

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2022

Pronounced on : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24892 of 2012

M. Balasubramani

...Petitioner

Vs.

1. The Tamil Nadu Electricity Board,
Represented by its Chairman
No.800, K.R.R. Maligai,
Anna Salai, Chennai - 600 002.

2. The Chief Engineer/Personnel,
No.800 K.R.R. Maligai
Anna Salai, Chennai-600 002.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 2nd respondent in Letter No.081304/364/G.12/G.122/2011 dated 24.09.2011 and quash the same consequently directing the respondents herein to include the name of the petitioner in the panel issued fit for promotion to the post of Junior Engineer Grade I in 2003 and promote the petitioner to the post of Junior Engineer Grade I with effect from 2003 and give the consequential monetary benefits.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.P.Subramanian
Standing counsel for TANGEDCO

O R D E R

The writ petition is filed challenging the order of the 2nd Respondent in Letter No. 081304/364/G.12/G.122/2011 dated 24.09.2011 rejecting the petitioner's request for promotion to the post of Junior Engineer Grade I and consequently direct the respondents to include the name of the petitioner in the panel to the post of Junior Engineer Grade I and promote the petitioner with effect from 2003 and provide consequential monetary benefits.

2. Brief facts:

i) The petitioner joined the 1st Respondent Board as Foreman and was promoted to the post of Junior Engineer (Electrical) Grade II in December 2000. The next avenue of promotion was Junior Engineer (Electrical) Grade I. The petitioner retired on attaining the age of superannuation on 31.10.2004 without being promoted.

ii) It is submitted that he was denied promotion despite satisfying all the criteria for being promoted to the post of Junior Engineer Grade I viz.,

- a. Seniority in Grade II
- b. Passed Electricity Department Test
- c. Performance assessment
- d. No disciplinary proceedings pending
- e. Completion of probation.

iii) It is submitted by the petitioner that the vacancy to the post of Junior Engineer Grade I arose in the year 2003 and the panel was prepared in the same year. A combined list of Diploma and Non-Diploma holders was prepared to fill up the 900 vacancies that arose to the post of Junior Engineer Grade I. It may be relevant to note that 540 posts were to be filled from the persons working as Junior Engineer Grade II, in which the petitioner's name was listed.

iv) Importantly, 540 posts were reduced to 200 and out of which 100 persons working in Junior Engineer Grade II were selected to the post of Junior Engineer Grade I by order dated 24.11.2003 in Memo No.11910/1972/A.B/G.132/2003. In the said list, the petitioner's name was not included due to the reduction of posts from 540 to 200. It is the case of petitioner, that a number of juniors were promoted overlooking the seniority of the petitioner. It is further submitted that the petitioner was deprived promotion in view of the failure on the part of the Respondent Board to grant time bound promotion in disregard to the Regulations.

3. Aggrieved by the same, the petitioner filed a writ petition in W.P. No. 13838 of 2007 to direct the Respondents to promote him to the post of Junior Engineer Grade I, with effect from December 2000, and consequently refix his seniority in the said post and pay him monetary and other benefits. The above writ petition came to be disposed of by this court, which directed petitioner to make a representation within 10 days from the date of receipt of a copy of the order, seeking relief of promotion to the post of Junior Engineer Grade I, with effect from December 2003. The 2nd Respondent was directed to pass appropriate orders on merits and in accordance with law, after

giving reasonable opportunity to the petitioner within a period of eight weeks thereafter.

4. Pursuant to the above order of this court dated 27.07.2011, the impugned order Letter No. 081304/364/G.12/G.122/2011 dated 24.09.2011 was passed, wherein, it was stated that the seniority for diploma holders and non-diploma holders are fixed not on the basis of date of joining but on the basis of Roster/ Communal Rotation. It is this order which is the subject matter of issue in this writ petition.

