



W.P.(MD)No.6257 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.6257 of 2020
and
W.M.P.(MD)No.5468 of 2020**

Mr.L.Davidson

... Petitioner

Vs.

1. The Chief Engineer (Personnel),
TANGEDCO,
144, Anna Salai,
Chennai – 02.
2. The Chief Engineer,
O/o. The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin,
Tuticorin District – 4.
3. The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin,
Tuticorin District – 4.

... Respondents



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent No.3 to issue the posting order to the petitioner for the post of Assistant Executive Engineer at Tuticorin Thermal power Station, Tuticorin District.

For Petitioner : Mr.T.Lajapathy Roy

For Respondents : M/s. M.Parameswari
Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the third respondent to issue posting order to the petitioner for the post of Assistant Executive Engineer at Tuticorin Thermal power Station, Tuticorin District.

2. The case of the petitioner is that he has joined in Tuticorin Thermal Power Station as Assistant Engineer (Civil) on 10.07.2012, by direct recruitment. Thereafter, he was posted as Assistant Engineer in Civil Maintenance Division II / Sub Division III and then he was posted as Assistant Engineer /Civil in Civil Maintenance Division II /Sub Division I.



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Subsequently, he was promoted as Assistant Executive Engineer and allotted to Tuticorin Thermal Power Station. But till date he has not received the posting order from the Superintending Engineer. Hence, the petitioner has made a representation to the respondents 2 and 3 in person on 27.03.2020. Though the petitioner was promoted after obtaining suitable report dated 03.09.2019, the said promotion was not given effect on the ground that subsequently charge memo was issued to the petitioner on 17.08.2020.

3. The learned counsel appearing for the petitioner would submit that as per the Tamil Nadu Electricity Board proceedings dated 08.01.2013, if an employee is not involved in any disciplinary proceedings or not undergoing punishment at the time of approval of the panel and if the charges are framed subsequent to the approval of the panel he could be promoted and punishment if any should be imposed in the higher post on finalisation of the disciplinary proceedings. In view of the above said Board proceedings, the petitioner is entitled to enjoy the promotion, which was granted in favour of the petitioner on 19.03.2020. However, the third respondent has not given posting order to the petitioner on the ground that



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subsequently charge memo was issued against the petitioner on 17.08.2020, which is not sustainable one. Hence, he has filed the present writ petition, seeking direction to the third respondent to issue posting order to the petitioner for the post of Assistant Executive Engineer at Tuticorin Thermal power Station, Tuticorin District.

4. Per contra, the learned Standing counsel appearing for the respondents would vehemently contend that the petitioner has caused loss to the Electricity Board to the tune of Rs.1,11,44,567/-, for which already the Chairman cum Managing Director has given orders to initiate departmental action against the erring officials in Note order dated 06.01.2020. Based on which, a disciplinary proceeding was initiated against the petitioner and issued a charge memo on 17.08.2020. However, in the present case, before issuing the posting order, a direction was issued to the Board to initiate disciplinary proceedings against the petitioner as well as the three other erring officials. As per Clause 2 of the Board proceedings dated 08.01.2013, based on the consolidated instructions issued by the Government, Board proceeding has been issued vide reference (2) cited relating to preparation



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of panel for promotion to higher posts. Charges framed under Regulation 8(b) of TNEB Employees D&A and any of the punishment awarded after the crucial date but before actual promotion shall also be held against the officer /employee. In view of the above said provision, promotion given to the petitioner was not implemented. Hence, he prayed for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned Standing counsel appearing for the respondents.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was joined as Assistant Engineer (Civil) in Tuticorin Thermal Power Station, on 10.07.2012. It is also not in dispute that the promotion panel was prepared to the post of Assistant Executive Engineer for the year 2019 and based on the suitability report to the post of Assistant Executive Engineer, the petitioner's name was included in the list of promotion vide office proceedings dated 03.09.2019 and promotion was given to the petitioner vide order dated 19.03.2020. However, the said order was not



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implemented on the ground that subsequently charge memo was issued against the petitioner. For better appreciation, the Board proceedings dated 08.01.2013, is extracted hereunder:

““If an employee is not involved in any D.P. or not undergoing punishment at the time of approval of the panel, and if the charges are framed subsequent to the approval of the panel, he could be promoted and punishment if any, should be imposed in the higher post on finalisation of the D.P.”

2) Subsequently, based on the consolidated instructions issued by the Government B.P. has been issued vide reference (2) cited relating to preparation of panel for promotion to higher posts, wherein the following instruction has been issued vide para-1 as below:

“Charges framed under Regulation 8(b) of TNEB Employees D&A and any of the punishment awarded after the crucial date but before actual promotion shall also be held against the officer /employee”.

3) Consequent on the issue of the above instructions, the orders issued in the reference (1)st cited is hereby cancelled.

(BY ORDER OF THE CHAIRMAN CUM MANAGING DIRECTOR)

*R.Srinivasan,
Chief Engineer/Personnel”*



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7. A perusal of the above said Board proceedings make it clear that if an employee is not involved in any D.P. or not undergoing punishment at the time of approval of the panel, and if the charges are framed subsequent to the approval of the panel, he could be promoted and punishment if any, should be imposed in the higher post on finalisation of the D.P. In the present case, the learned Standing counsel referred the order of the Chairman cum Managing Director dated 06.01.2020. However, the fact remains that the charge memo was issued only on 17.08.2020 and prior to that, no charge memo or punishment pending against the petitioner. In the absence of charge memo or punishment, withholding the promotion against the petitioner is not sustainable one. Hence, this Court directs the third respondent to implement the promotion order dated 19.03.2020 within a period of six weeks from the date of receipt of a copy of this order, by giving the post to the petitioner. This order will not stand in the way of the respondents to conclude the departmental proceedings initiated against the petitioner in terms of above Board proceedings dated 08.01.2013, within a period of twelve weeks from the date of receipt of a copy of this order.



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8. In the result, this Writ Petition is allowed with the above terms.

No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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M.DHANDAPANI,J.

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