. The Board was disinclined to grant the request till late 1962. When this is the factual position, how can the appellant contend that the Board must be deemed to have granted the exemption from the date of his application i.e. November 4, 1960? In this factual backdrop it is futile to contend that the Board had granted exemption with retrospective effect or that the exemption must relate back to the date of the making of the application. Besides, the language of Section 16-E of the Act does not admit of the construction canvassed on behalf of the appellant viz. that the Board can grant exemption with retrospective effect. It is in terms provided that the exemption may be granted by the Board only after considering the report of the Director having regard to



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the experience, education and other attainments of the person sought to be appointed. It would be reasonable to construe the Section as enabling the Board to exercise the power to grant exemption prospectively after considering the report and taking into account the relevant circumstances which would by the very nature of things be with prospective effect and not with retrospective effect. To accede to the construction canvassed on behalf of the appellant would be to hold that any unqualified person can be appointed even without the minimum qualifications subject to postfacto exemption being granted. Till the exemption is granted the person is not qualified to be appointed. In other words he would be lacking in the basic qualification for being appointed. This deficiency cannot be made good with retroactive exemption unless the provision itself expressly or by necessary implication contemplates such a course of action. Section 16-E does not satisfy this test. Thus it would appear that retrospective exemption could not have been granted and in point of fact was not granted in the present case. Even otherwise, it is not sufficient to show that retroactive exemption could have been granted. It must also be shown that retrospective exemption was in fact granted. In the present case the factual background clearly shows that the Board had not granted retrospective exemption. In fact the Board was not inclined to grant the exemption at all and was insisting that the appellant should obtain the requisite qualification. And the Board finally made up its mind to grant exemption only on July 23, 1963. Unless the view is taken that whenever exemption is granted it must be treated as having been granted with retrospective effect, if there is such power, the appellant cannot succeed. There is no warrant in law or logic for taking such a view. The High Court was therefore perfectly justified in repelling the contention urged on behalf of the appellant and in dismissing the Writ Petition.

9. There is also one more dimension of the matter. Though the appellant was working as a lecturer, it was not under any authority of law for there is no



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provision which empowers the college to allow any unqualified person to teach or to appoint him as such in anticipation of his disqualification being removed in future. Till the exemption was granted appellant was not even a teacher in the eye of law though he was allowed to teach by the indulgence of the college authorities. The disqualification was removed only on July 23, 1963 when the Board granted the exemption. How could he have claimed seniority vis-a-vis respondents nos. 5 and 6 who possessed the requisite qualifications and became regularly and lawfully appointed teachers much prior thereto?

10. An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employees does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularization, they can claim seniority vis-a-vis those who join the same stream later. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bonafide and acted on principles of fairness and fairplay. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. In any view of the matter the appellant who did not even belong to the stream of regularly (he was allowed to teach only in an irregular and unauthorized manner)



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and lawfully appointed lecturers cannot claim seniority against any one already in the stream before he joined the stream himself. The view taken by the High Court is unexceptionable.

19. The rejection of that petitioner's case was on the ground that having not had the requisite qualification till the grant of exemption on July 23, 1963, any appointment made prior thereto would have been an irregular appointment as he would have been unqualified as per the requisite Rule.

20. The facts of that matter as compared with the present, are wholly different and distinguishable for several reasons. Firstly, in that case, there was no appointment of that petitioner till such time exemption had been granted. In the present case, the Board has chosen to accept the promotion of the petitioner on 30.06.2004 for the reasons stated by the Board in its counter, that the petitioner had substantial experience having joined the Board in 1995, four years prior to the appointment of R4 in TNEB. The promotion of the petitioner was not an irregular promotion and the same has been made by the Board after due application of mind and taking note of the petitioner's greater experience, when compared with other employees.

21. That apart, in the present case, the Board has fixed the seniority on several occasions, i.e., upon the transfer of the petitioner and R4 to the Board Office Secretariat, their promotion to the post of Private Secretary and thereafter when reverted to the post Personal Assistant. The conduct of the Board is cognizant of the fact that the petitioner is senior to that of R4 and must thus be placed above her in seniority.

22. R4 has also accepted the fixation of seniority on all the aforesaid occasions and the representations filed in 2007 and thereafter appear to be an after thought. Such representations cannot be allowed to unsettle the fixation of seniority that has been made by the Board consciously and bearing note of the seniority of the petitioner in the service of the TNEB, duly accepted by R4 at all relevant points of time.

23. That apart, the impugned proceedings fix the date of coming-into- effect of the exemption as 01.07.2006,



prospectively. The effect of such fixation is that, on and after, 01.07.2006, the petitioner is deemed to have the requisite seniority. The impugned order is dated 18.04.2009 on which date the petitioner has the seniority as required, as per paragraph 5 thereof. The impugned proceedings are set aside with all consequential effect thereto.

24. There was a dispute in regard to the empanelment of the petitioner for the post of Additional Senior Private Secretary for the year 2019-2020. W.P.No.13396 of 2020 came to be filed, which was allowed on 05.02.2021 by a learned Judge of this Court setting aside the order of rejection of the petitioner's request for empanelment and directing the respondents to consider and grant her promotion to the post of Additional Senior Private Secretary without insisting upon additional qualifications, if she was otherwise fit for promotion and with all attendant benefits as on date.

25. This order has, as on date, attained finality. I am also given to understand that the Board has given effect to the said order and has promoted the petitioner to the post of Additional Senior Private Secretary on 06.05.2021.

26. In the light of the narration as above, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Tami lNadu Electricity Board,
rep. by its Secretary, Secretariat Branch,
No.144, Anna Salai, Chennai - 600 002.
2. The Chairman,
Tami lNadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.



3. The Deputy Secretary, (Personal)
Secretariat Branch,
Tamil Nadu Electricity Board,
No.144, Anna Salai, Chennai - 600 002.

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+2cc to Mr.A.Jenasenan, Advocate, S.R.No.51754
+1cc to Mr.P.Subramanian, Advocate, S.R.No.51881

W.P. No.9410 of 2009

PL(CO)
SB(10/11/2021)