5. It is submitted by the learned counsel for the petitioner that the Respondents have misdirected itself in fixing the seniority based on Communal Rotation, contrary to Regulation 97 of Tamil Nadu Electricity Board Service Regulations by which date of joining is taken as the basis for fixing seniority which position was clarified by this Court on more than one occasion.

6. To the contrary, it was submitted by Mr.P.Subramanian, learned counsel for the Respondents by placing reliance on the counter that the petitioner had retired on superannuation on 31.10.2004 prior to the issue of the panel. It was further submitted that there was no violation of any Rules and Regulations as alleged by the petitioner. The inter-se-seniority of Junior Engineer Grade II is fixed in the ratio of 3:1 among diploma holders and non-diploma holders as stated in the counter affidavit. The relevant portions of the same is extracted hereunder:

" 1. The 2nd respondent had published the seniority list of Junior Engineer / Electrical Grade II on 05.09.2003. The said list consists of 227 persons of Junior Engineer/ Electrical Grade-II. Out of 227 persons, 171 persons are Diploma Holders and 56 persons are Non-Diploma Holders. Therefore, the Respondents have prepared the seniority list in the ratio of 3:1 for the promotion to the post of Junior Engineer/ Electrical Grade I is totally against the provisions of Annexure-I, Clause II, Division II, Category 4 of the Tamil Nadu Electricity Board Service Regulations. There is no ratio for the promotion to the post of Junior Engineer/ Electrical Grade I."

In other words, the petitioner was denied promotion for two reasons viz.,

a. Seniority is fixed on the basis of Roster.

b. Seniority is fixed amongst Diploma and Non-Diploma holders in the ratio of 3:1.

7. Neither of the above reasons can be sustained inasmuch as 3:1 ratio among diploma holders and non-diploma holders for the purposes of fixation of seniority to the post of Junior Engineer Grade I as stated in the counter is contrary to the law laid down by this Court wherein it has been held that the ratio of 3:1 is inapplicable while considering promotion to the post of Junior Engineer Grade I. In this regard, it may be relevant to refer to the order of this Court in the case of M. Mohammed Raffi v. The Chief Engineer in W.P.(MD).20714 of 2015, which reads as under:

"12.... It is also an admitted case that the ratio of 3:1 is not applicable for further promotion to the post of Junior Engineer Grade-I. But, the date of appointment in the feeder category of Junior Engineer Grade-II will be the crucial date to be taken into account by the first respondent at the time of preparing the common seniority list among the Junior Engineers Grade II for further promotion from the post of Junior Engineer Grade II to the post of Junior Engineer Grade I."

(emphasis supplied)

The above order of this Court was affirmed by the Division Bench in the case of Vetrivelu vs. Mohammed Raffi in W.A.No.1227 of 2018 dated 02.07.2019, wherein it was held as under:

"3. The grievance of the writ petitioners was that there was no common seniority list prepared among Junior Engineer Grade-II, which post is being filled up from Diploma holders and non-diploma holders at the ratio of 3:1. Therefore, they contended that the impugned seniority list prepared without preparing a common seniority list, cannot be sustained as it would affect their promotional avenue to the post of Junior Engineer Grade I.

.....

7. Perusal of the order passed by the Writ Court and also by considering the admitted position that there is no common seniority list among Junior Engineer Grade-II, would establish that there is no error in the order passed by the Writ Court directing the preparation of common seniority list among Junior Engineer Grade-II."

8. Now, coming to the 2nd limb of the Respondent's submission that seniority is fixed on the basis of Roster, the same is contrary to the law laid down by this Court in the

following decisions:

i) N.Santhosh Kumar vs. Tamil Nadu Public Service Commission in W.A.No.2705 of 2012 dated 31.03.2015:

"81. Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lose its significance and will have nothing to do with the determination of seniority. Seniority will then be decided only by the rank secured by the candidates. The second limb of Rule 35(a) will also, stand satisfied by this process since the rule of reservation would have been observed, due to the fitment against roster. Therefore, the second contention of the respondents as though Rule 35(a) mandates the roster to be the seniority is only a myth."

