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W.P.Nos. 2026 to 2030 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 2026 to 2030 of 2018

W.P.No. 2026 of 2018

M. V. Jinesh

vs

.. Petitioner

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation,
No. 144, Anna Salai, Chennai – 2.
2. The Chief Engineer/Personnel
Tamil Nadu Generation and Distribution Corporation,
No. 144, Anna Salai, Chennai -2.
3. The Superintending Engineer,
Nilgiri Electricity Distribution Circle,
TANGEDCO, Ooty,
Nilgiri District.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to promote the petitioner notionally as Field Assistant w.e.f. 01.12.2011, on completion of two years of service in the post of Mazdoor, on the basis of (per) B.P. (F.B) No. 44 & 45 (Administrative Branch) and thereby fix his seniority in the appropriate place as on 31.12.2016, in the seniority list in Ku.Aa.No.07721/901/NePiII/U.1/Ko.Muthanmai Pattial/2017 dated 04.03.2017.



For Petitioners : Mr. S. N. Ravichandiran
For Respondents : Mr. Anand Gopalan
for M/S. T.S. Goplan & Co
for R1 to R3

COMMON ORDER

Promotion per se cannot be claimed as an absolute right. However, consideration for promotion is a fundamental right of an employee.

2. In the event of taking an administrative decision to fill up the promotional post, authorities competent are bound to consider all the employees who are all aspiring to secure promotion in accordance with the rules and based on their respective seniority. Thus, mere eligibility would not confer right to seek promotion either by submitting a representation to the authorities or by filing a writ petition.

3. In the present case, it is not in dispute that the petitioner was engaged as a contract labourer and by virtue of the 12 (3) Settlement between the labour union and the management of the Tamil Nadu Electricity Board, the benefit of permanent absorption was extended to the contract labourers. Accordingly, the petitioner was permanently absorbed in Board



Services in the post of Masdoor and thereafter, promoted to the post of Helper.

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4. The grievances of the writ petitioner is that the time bound promotion assured under 12(3) Settlement to the workmen was not granted to the writ petitioner. The time bound promotion is to post of in service men and such a promotion is to be granted to the writ petitioner on completion of two years of service in the post of helper. Accordingly the petitioner ought to have been promoted to the post of Field Assistant with effect from 01.12.2011. However, no such promotion was granted and thus the petitioner submitted a representation, which was not considered and consequently, the petitioner has chosen to file the present writ petition.

5. Prescription of eligibility under the rules are in a settlement per se would not confer right to claim promotion on completion of mere two years of service. If at all the petitioner feels that it is a settlement under Section 12 (3) of the Industrial Disputes Act, then its requires an adjudication with reference to the documents and evidences and the petitioner has to approach the Labour Court for such adjudication. High Court cannot adjudicate such disputed issues in a writ proceedings under Article 226 of the Constitution



of India, which is to be done in the manner contemplated under the Industrial Disputes Act. In general, mere eligibility of an employee would not confer any right to seek promotion. Promotion per se is not a right and therefore it is to be considered in accordance with the rules based on the vacancies available and in compliance with the Rules. The petitioner could not able to establish that any of his junior was promoted overlooking his seniority. If such violations are pointed out, then alone the grievances are to be considered but not otherwise.

6. When the petitioner states that as per 12 (3) Settlement, on completion of two years service in the post of helper, he should be promoted to the post of Filed Assistant, then it is to be considered subject to the availability of vacancy and by following the procedures and by considering the names of all the eligible candidates in the order of seniority.

7. The learned counsel for the respondent brought to the notice of this Court that none of the juniors to the petitioners were promoted to the post of Assistant violating the seniority list of eligible persons. Therefore, the case of the petitioner will be considered in the order of seniority and subject to availability of vacancy in the promotional post. Regarding the eligibility of



the petitioner, the respondents have stated in paragraph 9 of the counter that the petitioner cannot claim parity with those direct recruitments which were made in the year 2019 and 2014. Therefore, this Court is of the considered opinion that the eligibility of the petitioner is to be considered in accordance with the rules in force and by following the seniority whenever an administrative decision is taken to promote the employees to the higher post.

8. In view of the fact that the petitioners have not established any acceptable ground for the purpose of considering the relief, the writ petitions stand dismissed. No costs.

14.11.2022

mrn
Index : Yes / No
Speaking order / Non-Speaking order

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S.M.SUBRAMANIAM, J.



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