

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.269 of 2015

A.Jesudoss

...Petitioner

Vs.

The Superintending Engineer,
Tamil Nadu Energy Development Corn. (TNEDC)
Thiruvannamalai.

...Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for an issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in LR.No. 15192/Ni.bi.2/ U.4/Ko.Thani/2014 dated 28.08.2014 and quash the same as illegal unlawful ultra vires and consequently direct the respondent to provide notional promotion from Commercial Inspector post to the level of Junior Engineer, Grade II and provide consequential pecuniary benefits and terminal benefits to the petitioner within the time frame to be stipulated by this Honourable Court.

For Petitioner : Mr.T.S.Rajamohan

For Respondent : Mr.P.Subramanian for TNEDC

O R D E R

The order impugned dated 28.08.2014 rejecting the claim of the writ petitioner for grant of notional promotion to the post of Junior Engineer Grade - II is under challenge in this writ petition.

2.The petitioner joined in the services of TANGEDCO on 21.04.1974 and retired from service as Commercial Inspector on 31.03.2007. The writ petition itself has been filed after a lapse of about 8 years from the date of retirement and based on the rejection order dated 28.08.2014.

3.The rejection order was passed by the Superintending Engineer based on the directions issued by this Court in W.P.No.224 of 2014 in the year 2014 to consider the representation of the writ petitioner. Therefore, the petitioner

has reopened the lapsed cause after a lapse of about 7 years. Even at the time of the retirement, the petitioner has not filed any writ petition. After a lapse of about 7 years from the date of retirement, he filed a writ petition in W.P.No.224 of 2014 and sought for a direction to consider his representation with a view to reopen the lapsed cause of action and based on the direction, the authorities passed an order. Then, he filed the present writ petition as if the order impugned has been passed in the year 2014.

4. There is a growing trend amongst the litigants that they are sending a representation after several years or the representation sent has been taken as a cause after several years to file a writ petition to consider the representation. The High Court is also issuing a direction to consider the representation. Pursuant to the said direction, the authorities are passing orders and based on the said order, they are reopening the lapsed claim after several years and such a practice can never be appreciated but to be deprecated. The method is an indirect way of opening the lapsed cause and in all circumstances, the aggrieved employee is expected to approach the competent authority and the Court of law within a reasonable period of time. In the present case, admittedly, the petitioner retired on 31.03.2007 and he filed the writ petition to consider the representation in the year 2014 in W.P.No.224 of 2014. Thereafter, the impugned order has been passed on 28.08.2014 and the said order is under challenge in the present writ petition.

5. This is exactly the reason why the Courts have repeatedly held that in all such writ petitions, the issues are to be decided at the first instance. Merely issuing a direction to consider the representation would not do any service to the cause of justice. The litigants are back again to the Court. That is exactly happened in the present case.

6. As far as the issues raised are concerned, the petitioner claims retrospective promotion to the post of Junior Engineer. The order impugned is self-speaking that the petitioner suffered various punishments and availed leave on several occasions without any prior intimation or permission. The punishment itself was imposed, the punishment orders were issued in 11 departmental disciplinary proceedings as per the impugned order. The learned counsel for the petitioner made a submission that some punishments were set aside. However, the said punishments were set aside subsequently and during the relevant point of time, the charges were pending against the writ petitioner. Considering all these factors, the claim of the writ petitioner was rejected for grant of notional promotion.

7. The respondents have stated that during the relevant point of time when the petitioner was due for promotion to the

post of Junior Engineer, the departmental disciplinary proceedings were pending and he was suffering currency of punishment also. A perusal of the order impugned would reveal that the petitioner availed leave on several occasions without permission and suffered punishment in respect of 11 departmental disciplinary proceedings, out of which, some of the punishments were set aside. However, the charges were pending during the relevant point of time. That apart, the writ petitioner retired on 31.03.2007 and he filed a writ petition in the year 2014 and pursuant to the direction to consider the representation, the impugned order has been passed on 28.08.2014 and there was an enormous delay even in pursuing the remedy. In order to overcome the delay, the petitioner has first filed the writ petition to consider the representation and after getting an order, made an attempt to contest the issue which cannot be encouraged by the Courts. That apart, the petitioner even at the time of filing of the writ petition was aged about 65 years and now, no more and died on 28.02.2019. This being the factum, the writ petitioner is not entitled for the relief as such sought for in the writ petition for grant of notional promotion.

8. Accordingly, the writ petition stands dismissed. No Costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sms/sli

To

The Superintending Engineer,
Tamil Nadu Energy Development Corn. (TNEDC)
Thiruvannamalai.

+1cc to Mr.P.Subramanian, Advocate SR. No. 38382

W.P.No.269 of 2015

AKII (CO)
PR (11/07/2022)