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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.02.2022
Pronounced on :09.03.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.12857 of 2010

C. Rajkumar

... Petitioner

Vs.

1. Tamil Nadu Electricity Board,
Rep by its Chief Engineer - Personnel,
N.P.K.R.R. Maligai, 8th Floor,
Electricity Avenue,
800, Anna Salai, Chennai - 600 002.

2. The Chief Engineer,
Ennore Thermal Power Station,
Ennore, Chennai - 600 057.

3. The Supreintending Engineer,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai - 600 057.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in connection with his proceedings, bearing Ref.No.Ku.No.573/NP2/Vool/kho./2010 dated 07.01.2010 and quash the same and direct the Respondents to regularize the service of the petitioner with effect from 01.05.1999 with all consequential benefits and pass such further orders.

For Petitioner : M/s S.Kala

For Respondents : Mr.Anand Gopal for
Mr.T.S. Gopalan and Co.



O R D E R

This writ petition is filed praying for a writ of certiorarified Mandamus calling for the records of the 3rd respondent in connection with his proceedings bearing Ref.No.Ku.No. 573/NP12/Vool/kho./2010 dated 07.01.2010 and quash the same and direct the respondents to regularize the service of the petitioner with effect from 01.05.1999 with all consequential benefits.

2. The Ennore Thermal Power Station was commissioned in the year 1971. The petitioner was in service in Ennore Thermal Power Station since 1981. Thousands of contract labourers were employed by Ennore Thermal Power Station. A commission headed by Justice Khalid was set up to identify contract labourers for absorption. The said Commission identified 18,000 contract labourers for absorption which was accepted by the Hon'ble Supreme Court and directions was also issued to Tamil Nadu Electricity Board not to recruit any person until the identified persons are absorbed. A proceedings was issued by the Tamil Nadu Electricity Board in Board Proceedings.No.17 dated 28.04.1999 wherein guidelines were issued with regard to absorption of contract workmen in all the four Thermal Power Stations including Ennore Thermal Power Station. In terms of the above said Board Proceedings, contract labourers in the four Thermal Power Stations were directed to be absorbed based on seniority in the list and in accordance with the terms and conditions set out in Board Proceedings.No. 17.

3. From 01.05.1999, engagement of contract labourers were stopped in all the Thermal Power Stations and contract labourers who were working as on that date were directed to be engaged as daily wagers and the process of identification was completed. It appears that hundreds of workers were identified and absorbed in the Ennore Thermal Power Station and some were absorbed in the Distribution Circle with retrospective effect from 01.05.1999. The petitioner's Co-workmen and juniors were absorbed with effect from 01.05.1999.

4. The 3rd respondent vide proceedings dated 17.04.2002 informed the petitioner that in view of the fact that a criminal case was pending at the time of selection 10/99, the request of the petitioner for absorption as regular helper in terms of B.P. (FB) No.17 (sectt. Branch) dated 28.04.1999 cannot be considered.

5. Aggrieved by the same the petitioner challenged the proceedings dated 17.04.2002 in W.P.No.22249 of 2002, wherein,



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this Court was pleased to issue a direction to the first respondent / The Chairman, Electricity Board to consider the representation of the petitioner. Pursuant thereto the petitioner was absorbed w.e.f 28.09.2002. The petitioner accepted the above order of absorption which is effective from 28.09.2002 without any demur or protest. The petitioner also gave an undertaking that he would not claim any retrospective benefit. The petitioner admittedly gave an undertaking that he is willing to give up the seniority and that his name can be placed in the lowest category in Ennore Thermal Power Station.

6. It is now submitted by the petitioner that the denial of analogous appointment is arbitrary and legally incorrect in support thereof and reliance is sought to be placed on the decision of the Hon'ble Supreme Court in the case of State of Bihar and other Vs. Arbind Jee 2021 reported in 2021 SCC Online SC 821. It is further submitted that the benefit of notional promotion ought to be conferred on the petitioner inasmuch as the petitioner is acquitted in the criminal case and thus, the petitioner would be entitled to be absorbed with effect from 01.05.1999 on par with his co-workers/ juniors.

7. To the contrary, it is the submission of the respondent that the prayer of the petitioner needs to be rejected for the following reasons:

a. The petitioner cannot claim seniority before being borne into service which in the present case is only from 28.09.2002. In this regard, reliance is sought to be placed on the following decisions of the Hon'ble Supreme Court viz., in the case of K. Meghachandra Singh and others., vs. Ningam Siro and others reported in 2020 (5) SCC 689 and in the case of State of Bihar and others V. Arbind Jee 2021 reported in SCC Online 821 para 12.

b. The petitioner having given an undertaking while being absorbed on 28.09.2002, that he is willing to give up seniority and that he will not claim any retrospective benefit is estopped from claiming absorption w.e.f. 01.05.1999. In this regard reliance was placed on the Judgment of the Supreme Court in the case of U.P.Vs. Meraj Ahmad, (2017) 9 SCC 322 : (2017) 2 SCC (L&S) 840 : 2017 SCC Online SC 1116 at page 324

C. Further, in terms of Regulation 97 (d) of Tamil Nadu Electricity Board Services Regulations, any issue with regard to seniority ought to be raised within a period of 3 years from the date of entry of service as per Service Regulation of Board.

d. Finally, the petitioner has sought to claim regularisation w.e.f from 01.05.1999 after a period of 4 years



from the date of appointment on 28.09.2002 and thus ought to be rejected on the ground of laches.

