



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD) No.5969 of 2012

and

M.P. (MD) No.2 of 2012

P.Murugesan

... Petitioner

Vs.

1.The Chairman,
TNEB, X Floor, NPKRR Maligai,
800, Anna Salai,
Chennai-600 002.

2.The Chief Engineer,
Tamil Nadu Electricity Board,
Madurai.

3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Dindigul.

4.The Superintending Engineer,
Tamil Nadu Electricity Board,
Coimbatore.

5.The Chief Engineer,
Tamil Nadu Electricity Board,
Coimbatore.

6.P.Balasupramanian

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the respondents particularly that of the third respondent's proceedings in Ku.No.02481/116/NiBi2/NiBi 001/Ko.ci.ni.mu.o/12, dated 16.02.2012 relating to the promotion of the sixth respondent as special grade foreman driver followed the previous promotion, dated 29.08.1998 and consequently direct the respondent to remove the name of sixth respondent arrayed as serial No.6A from the revision panel list, dated 15.09.2009.



For Petitioner : Mr.K.Anandan
For Respondents : Mr.T.Sakthikumaran
Standing Counsel for R.1 to R.5
: Mr.M.Saravanakumar for R.6

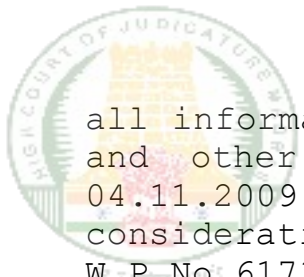
WEB COPY

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents particularly that of the third respondent's proceedings in Ku.No.02481/116/NiBi2/NiBi 001/Ko.ci.ni.mu.o/12, dated 16.02.2012 relating to the promotion of the sixth respondent as special grade foreman driver followed the previous promotion, dated 29.08.1998 and consequently direct the respondent to remove the name of sixth respondent arrayed as serial No.6A from the revision panel list, dated 15.09.2009.

2. The case of the petitioner is that the petitioner was appointed as Driver in the Tamil Nadu Electricity Board on 21.12.1995 and subsequently, he was transferred to Dindigul with seniority on his request on 19.06.1997. Thereafter, he was promoted as Senior Driver (Grade I), after completion of more than six years of practical experience as per Tamil Nadu Electricity Board service regulations, on 03.06.2002. As per the normal course, the respondents prepared the seniority list for the promotion of the Drivers as per the revised seniority panel list, dated 31.05.2006 enlisting the employees eligible for promotion, in which, the petitioner was ranked in 12th place, whereas the sixth respondent was appointed as Driver in the Coimbatore Division, on 28.08.1996, after the petitioner's appointment. However, he was given promotion on 29.08.1998, within a period of two years, against the Tamil Nadu Electricity Board service regulations, without completion of six years experience, which is mandatory to the above said Rules.

3. Thereafter, the respondents flouted the rules and regulations without following the procedures established by law and the sixth respondent was granted promotion bypassing seven other seniors and the said seniority list was issued without calling any explanation from the interested parties including the petitioner and without affording any opportunity of hearing and hereby safeguard his interest as is mandatory requirement under Regulation No.98 (A) (2) (d) of Tamil Nadu Electricity Board Service Regulations. Thereafter, the petitioner came to know that no statutory opportunity was provided to other elsewhere. The third respondent finalised the revised seniority list, by his proceedings dated 15.10.2009. Thereafter, the petitioner obtained



all informations through Right to Information Act. The petitioner and other affected seniors submitted their objections, dated 04.11.2009 and 25.01.2010. However, the same was not taken into consideration. Thereby, the petitioner filed a writ petition in W.P.No.6173 of 2010, challenging the illegal insertion of the fourth respondent therein in serial No.6A ranking over and above the petitioner. During the pendency of the writ petition, the third respondent passed an order of promotion to the sixth respondent as a heavy driver, vide order dated 17.08.2010.

