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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7323 of 2015

A.Anbalagan

...Petitioner

-Vs-

1.The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 2.

2.The Chief Engineer Personnel,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 2.

3.The Superintending Engineer,
Thiruvannamalai Electricity,
Distribution Circle,
Thiruvannamalai District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to implement the PB(FB) 44 dated 06.09.2007 and re-fix the petitioner's seniority and promote the petitioner with service and monetary benefits on the base of the petitioner's representation dated 03.10.2013.

For Petitioner :Mr.A.E.Kalaiselvan

For Respondents :Mr.Anand Gopalan
for Ms.T.S.Gopalan & Co.

ORDER

The relief sought for in the present writ petition is to direct the respondents to implement (Per) B.P. (FB) No. 44 dated 06.09.2007 and re-fix the petitioner's seniority and promote him



to the higher post along with monetary benefits, based on the petitioner's representation dated 03.10.2013.

2. The petitioner was engaged as a Contract Labourer on 01.01.1991 in the Sathanur Dam Hydro Power Project in Thiruvannamalai District. The petitioner states that he was continuously working and receiving ex gratia payment. From the year 1997 to 2006, the petitioner was working at Bhavani Project and he received the ex gratia payment as per B.P.No.44, dated 06.09.2007. Thus, the petitioner is eligible for appointment to the post of Assessor.

3. The learned counsel for the petitioner mainly contended that though the respondents issued (Per) B.P. (FB) No. 44 dated 06.09.2007, the case of the writ petitioner was mistakenly omitted for grant of appointment during the relevant point of time. However, the petitioner was appointed in the sanctioned post only on 29.04.2011, pursuant to the directions issued by this Court in W.P.No.4275 of 2010 to consider the case of the petitioner.

4. The learned counsel for the petitioner reiterated that due to administrative mistake, the case of the petitioner was not considered during the relevant point of time for appointment and therefore, the petitioner is entitled for seniority retrospectively with effect from the date on which the Board issued B.P.No.44 dated 06.09.2007. The mistake occurred on the part of the respondents' administration was also accepted by the Superintending Engineer in his proceedings dated 16.11.2010 and therefore, the petitioner is entitled for seniority.

5. The learned Standing Counsel appearing on behalf of the respondents objected the contention raised by the petitioner by stating that the Board issued B.P.No.44 dated 06.09.2007 to appoint the Contract Labourers. Though the board proceedings was issued during the relevant point of time, there were no sufficient posts to accommodate the Contract Labourers and they were appointed in a phased manner in accordance with the terms and conditions stipulated in B.P.No.44. Therefore, it is not as if the eligible persons are to be appointed immediately after the issuance of B.P.No.44. Accordingly, the case of the petitioner was considered in the year 2011 and he was appointed on 29.04.2011. The date of appointment is to be taken into consideration for fixing the seniority and accordingly, the seniority of the petitioner was fixed from the date of his appointment. Thus, there is no irregularity as such in respect of fixation of seniority to the writ petitioner. The said



position is stated in paragraph 5 of the counter affidavit filed by the respondents, which reads as under:-

"(5) I humbly submit that the averments stated in para 2 of the affidavit filed in support of the petitioner are not at all true and denied. Though the petitioner states that he has been engaged to carryout works under various contractors from 01.01.1991 onwards at Sathanur Hydro Power Project, he had a break in service from 02/2011 to 11/2011 (i.e.) for more than 11 months and after that he was engaged at Bhavani Kattalai Barrage-II from 01.12.2011 onwards. I submit that though the petitioner was identified during 08.08.1988 and received exgratia from 1996 to 2000, he has not fulfilled the conditions prescribed vide (Per) Board Proceedings (FB) No. 44 dt. 06.09.2007 (i.e.) since there was a break in service and was not continuously engaged till the date of absorption. Further he had failed to appear before the identification committee during 11/2007 and had not received exgratia for the year 2004-2005 & 2005-2006 and he was not covered under the 12(3) settlement entered into between the respondent and the union under I.D. Act, 1947 and hence was not absorbed into Board's service. I submit that, 4,037 labourers who were not covered under the said 12(3) settlement were engaged on daily wages were absorbed on consolidated wages as Mazdoor (Trainee) irrespective of their educational qualification into Board's service during 2012. Whereas, the petitioner preferred W.P.No.4275 of 2010, and the Hon'ble High Court ordered on 02.07.2010 and in obeying the order of the Hon'ble High Court, the petitioner was absorbed into Board's service as Assessor Grade-II during 2011."

6. This Court is of the considered opinion that the writ petitioner was engaged as a Contract Labourer. Thus, his initial engagement was not in accordance with the recruitment rules. However, the case of the Contract Labourers was considered by the Board for grant of regular appointment. Accordingly, B.P.No.44, dated 06.09.2007 was issued to absorb the Contract Labourers in a phased manner, based on the availability of vacancy/sanctioned post.



7. The writ petitioner, meanwhile, filed W.P.No.4275 of 2010 and this Court also issued a direction to consider the case of the writ petitioner. Accordingly, the case of the petitioner was considered and he was appointed in a sanctioned post in the time scale of pay, vide proceedings dated 29.04.2011. That being the case, the seniority of the writ petitioner is to be fixed from the date of his appointment/regularization and not from the date on which B.P.No.44 was issued by the Board.

8. No doubt, the petitioner states that his case was not considered during the relevant point of time by mistake and the mistake committed by the respondents was admitted in their proceedings. Even in such case, the petitioner cannot seek for seniority at this length of time, in view of the fact that he was regularly appointed in the Board only through proceedings dated 29.04.2011. Thus, this Court do not find any infirmity in respect of the seniority fixed for the petitioner from the date of his regular appointment and thus, the relief sought for cannot be granted.

9. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

hvk

To

1.The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 2.

2.The Chief Engineer Personnel,
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800, Anna Salai,
Chennai - 2.



3.The Superintending Engineer,
Thiruvannamalai Electricity,
Distribution Circle,
Thiruvannamalai District.

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+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.39086

W.P.No.7323 of 2015

JP-II (CO)
CB(07/07/2022)