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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

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THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.40916 of 2005 & W.P.M.P.No.43917 of 2005

A.R.Mani

... Petitioner

-Vs-

1.The Superintending Engineer
Tamil Nadu Electricity Board
Trichy Electricity Distribution Circle/
North/Trichy., Trichy.

2.The Executive Engineer (O&M)
Tamil Nadu Electricity Board
Perambalur Town and District.

3.T.Ranganathan, Commercial Inspector
TNEB, Musiri, Karur District.

(Dismissed vide Court order dated
24.06.2011)

4.R.Ramakrishnan, Commercial Inspector
TNEB, Lalgudi, Trichy District. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent made in Memo No.1120/Adm.II/A.I/FIMGR/2005 dated 25.11.2005 and quash the same in so far as it relates to the 3rd and 4th respondents and direct the 1st Respondent to promote the petitioner as Foreman Grade-I.

For Petitioner : Mr.R.Balasubramaniam

For Respondents : Mr.Fakkir Mohideen,
Standing Counsel
-for RR 1 and 2



O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent made in Memo No.1120/Adm.II/A.I/FIMGR/2005 dated 25.11.2005 and quash the same in so far as it relates to the 3rd and 4th respondents and direct the 1st Respondent to promote the petitioner as Foreman Grade-I.

2. The petitioner was working as Commercial Inspector at the respondent organization ie., Tamil Nadu Electricity Board. While so, there has been a disciplinary proceedings initiated against him, which ended in a punishment of reversion by an order dated 31.07.2000 as clarified by the order dated 22.09.2000. The petitioner was reverted from the post of Commercial Inspector to the post of Commercial Assistant.

3. In the order dated 22.09.2000, it has been specifically stated that, once the five years reversion period is completed in the post of Commercial Assistant, thereafter he will be posted in the original post called Commercial Inspector by restoring the original seniority in the said post and accordingly, his pay benefits also would be fixed.

4. During the currency of punishment ie., when the petitioner was working in the reverted post, there has been a panel prepared for the next promotional avenue ie., Foreman Grade I, for which the post of Commercial Inspector is the feeder category. According to the Regulations which are in vogue, 31st October would be the crucial date for the purpose of preparing the panel for the promotion to the post of Foreman Grade I from Commercial Inspector.

5. Accordingly, based on the crucial date, a panel was prepared and that was approved by the authority on 14.03.2005, following which an order of promotion was passed on 25.11.2005. In the meanwhile, the five years reversion period undergone by the petitioner had come to an end on 11.09.2005 and therefore, an order was passed on 17.09.2005, restoring the position of the petitioner to the post of Commercial Inspector with effect from 12.09.2005.

6. In this context, since the petitioner had been restored to the position of Commercial Inspector with effect from 12.09.2005, in the promotion effected with effect from 25.11.2005 as per the impugned order, since the name of the petitioner was not included in the promotion to the post of Foreman Grade I, the petitioner has chosen to challenge the order dated 25.11.2005 in this writ petition with the aforesaid prayer.



7. Heard Mr.R.Balasubramaniam, learned counsel for the petitioner, who would submit that, even at the time of the punishment of reversion has been imposed on the petitioner it has been clarified by an order dated 22.09.2000 that, once the reversion period is over and after the petitioner is restored to the original position ie., Commercial Inspector post, his original seniority with pay benefits also would be protected and restored and if that is the case, if at all any juniors of the petitioners are included in the panel for promotion to the post of Foreman Grade I and pursuant to the order dated 25.11.2005, which is impugned herein, was issued, where the juniors of the petitioner if at all included, the petitioner's name also should have been included and promotion should have been given to the petitioner and therefore, without including the name of the petitioner in the panel, if any promotion is effected by the impugned order dated 25.11.2005, including some of the juniors, that is bad in law and therefore he seeks the indulgence of this Court.

8. However, Mr.Fakkir Mohideen, learned Standing Counsel appearing for the respondents, by relying upon the averments made in the counter affidavit in Para 6 and 7 would submit that, every year crucial date was fixed as 31st of October and accordingly as on 31.10.2004, who are all eligible to be considered for the post of Foreman Grade-I was included in the panel and that was approved on 14.03.2005. Therefore, on the crucial date as well as on the date when the panel was approved, since the petitioner was undergoing the punishment of reversion and he has completed the punishment period only by 11.09.2005, the question of including the petitioner in the panel does not arise and therefore his name was not included.

9. The said approved panel has been acted upon and actual promotion has been effected on 25.11.2005. Therefore, the impugned order cannot be challenged as he could not have been included in the said panel which was approved on 14.03.2005 as during that period, the petitioner was undergoing the punishment.

10. Learned Standing Counsel, by relying upon the averments made in the counter affidavit, would further submit that, certainly in the next year panel by taking into account the crucial date as 31.10.2005, certainly his name would be included if he is otherwise eligible to be considered and accordingly the promotion can very well be conferred on him.

11. In this regard, even though there is no definite instructions from the respondents to the learned Standing Counsel to submit that, the petitioner had since been considered subsequently in the next year panel taking the crucial date as



31.10.2005, the learned Standing Counsel would make a submission that, certainly he would have been considered provided had he been eligible to be considered on the crucial date, if he was otherwise eligible.

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12. Be that as it may. Insofar as the controversy that has arisen in this case, whether the petitioner would be eligible to be included in the panel approved on 14.03.2005, merely because the order of promotion was given on 25.11.2005 and before which ie., from 12.09.2005, the petitioner got restored to the original post of Commercial Inspector, he cannot seek the indulgence to include his name in the panel, which has already been approved. But, at the same time, certainly the petitioner would be entitled to be included in the next year panel taking the crucial date as 31.10.2005 and this has also been admitted by the respondents in their counter affidavit in paragraph 7.

13. When that being the position, this Court feels that, the petitioner can very well be included in the next year panel taking the crucial date as 31.10.2005. If at all any inclusion has been made in the Panel next, consequently the name of the petitioner can also be considered. However, as of now there is no record to show that such consideration has been shown, as the Standing Counsel is not so definite in the said stand in the absence of any instructions from the respondents.

14. In view of the above discussion, this Court is inclined to dispose of this writ petition with the following order.

15. That the respondents shall consider the candidature of the petitioner for promotion to the post of Foreman Grade I by including his name in the subsequent panel taking the crucial date as 31.10.2005, as on that date the petitioner had been working as Commercial Inspector with effect from 12.09.2005 after completion of his reversion period of five years and his original seniority also since has been restored, definitely he would be eligible to be considered for the said year panel.

16. If already the petitioner was not considered and given promotion in the next year panel ie., during the year 2005-06, the aforesaid consideration shall be made and accordingly if the petitioner is otherwise eligible, confer the promotional status to the petitioner on the date his juniors were promoted, taking into account the crucial date as 31.10.2005, on notional basis and confer all other consequential service benefits and attendant benefits. The aforesaid needful shall be undertaken by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.



17. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

KST

To

- 1.The Superintending Engineer
Tamil Nadu Electricity Board
Trichy Electricity Distribution Circle/
North/Trichy., Trichy.
- 2.The Executive Engineer (O&M)
Tamil Nadu Electricity Board
Perambalur Town and District.

W.P.No.40916 of 2005

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