

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :
21.01.2022

Delivered on :
03.02.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 27441 of 2008
and M.P.No. 1 of 2008

S.Muthusamy

..Petitioner

Vs.

1. The Superintending Engineer (P &A)
Mettur Thermal Power Station,
TNEB Mettur dam, Salem District.

2.The Chief Engineer,
Mettur Thermal Power Station,
TNEB Mettur dam, Salem District.

3.The Chief Engineer (Personnel),
TNEB, Anna Salai, Chennai-2.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent culminated in and by his proceedings in Memo No. 21059/344/NiPi.2/U.1/Ko.Mugavar 2nd Nilai/08/dated 19.08.2008 quash the same and consequently direct the respondents to promote the petitioner to the post of Foreman I grade, with effect from 09.12.1998 with all the benefits.

For Petitioner : Mr.V.S.Kesavan
For Respondent : Mr.P.Subramanian,
Standing Counsel

O R D E R

Brief facts of the case is that the writ petitioner joined in the services of Tamilnadu Electricity Board on 01.06.1971 as casual labourer. At the time appointed his educational qualification was V standard. On 09.03.1990, the petitioner was promoted as Loco driver. Even though VIII standard is required as educational qualification for loco driver, considering the petitioner's experience and practice, the said requirement was relaxed as per rules. Subsequently, two employees namely V.Semalai and R.Matheswaran, who were juniors to the petitioner in the service were promoted to the post of Foreman-II. The said promotion was denied to the



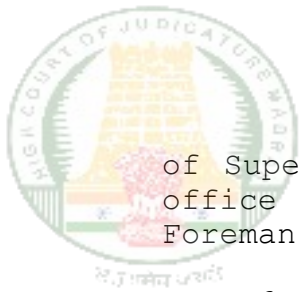
petitioner on the ground that he was not having required educational qualification.

2. The writ petitioner had preferred a writ petition in W.P.No.8665 of 1997 before this Court seeking direction to the respondents to promote the petitioner as Foreman-II. This Court by order dated 12.10.2004 granted exemption to hold the post of loco driver for a promotion/transfer to the post of Foreman II grade. Accordingly, the petitioner was promoted as Foreman Grade II by proceedings of the respondents dated 11.12.2006. subsequently, the aforesaid two juniors were promoted to post of Foreman-Grade I. The petitioner has made representation to the 1st respondent for promotion to the cadre of Foreman Grade I, but the respondent by order dated 28.03.2008, had rejected his representation on the ground that the petitioner was not having required qualification. The petitioner preferred an appeal before the 2nd respondent and the said appeal was also rejected by the 2nd respondent on the same ground, hence the present writ petition.

3. The main contention of the learned counsel for the petitioner is that the educational qualification required for all the three posts, namely Foreman-II, Foreman-I and special grade Foreman is only VIII standard. Since the petitioner's educational qualification was already relaxed for two of his earlier promotions, which also required the same VIII standard, it should not be a constraint for the present promotion which is also required the same educational qualification.

4. The learned counsel for the petitioner has further submitted that in a similar situation several employees were given promotion, hence the petitioner also entitled to the similar promotion with effect from the same date when the aforesaid juniors namely V.Semalai and R.Matheswaran promoted. Without considering the said facts, the respondents have denied the promotion to the petitioner and passed the impugned order, which according to the learned counsel for the petitioner is arbitrary and violation of principles of natural justice and liable to be set aside.

5. On the other hand, the learned standing counsel appearing for the respondent submitted that the petitioner was promoted as Loco Driver and joined on 09.03.1990, then he had converted to the post of Mechanic I Grade. Both the cadre carrying the same identical time scale of pay i.e R.4200-130-7840. Subsequently, the petitioner applied for converting his post as Foreman Grade II which is also carrying the same identical time scale of pay, since no post is vacant in the category of Foreman Grade II at that time, his request was not considered by the respondent. In view of the order passed by this Court in W.P.No. 8665 of 1997 filed by the petitioner, the petitioner was converted from Mechanic Grade I to the post



of Supernumerary Foreman Grade II w.e.f. 14.12.2006 F.N vide office Memo dated 11.12.2006, subsequently, the post of Foreman Grade II has been regularised.

6. The learned standing counsel has further submitted that as per B.P.Ms (F.B) No. 94, A.B dated 03.10.1986, the educational qualification for the post of Foreman Grade I is VIII standard pass with 12 years experience, since the other employees namely V.Semalai and R.Madheswaran were having educational qualification and experience ie. Pass in III form (VIII standard) with 12 years practical experience they were promoted as Foreman Grade I in accordance with the proceedings in B.P.No.94, dated 03.10.1986. Whereas the petitioner's education qualification is only V standard, he was not promoted to the post of Foreman Grade I as claimed by the petitioner and his request was also rejected by the respondents on the ground of educational qualification, which is purely on the basis of aforesaid proceedings, dated 03.10.1986. Therefore, the petitioner's claim has been rightly rejected vide impugned proceedings dated 19.08.2008 and there is no violation of principles of natural justice as contended by the learned counsel for the petitioner.