8. Against the above back ground, following questions arise for consideration:

a. Whether the petitioner acquitted on 06.05.2001 would be entitled for absorption with effect from 01.05.1999.

b. Whether the petitioner having given an undertaking while being absorbed vide proceedings dated 28.09.2002 that they would not make any claim for seniority or claim any retrospective benefit is estopped from making any can claim contrary to the said undertaking.

9. Before we proceed to examine the above issues, it may be relevant to note that Board Proceedings.No.17 which provides for absorption of contract labourers in four Thermal Power Stations set out the procedure to be followed while absorbing the contract labourers in thermal power stations as regular employee. Importantly, Clause-5(d) of the said Board Proceedings which set out the conditions/procedures to be followed for absorption reads as under:

" 5.(d) persons on whom criminal cases are pending in Courts of Law and who are medically unsuitable for the jobs in the Thermal Stations will not be absorbed....."

Thus clause-5 (d) of the Board Proceedings provides that persons on whom criminal cases are pending in Court of law and who are medically unsuitable for the jobs in the Thermal Power Stations will not be absorbed.

10. It appears that the writ petition is liable to be rejected in view of the following reasons:

A. Admittedly, the petitioner was arrested on account of a criminal case on 05.07.1999 and acquitted by the Judicial Magistrate on 06.05.2001. In this regard it may be useful to refer to the decision of the Supreme Court reported in (2020) Supreme Court Cases online 832 in the case of Anil Bhardwaj Vs Hon'ble High Court of Madhya Pradesh and Others wherein while dealing with certain guidelines for character verification of appointment in the uniformed services which, provided that on the acquittal on merit of the case by the Hon'ble Court, the candidate will be eligible for Government Service. It was thus submitted that the candidate having been acquitted on merit, would be eligible for Government Services in terms of the said guidelines, the Hon'ble Supreme Court, rejected the above



submission. The following extract from the Judgment in the case of Anil Bhardwaj Vs Hon'ble High Court of Madhya Pradesh and Others reported in (2020) Supreme Court Cases online 832 is relevant:-

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The guidelines dated 05.06.2003 has been issued by Government of Madhya Pradesh on the subject "regarding issuing of new guidelines for character verification." Paragraph 6 which has been relied by the counsel for the appellant is regarding column 12 of the Attestation form. It is useful to extract paragraph 6 and clause (viii) which are as follows:-

"6. The Column 12 of the attestation form filled for character verification by selected candidates for government service, criminal background, judicial case and the information about acquittal or conviction in it, willfully or erroneously or ignorantly kept vacant subject to qualification for appointment in government service taking into consideration the policy as per rules by the state government with immediate effect decisions have been taken.

(i).....

.....

(viii) On the acquittal on merit of the case by the Hon'ble Court, the candidate will be eligible for government service."

28. Clause (viii) on which the reliance is placed contemplates that the candidate who has been acquitted on merit by the Court will be eligible for the Government service. The aforesaid contemplation relates to at the time of character verification. Thus, at the time of character verification, if a candidate is found to be acquitted on merits by the Court, the candidate shall be treated to be eligible for Government Service. The above clause (viii) as quoted above cannot come to the rescue of the appellant who at the time of character verification or at the time of consideration of the case of the appellant by the committee on 18.07.2018 had not been acquitted. Had the appellant in column 12 had mentioned about the acquittal or at the time of character verification it was found that the candidate has been acquitted on merit by the Court, Clause 6(viii) would have been attracted but in the



present case the said clause is not attracted since at the time of character verification the appellant had not been acquitted and he was acquitted after more than a year from rejection of his candidature.

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A reading of the above Judgment would show that even while dealing with a condition which provided that a candidate on acquittal on merits would be eligible, it was held that the above clause will be relevant at the time of character verification and any subsequent acquittal i.e., after the process is over would not advance the case of the candidate. Reference is made to the above decision only to show that even when an express clause provided that acquittal would render a candidate eligible, the same was found to be relevant only at the time of verification and the subsequent acquittal would not relate back and enable the candidate to secure appointment.

In the present case, Board Proceedings.No.17 stipulates that pendency of any criminal case would disentitle the petitioner from being considered for absorption. Admittedly, during the relevant period there was a criminal case pending against the petitioner and he was acquitted only after the entire process of absorption was completed in November 1999. The scheme of absorption having lapsed even before the petitioner was acquitted, it is hard to accept the submission that acquittal will confer right on the petitioner to stake a claim for being absorbed with effect from 01.05.1999.