ii) K.Raja v. The Addl. Chief Secretary to the Government of Tamil Nadu - (W.P.No.998 of 2017 dated 15.11.2019)

"3.2. There is yet another facet in the roster point system. A roster fixed is also taken for the fixation of seniority. Thus, a person selected under the roster will get his seniority determined accordingly as against merit in a single selection process. This was put to challenge in the earlier round of litigation. A Division Bench of this Court in N.Santhosh Kumar and others vs. Tamil Nadu Public Service Commission, rep., by its Secretary, Government, Chennai-2 and others (2015 (4) MLJ 281), has held that the selected candidates are to be conferred seniority based upon merit and not the roster point. This was taken on appeal by way of Special Leave Appeal (C) CC.Nos.22094-22098 of 2015, which were also dismissed by an order dated 22.01.2016. To remove the basis of the judgment of the Division Bench as confirmed by the Apex Court as stated supra, Sections 1(2), 40(1), 70 and 71 of Tamil Nadu Government Servants (Conditions of Service) Act 2016, (hereinafter referred to as "the Act") were introduced, whereby challenging the same, W.P.Nos.5735, 22852, 34311, 34312 of 2017, 7511, 8718 to 8720, 18725, 26442 and 31156 of 2018 have been filed. W.P.No.6649 of 2017 was also filed challenging the fixation of roster point itself, being violative of Rule 22(c) of the General Rules for Tamil Nadu State and Subordinate Services and Section 27(e) of the Act. Rule 22(c) of the General Rules for Tamil Nadu State and Subordinate Services Rule 27(e) of the

Act.

.....

37.3. In the case on hand, the State of Tamil Nadu took umbrage under Article 16(4) of the Constitution of India to get over the dictum of the Court. We may note at the cost of repetition that the Constitutional Bench of the Apex Court has already held and which was taken note of by other decisions, that Article 16(4) does not authorise such an action unless there is an express provision like the one introduced by way of 77th and 85th amendments in Article 16(4A) of the Constitution of India. As it is an express statement of law, we are constrained to hold that the State of Tamil Nadu does not have the power, authority or cachet to introduce the impugned provisions tracing Article 16(1) and 16(4) of the Constitution of India as their source of power, we are constrained to note that we are dealing with a case involving all sort of reservations at the level of seniority when there is no material available nor produced before this Court.

....

37.17..... We also hold that roster point cannot be the basis for seniority giving adequate reasons both on law and fact. The very challenge itself is to the fixation of seniority or preference on the basis of roster point."

9. The contentions of the Respondents does not have merit. It is further submitted by the learned counsel for the petitioner that even the petitioner's juniors have been promoted prior to his superannuation. The petitioner though retired may thus have a legitimate grievance as held by the Hon'ble Supreme Court in the case of Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur reported in (1998) 7 SCC 44, the relevant portions of which reads as under:

"6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation...."

10. In view of the above, the impugned order is quashed. The Respondents shall consider the petitioner's claim for promotion to the post of Junior Engineer Grade I in accordance with law. The petitioner if found eligible shall be granted promotion on a notional basis from the date on which his juniors were promoted prior to his superannuation only for the purpose of reckoning the retiral benefits. The above exercise shall be

completed within a period of 12 weeks from the date of receipt of a copy of this order.

11. For all the above reasons, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

smn/mka

To:

1.The Chairman,
The Tamil Nadu Electricity Board,
No.800, K.R.R. Maligai,
Anna Salai, Chennai - 600 002.

2.The Chief Engineer/Personnel,
No.800 K.R.R. Maligai
Anna Salai, Chennai-600 002.

+1cc to Mr.P.Subramanian, Advocate, S.R.No.42100
+1cc to Mr.K.Selvaraj, Advocate, S.R.No.41303

W.P. No.24892 of 2012

GPL(CO)
SB(13/07/2022)