7. Heard both sides and perused the documents available on record.

8. Admittedly, the petitioner was initially appointed as Temporary casual labour on 01.06.1971 and thereafter he was temporarily appointed as Helper in the Regular Work Establishment cadre (RWE) on 01.01.1977 and on completion of probation, he was subsequently promoted as Loco Driver (Transport) on 09.03.1990 FN in the time scale of pay of Rs.1210-35-1490-40. Upon request made by the petitioner, he was transferred to the post of Mechanic I Grade and thereafter as per Board Proceedings dated 27.11.2006, the said post of Mechanic I Grade was converted to the post of Foreman Grade II w.e.f 11.12.2006 under Regulation 92 of TNEB Service Regulation. The contention of the learned counsel for the petitioner is that the petitioner's educational qualification was already relaxed for two of his earlier promotions, which also required the same VIII standard, therefore, the petitioner is eligible for promotion to the post of Foreman Grade I, which is also required the same educational qualification, the respondents without considering the said aspect, had passed impugned rejection order.

9. It is seen that the 3rd respondent in letter no. 005231/87/G.46/G.462/2008-1, dated 14.03.2008 has issued clarification for relaxation of Educational qualification for considering promotion to RWE employees on par with distribution circles, wherein it has been stated that as per orders issued in B.P.No.6 (Sectt. Branch) dated 25.01.2000, relaxation of educational qualification will not cover the employees in non workload areas including thermal stations.



10. The Writ petitioner had relied upon the order of this Court made in W.P.No. 8665 of 1997 dated 12.10.2004 filed by the petitioner, wherein this Court has considered the educational qualification of the petitioner for promotion/transfer to the post of Foreman Grade II by granting exemption and held that since the educational qualification is same for loco driver and Foreman Grade II, the petitioner is also equally entitled to be posted as Foreman Grade II.

11. It is clear from the records that the petitioner was converted from the post of loco driver to Mechanic Grade I and thereafter to Foreman Grade II, which carries the identical time scale of pay. Therefore, the petitioner's post as Foreman Grade II was made by conversion and not by promotion as per the existing Board proceedings, hence the contention of the learned counsel for the petitioner that the was promoted as Foreman Grade II by relaxing his educational qualification is not acceptable. As far as the post of Foreman Grade I is concerned, as per the Board Proceedings in B.P. Ms (F.B)No.94, A.B, dated 03.10.1986, the post shall be given only on promotion and the required qualification for the said post is VIII standard and 12 years experience, since the petitioner was having qualification of V standard, his name was not included in the promotion panel list for the post of Foreman Grade I. The relevant portion of the Board Proceedings is extracted hereunder;

"94 (a) No person shall be eligible for appointment to the post and by the method mentioned in Annexure -III unless he possess the qualification prescribed therein.

Provided that the person concerned shall possess the specified qualification including experience prescribed therefor on the date of on which the notification of vacancy have been made



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Annexure - III

Post	Experience
Foreman Grade - I	LME or L.E.E as the case may be or equivalent qualification as approved by the Chief Engineer (Personnel) with 5 years practical experience in a responsible position, in the type of works concerned
	Or Post in III form with 12 years practical experience in a responsible position in the type of work concerned
	Or Group certificate in Electrical Engineering with ten years of practical experience in the type of work concerned.

12. With regard to other two employees namely V.Semmalai and R.Madheswaran, they have possessed the qualification of VIII standard and they were promoted as Loco driver in the year 1989, whereas the petitioner was promoted in the year 1990. Subsequently, the aforesaid two employees were converted to the post of Foreman Grade II in the year 1997, but the petitioner was converted as Foreman Grade II in the year 2006. Therefore it is clear that the aforesaid two employees were holding the post of Foreman Grade II from the year 1997 and possessed 12 years experience. Hence the promotion given to the said two employees as Foreman Grade- I was based on the requirement prescribed in the Board Proceeding. This Court finds no error in granting promotion to the said two employees, therefore the submissions of the learned counsel for the petitioner, discriminating the promotions granted to the aforesaid two employees is incorrect and not acceptable.

13. Though the 2nd respondent had issued clarification by communication dated 14.03.2008 stating that relaxation of educational qualification will not cover the employees in non workload areas including thermal station in which the petitioner was working, the learned Standing Counsel for the respondent has brought to the notice of this Court the Board Resolution in B.P.No. 18, dated 03.04.2012, wherein the respondent Board issued orders implementing the relaxation of educational qualification for the first time in respect of Regular Work Establishment employees (RWE) as a special case in all Thermal Power Stations by virtue of Section 18 (i) Settlement of I.D. Act 1947 arrived at between the board and the Unions.



14. The above Board resolution came into force w.e.f 03.04.2012, but the petitioner had retired from service on attaining the age of superannuation on 30.12.2011, therefore, the petitioner's claim cannot be considered. In view of the clarification issued by the 3rd respondent dated 14.03.2008 and the proceedings in B.P. Ms (F.B)No.94, A.B, dated 03.10.1986, the petitioner is not eligible to be promoted to the post of Foreman Grade I and the respondent has also rightly rejected the claim made by the petitioner and passed impugned orders. This Court finds no grounds to interfere with the impugned order passed by the respondent.

15. In the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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TNEB Mettur dam, Salem District.

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Mettur Thermal Power Station,
TNEB Mettur dam, Salem District.

3.The Chief Engineer (Personnel),
TNEB, Anna Salai, Chennai-2.

+1 cc to Mr.P.Subramanian, Advocate Sr.NO. 6919

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nr(CO)
A.SK(24.02.2022)