4. Challenging the said promotion, the petitioner filed another writ petition in W.P.NO.11198 of 2010 and the same was pending before this Court. Again the third respondent prepared the seniority list by fixing the sixth respondent in the second place, vide order dated 06.04.2011. On receiving the same, the affected persons sent a detailed objections to the respondents through proper channel, on 05.05.2011. Challenging the said inclusion of the sixth respondent in the second place, the petitioner filed another writ petition in W.P.(MD)No.7659 of 2011 seeking for issuance of writ of mandamus to forbear the respondents to implement the proceedings, dated 06.04.2011 of the seniority list, which is illegal and against the TNEB service regulations.

5. This Court, by order dated, 11.07.2011, directed the third respondent to provide opportunity to the petitioner and other affected persons and pass orders on the objection of the petitioner dated 05.05.2011. Further, without complying with the said order, the third respondent promoted the sixth respondent as Special Grade Foreman Driver under Regulation 106, vide his proceedings dated 16.06.2012. Challenging the said promotion, the present writ petition has been filed.

6. Learned Counsel appearing for the petitioner would submit that the petitioner is senior to the sixth respondent and he entered into the service of the respondent Board as Driver in the year 1995, whereas the sixth respondent entered as Driver in the year 1996 and the minimum practical experience period for the next level of promotion is 6 years as per the Rule existing at the relevant point of time and that six year period was subsequently amended in the year 2006 to the extent of three years and even that three years experience was not possessed by the sixth respondent. However, contrary to the earlier Rules, the sixth respondent was granted promotion, which is unsustainable one and following the earlier promotion, subsequently, the sixth respondent was also granted promotion, which is also bad in law. Hence, the learned Counsel appearing for the petitioner would pray for interference.



7. Learned Standing Counsel appearing for the respondent Board would submit that at the relevant point of time, the minimum experience required to the next level of promotion as Senior Driver is six years and that period was subsequently amended in the year 2006 to the extent of three years. However, the learned Standing Counsel would submit that settled things cannot be unsettled after a long time.

8. Learned Counsel appearing for the sixth respondent would submit that the mandatory experience is not applicable to the person, who was selected in the internal process. The sixth respondent was directly recruited as Driver in the respondent Board in Coimbatore Division in the year 1996 and subsequently he got promotion in the year 1998. Thereafter, he was transferred to Dindigul Division with seniority. Hence, the relevant provision is not applicable to the sixth respondent and accordingly, the learned Counsel would pray for dismissal of the writ petition.

9. Heard the learned Counsel appearing for the petitioner, the learned Standing Counsel appearing for the respondents 1 to 5 and the learned Counsel appearing for the sixth respondent and perused the materials placed on record.

10. This Court perused the regulations in F.B. No.17, dated 15.07.2006, wherein it is stated that in the year 1995, six years practical experience is mandatory for the promotion to the post of heavy vehicle driver and the senior driver, however, the said six years experience was reduced on 15.07.2006, to three years. However, considering the service of the petitioner as well as the sixth respondent, the petitioner entered into service in the respondent Board in the year 1995 and the sixth respondent entered into service in the year 1996. The petitioner was granted promotion in the year 2002, after the completion of six years experience. However, the sixth respondent was granted promotion as senior driver in the year 1998 and that promotion was not disputed by the sixth respondent. Therefore, as per the relevant rules which was in existence at the relevant point of time, that promotion granted to the sixth respondent is contrary to the said regulations. This Court is fully satisfied that the promotion given in favour of the sixth respondent was not in accordance with the Rules.

11. For the reasons above stated, the order impugned in the present writ petition is set aside and the matter is remitted back to the authorities to rework the entire issue and refix the seniority of the drivers as per the Regulations of the Tamil Nadu Electricity Board, in the appropriate place including petitioner, after affording an opportunity of hearing to the petitioner, sixth respondent and other affected persons. Accordingly, the writ



petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to Mr.K.ANANDAN, Advocate (SR-3182[F] dated 04/02/2021)

+1 CC to Mr.M.SARAVANA KUMAR, Advocate (SR-3224 [F] dated 04/02/2021)

+1 CC to Mr.T.SAKTHI KUMARAN, Advocate (SR-3372 [F] dated 04/02/2021)

W.P (MD) No.5969 of 2012
03.02.2021

KM (15.02.2021) 5P 4C