



W.P.No.17131 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17131 of 2014

K.Kalaichelvan

...Petitioner

Vs

1.Tamil Nadu Generation and
Distribution Corporation Ltd.,
Rep. by its Chairman cum
Managing Director,
144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer/Personnel,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 600 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order No.025811/275/G30/G301/2014-1 dated 17.04.2014 issued by the 2nd respondent and quash the same as being illegal, arbitrary and unconstitutional and consequently issue a direction to the 1st and 2nd respondents to grant notional promotion to the petitioner to the post of



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Assistant Accounts Officer on the basis of the panel dated 21.10.2008 on par with his juniors, with all attendant service benefits, within a time frame.

For Petitioner : Mr.C.K.Chandrasekhar

For Respondents : Mr.P.Subramanian

ORDER

Heard Mr.C.K.Chandrasekhar, learned counsel for the petitioner and Mr.P.Subramanian, learned counsel for the respondents.

2. The petitioner herein, who had superannuated on 30.06.2009 from the post of Accounts Supervisor, seeks for notional promotion to the post of Assistant Accounts Officer, by citing the cases of his juniors who were extended with such promotions through Court orders. When the petitioner had approached the respondents-Corporation, seeking for such notional promotion, the same came to be rejected, predominantly on the ground that since the petitioner had qualified his B.Com., Degree through an one year curriculum from Osmania University, the same is ineligible, in view of the proceedings of the Board in Memo No.20233/A3/A32/2006-24, Sectt.Branch dated 03.04.2010.



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WEB COPY 3. The circumstance relating to the claim for notional promotion is that the Board had prepared a promotional panel for the year 2008-2009 for the post of Assistant Accounts Officer fixing the crucial date as 28.03.2009. Though the petitioner's name found place in the promotional panel, the promotion was denied, due to the intervention of the Lok Sabha Elections for the year 2009 and the consequential imposition of the Code of Conduct.

4. When a similarly placed employee, who is junior to the petitioner herein, had approached this Court seeking for notional promotion for the post of Assistant Accounts Officer, this Court, in its order dated 14.03.2012 passed in ***W.P.No.28673 of 2010 in the case of P.Chellan Vs. The Chairman, Tamil Nadu Electricity Board and others***, directed the Board to grant notional promotion to the petitioner therein for the purpose of terminal and pensionary benefits, since the employee had reached the age of superannuation by then. It is seen that Thiru.P.Chellan's name was found in Serial No.216 in the promotional panel, while the petitioner's name was found at Serial No.122. This order, when taken up in an intra court appeal filed by the Board, was confirmed by the Hon'ble Division Bench, through an



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order dated 09.04.2013 passed in W.A.No.510 of 2013, in the following manner:-

"2. The appellants/Electricity Board have challenged the said impugned order by contending that even though the respondent's name was found in the panel, fixing the crucial date as 25.03.2008, because of the Code of Conduct imposed during the Lok Sabha Elections conducted in the year 2009, no appointment or promotion was made, as the Electricity Board has not approached the Election Commission of India for getting necessary clearance. Learned counsel, further, submitted that 33 similarly placed persons were also not given promotion because of the aforesaid reason and the respondent had also reached the age of super-annuation by 31.05.2009.

3. It is contended by the learned counsel appearing for the respondent that the respondent has passed all tests prescribed for promotion and he was rightly placed in the panel prepared for the year 2008-09 fixing the crucial date as 25.03.2008, and there were vacancies available and the respondent's name was placed in Sl.No.216 and that promotion was denied to the respondent due to the intervention of Lok Sabha elections for the year 2009. Learned counsel further



submitted that the appellants themselves have admitted that they failed to get clearance from the Election Commission of India. In such a situation, the respondent cannot denied of his rightful promotion at the fault of the appellants-Electricity Board.

4. It is on admitted fact that the Tamil Nadu Electricity Board has not approached the Election Commission of India for getting clearance for promoting the eligible persons. Though, the respondent's name was including in the panel, he had reached the age of superannuation on 31.05.2009. The only reason stated in the counter affidavit is that after the retirement of the respondent, fresh panel was prepared fixing the crucial date as 25.03.2009 and the respondent's name was included, and he having retired on 31.05.2009 promotion was not given to him. Therefore, the respondent's right to get promotion was rightly considered by the learned single Judge, who ordered notional promotion for the purpose of pension and terminal benefits with effect from 15.05.2009. It is a well settled law that right to get promotion, if otherwise qualified, is a fundamental right available to a Government servant.

5. The Mandatory duty on the part of the Government in considering the promotion of



Government servants at the relevant time was held to be a fundamental right guaranteed under Article 16 of the Constitution. The Supreme Court in the decision reported in Union of India vs. Hemraj Singh Chauvan, 2010 (4) SCC 290 in paragraphs 35 & 36 held as follows:-

"35.The Court must keep in mind that constitutional obligation of both the appellants/ Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of quality under Article 14 of the Constitution."

(Emphasis Supplied)

6.Applying the said principle to the facts of this case, and the judgment of the Apex Court, we are unable to differ from the view taken by the learned single Judge. The writ appeal, which has no merits, is hereby dismissed. No costs. Consequently, miscellaneous petition is closed."

The order of the Hon'ble Division Bench is said to have become final and that the Board has also extended the benefits to the concerned employee.



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5. While the learned counsel for the petitioner seeks the benefits of the order passed by this Court in the case of the petitioner's junior, the learned counsel for the respondents submitted that in view of the Board proceedings dated 03.04.2010, which prescribes the one year B.Com., Degree as ineligible for the purpose of promotion to the post of Assistant Accounts Officer, no interference is required to the impugned order.

6. The administrative orders of the Board will only have a prospective effect. There cannot be any quarrel over this position. The Hon'ble Supreme Court, in the case of ***Bharat Sanchar Nigam Limited and others Vs. M/s.Tata Communications Ltd. passed in Civil Appeal Nos.1699 to 1723 of 2015***, has upheld this proposition in the following manner:-

"30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect.



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Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April, 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment."

7. By the time the Board proceedings dated 03.04.2010 was passed, the petitioner herein had reached the age of superannuation and he was also permitted to retire on 30.06.2009. Thus, citing this administrative order and attempting to give a retrospective effect may not be permissible.

8. When the petitioner's junior, namely P.Chellan, who had also reached the age of superannuation, had approached this Court, seeking for notional promotion to the post of Assistant Accounts Officer, his claim was entertained by the Writ Court and confirmed in the intra court appeal also. Admittedly, the petitioner herein is senior to Thiru.P.Chellan in the promotional panel. While that being so, the petitioner would also be entitled



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for the similar relief and for grant of notional promotion. By applying the ratio laid down by this Court in W.A.No.510 of 2013, I am inclined to allow the claim made by the petitioner herein. Thus, the reasons adduced by the respondent in the impugned order cannot be sustained.

9. In the light of the above findings, the impugned order dated 17.04.2014 is quashed. Consequently, there shall be a direction to the respondents herein to pass orders, granting notional promotion to the petitioner herein for the post of Assistant Accounts Officer, from the date on which his immediate junior was promoted and accordingly, disburse all the terminal and pensionary benefits, within a period of 6 weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed.

No costs.

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Index:Yes
Speaking order
hvk



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M.S.RAMESH,J.

hvk

To

1.The Chairman cum Managing Director,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer/Personnel,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
144, Anna Salai,
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