



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 17345 of 2019

and

W.M.P. (MD) No. 13839 of 2019

M.Udaiyarsamy

... Petitioner

Vs.

The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin - 4.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records in pursuant to the impugned order passed by the respondent in his proceedings Memo No.144/Ni Pi 2/ Assistant . 1/Ko.Pa.Moo.Pa/2018 dated 09.05.2018 and quash the same and consequently direct the respondent to promote the petitioner to the post of Foreman Grade-II on par with his junior and further promote the petitioner to the post of Special Grade Foreman and to grant all attendant and monetary benefits to the petitioner in the cadre of ECG Technician.

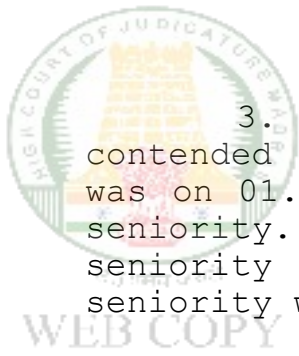
For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.S.Arivalagan

O R D E R

The order dated 09.05.2018 fixing the seniority of the writ petitioner with effect from 01.04.1990 is under challenge in the present Writ Petition.

2. The petitioner was originally engaged as Contract Labourer in the Dozer Section under the control of the respondent on 01.04.1984. He was absorbed in the permanent vacancy with regular time scale of pay with effect from 01.05.1999. Thereafter, the provident fund subscription amount was deducted with effect from 01.04.1995. The probation was declared with effect from 01.08.2000.



3. The learned counsel appearing for the petitioner mainly contended that when the initial appointment of the writ petitioner was on 01.04.1984, the same is to be taken into account for fixing seniority. However, the respondent has erroneously fixed the seniority without considering the initial appointment and granted seniority with effect from 01.04.1990.

4. It is contended that the respondent is not clear about the fixation of seniority and they are going on taking the seniority position of the petitioner and depriving the same from getting promotion to the higher post.

5. This Court is of the considered opinion that, there cannot be any dispute in respect of seniority, as the seniority is to be fixed based on the date of regular appointment into service and in the event of temporary engagement or contract employment, then the date of regularization and permanent absorption must be the point of seniority to be reckoned in respect of the employees. Making more clear, if an employee is appointed through the Recruitment Board in accordance with the recruitment rules and the services were regularised with effect from the date of initial appointment, then such initial appointment is to be taken into consideration for the purpose of fixation of seniority.

6. As far as the casual temporary contract labourers are concerned, the period in which they served as contract temporary labourers cannot be counted for the purpose of seniority, as those contract or casual labourers were not serving in a sanctioned or cadre post. Therefore, the seniority cannot be granted to such employees, who were engaged on contract, casual or daily wages basis, as they do not acquire any right of service, while they are continuing as temporary employees. Only if their services are regularised and permanently absorbed, from such date, the employees may claim seniority.

7. The Competent Authorities are going on creating unnecessary disputes in such matters of fixation of seniority. The Courts are repeatedly held that the temporary employees cannot claim seniority as their initial appointments were not made in accordance with the recruitment rules in force and their appointments were not made in sanctioned or cadre posts. Thus, in respect of those temporary employees whose services were regularised and permanently absorbed in sanctioned post, the date of regularization or permanent absorption shall be the date to be taken into account for the purpose of fixation of seniority. This being the principles settled, the respondent is directed to follow the said principles in accordance with the rules in force. If at all any exception or otherwise is to be granted, the same must be done strictly in accordance with the service rules in force and not in violation of the established principles.



8. The learned counsel appearing for the petitioner in this case states that, the date of seniority is being modified then and there without fixing the correct seniority.

9. Under these circumstances, the respondent is directed to verify the date of regularization and permanent absorption of the petitioner in the sanctioned post and accordingly, fix his seniority, in order to avoid all further disputes. Further, the respondent is directed to correct the seniority of all similarly placed persons, in view of the fact that, in the event of fixing different seniority, again there is a possibility of dispute among those employees and it will lead to approach the High Court unnecessarily by developing multiplicities of proceedings. In order to avoid all such complications, the respondents, who are all Competent Authorities, are bound to ensure that the seniority is fixed in accordance with the Rules in-force and publish the seniority list by providing opportunity to raise objections if any by the employees. Such an exercise is to be done as expeditiously as possible, with the interest of the employees who are all working for long years.

10. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vji

To

The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin - 4.

+1 CC to M/s.M.SARAVANAKUMAR, Advocate (SR-6918[F] dated 17/02/2022)

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