B. Absorption cannot be claimed as a matter of right. To the contrary, appointment on the basis of absorption is frowned upon by the Hon'ble Supreme Court as creating an alternate mode of public appointment and thus impermissible for it distorts the Constitutional Scheme of appointment (kindly see: Secretary to the State of Karnataka vs. Umadevi reported in 2006 4 SCC 1). In the absence of any positive direction to absorb the petitioner by this Hon'ble Court the appointment/ absorption even on 28.09.2022 is apparently by relaxing the condition, though, any condition relating to eligibility for absorption or a pre-requisite for absorption ought to be applied strictly.

C. The petitioner having been absorbed on 28.09.2002 by relaxing the condition in Board Proceedings No.17 in particular clause-5(d) and the petitioner having given an undertaking that he will not claim any retrospective benefit, it may not be open to the petitioner to resile from his promise. Moreso, when acceding to the request of the petitioner would impact the right to seniority of other employees. In other words 3rd party rights



would be affected. In this regard it is useful to refer to the following decisions

(i) In the case of Mahak Singh (Dr) Vs. Chancellor, Ch.Charan Singh University, Meerut reported in (1996) 11 SCC 760 and the relevant para is extracted hereunder:

...It is not possible to agree with the contention for the simple reason that if it was felt that his appointment from 31.01.1986 as senior lecturer was wrongly made and he should have been treated as a senior lecturer not from 31.01.1986 but from 01.01.1986, he should have made such a relevance at the relevant time. Years rolled by still he never made a grievance about the same and accepted the decision that he was to be designated as senior lecturer only from 31.01.1986...

(ii) In the case of U.P.Vs. Meraj Ahmad, (2017) 9 SCC 322 : (2017) 2 SCC (L&S) 840 : 2017 SCC Online SC 1116 at page 324 and the relevant portion is extracted hereunder;

"...The learned Single Judge was manifestly in error in entertaining a challenge to the order of termination dated 09.04.1984. Such a challenge was not open to the respondent and could not have been entertained once he had accepted his termination and sought fresh appointment of 07.02.1989 by undertaking to give up any claim in connection with his past service. In the face of the unequivocal undertaking of the respondent, the learned single Judge erred in allowing the writ petition and in setting the order of termination. The Division Bench, in the special appeal, was in error in affirming the order of the Single Judge. ..."

(Emphasis supplied)

D. The petitioner having entered the service of the Board with effect from 28.09.2002 any issue with regard to seniority ought to have been raised within a period of 3 years from the date of entering into service in terms of Regulation 97(d) of Tamil Nadu Electricity Board Service Regulations. In any view in service matters, laches/delay/limitation may be a ground by itself for denying the relief. It has been categorically stated that if an employee is not vigilant about his right and lodges a belated claim, in particular if it has a bearing or would impact 3rd party rights, in such cases delay/laches may prove fatal as held in Union of India v. Tarsem Singh, reported in (2008) 8 SCC 648 and the relevant portion is extracted hereunder:



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"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). ..."

".... But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied...."

(emphasis supplied)

E. Seniority cannot be claimed before being borne into service as rightly contended by the petitioner as held in the case of K.Meghachandra Singh and Ors., V.Ningam Siro and Others reported in 2020 (5) SCC 689 para 28 and the same is extracted hereunder:

"28....it is necessary to observe that the law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service...."

Yet another Judgment relied by the petitioner stating that the seniority cannot be claimed before being borne into service is State of Bihar and Others Vs. Arbind Jee 2020 SCC Online 821 in para 12 and the same is extracted hereunder:

"The principles enunciated in Shitla Prasad Shukla (supra) are applicable to the case at hand. The compassionate appointment of the respondent is not being questioned here but importantly he is claiming seniority benefit for 10 years without working for a single day during that period. In other words, precedence is being claimed over other regular employees who have entered service between 1985 to 1996. In this situation, the seniority balance cannot be tilted against those who entered service much before the respondent. Seniority benefit can accrue only after a person joins service and to say that benefits can be earned retrospectively would be erroneous. Such view was expressed in many cases and most recently in Ganga Vishan Gujrativ. State of Rajasthan². Justice Dr. D.Y. Chandrachud speaking for the Court opined as under:-

"41.A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle



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emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra³. The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath⁴ and State of Uttaranchal v. Dinesh Kumar Sharma.⁵

For the above reasons we see no merit in the writ petition. The writ petition stands dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

smn

To.

1. The Chief Engineer - Personnel,
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Ennore, Chennai - 600 057.

+1cc to M/s.T.S.Gopalan & Co.,, Advocate SR.No.16177

W.P. No.12857 of 2010

PM(CO)
CB(22/03/2022)