



W.P.(MD)No.16245 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2022

DELIVERED ON : 04.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16245 of 2014

Mr.T.Radhakrishnan

... Petitioner

VS

1. The Chairman cum Managing Director,
Tamilnadu Generation and Distribution
Corporation Ltd.,
144, Anna Salai, Chennai-600 002.
2. The Chief Engineer/Personal,
Tamilnadu Generation and Distribution
Corporation Ltd.,
144, Anna Salai, Chennai-600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records and quash the impugned order of second respondent in Na.Ka.No.009852/32/G55/G552/2014, dated 12.05.2014 and direct the second respondent to treat the petitioner as Junior



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Engineer/Electrical II Grade in the existing vacancies before retirement and to pay all monetary benefits for the same.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

This Writ Petition is filed to quash the impugned order passed by the second respondent dated 12.05.2014 and directing the second respondent to treat the petitioner as Junior Engineer/Electrical II Grade in the existing vacancies before retirement and to pay all monetary benefits.

2. The brief facts of the case are that the petitioner joined as Temporary Casual Labour (TCL) on 16.02.1971 in the Tamil Nadu Electricity Board at Madurai and worked as Foreman First Grade in the Office of Assistant Engineer, Subramaniapuram and on attaining superannuation the petitioner retired on 31.08.2008 after completing unblemished service of 37 years.



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3. The contention of the petitioner is that there were 1,587 vacancies of Junior Engineer / Electrical Grade II for 2007-2008 to be filled up urgently in the Electricity Board. The estimated total vacancies of 1,587 was informed by the Electricity Board Administrative Branch, vide note order, dated 20.09.2007. About 399 posts out of 1,587 total post have to be filled up by appointment by transfer against reserved vacancies for the members in Regular Work Establishment (R.W.E) under Non-Diploma Holders at 3:1 ratio i.e., Diploma Holders vs Non-Diploma Holders. The employees working as Line Inspector or in equivalent posts who joined upto 31.12.1994 in the Regular Work Establishment, who possess a minimum educational qualification of completed S.S.L.C and who possess not less than six years of practical experience in Electrical side in the Board are eligible to be considered for appointment as Junior Engineer/Electrical Grade II. The petitioner is eligible candidate to be appointed by transfer against reserved vacancies for the members in R.W.E. Categories. On 21.01.2008, the second respondent called for list of eligible R.W.E employees, vide letter, dated 21.01.2008. The petitioner's name has been recommended as early as 29.02.2008



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and the petitioner's name is mentioned as Serial No.184 in the merit list and the statement prepared for 783 persons by the second respondent office on 17.05.2008. The Board filled up only 61 Non-Diploma Holders in R.W.E. Categories were selected by short lists for 47 employees on 27.05.2008, for 12 employees on 27.06.2008, for one employee on 22.07.2008 and for one employee on 14.08.2008 appointed as Junior Engineer/Electrical Garde II, before August 2008. The petitioner alleges that gross discrimination in not appointing the petitioner as Junior Engineer/Electrical Garde II, since the petitioner was on the verge of retirement. In the approved panel-merit list, new names have been inserted and selected as Junior Engineer/Electrical Garde II in every month. On 11.08.2008 before retirement, the petitioner submitted a representation to the respondents to consider his grievances early and appoint the petitioner as Junior Engineer/Electrical Grade II. The Union also supported the case of the petitioner. In spite of this, the respondents delayed in filling all the vacancies as such the petitioner's appointment was also denied. Therefore, the petitioner has preferred a writ petition in W.P.(MD)No.7815 of 2008, dated 25.08.2008, before retirement and this Court, vide order, dated 16.12.2013 directed the respondents to consider



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and pass orders. The respondents, vide order, dated 12.05.2014 rejected the petitioner's request stating that the petitioner had already retired and therefore, the petitioner's request cannot be considered.

4. The contention of the petitioner is that if the selection list had been drawn against all the entire urgent vacancies before August 2008 definitely the petitioner's name would be included in the selection list before August 2008 and the petitioner would have been appointed as Junior Engineer/Engineer Grade II well in advance before retirement on 31.08.2008. The petitioner would have got all the monetary benefit including the one year for passing the Account test for Subordinate Officers Part I for the 37 years of sincere service. The second respondent who is the Competent Authority released another selection list for 135 numbers Non-Diploma Holders on 29.12.2008, after abnormal delay from short selection lists already released for 61 numbers from March 2008-August 2008 containing many discrepancies violating instructions etc. One P.Karthikeyan in Serial No.24 in the list dated 29.12.2008, the individuals first entered in the Board service is mentioned as 03.05.1970 and the date of birth is 07.05.1955. If



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the statement is agreed, the said Karthikeyan would have been appointed in the Board Service while he was 15 years which is against the Government law & rules. The Competent Authority has no power to delay the preparation of Merit list, Selection List and release of selection orders. The petitioner has applied under Right to Information. The second respondent has entertained an employee who is not covered under cut-off date, but selected and promoted on the date of retirement day evening as a special post. The respondents ought to have considered the petitioner's case also and ought to have granted promotion prior to his retirement. Since the same was not granted, aggrieved over the same, the present writ petition is filed.

5. The second respondent has filed a counter affidavit stating that as per provision in Annexure-I referred to Regulation 92 of TNEB Service Regulations, one out of every fourth vacancies occurring in the category of Junior Engineer / Electrical Grade II (Non-Diploma) shall be filled in or reserved to be filled on appointment by transfer from employees in Regular Work Establishment who have completed S.S.L.C and who possess practical experience for less than six



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years in the Board. The said TNEB Service Regulation was amended in (Per) B.P. (FB) No.17, Secretariat Branch, dated 05.07.2003 stated that the posts reserved for Regular Work Establishment category shall be filled up from the holders of posts in Foreman Grade I, Line Inspector and equivalent categories under Division IX, Class-III, who are holders of completed S.S.L.C or equivalent qualification and who possess not less than six years of practical experience in Electrical Engineering. The regulation relating to educational qualification shall not apply to the persons appointed under this provisions. As per Regulation 92(e) of TNEB Service Regulation, the principle of rule of reservation will also be applicable for this method of appointment. In the eligible 783 employees list, most of the employees have joined as Line Inspector or equivalent cadre against 01.01.1994 work load posts. Therefore, the effective date of appointment as Line Inspector or equivalent cadre against work load with effect from 01.01.1994 are taken into account for selection to the post of Junior Engineer/Electrical Grade II made during the year 2008. It is submitted that 182 employees in the category of Technical Assistant/Electrical, Diploma Holders of Senior Draughtsman and Draughtsman were given promotion as Junior Engineer/Electrical Grade II in the



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month of May 2008. As per the service regulation 3:1 is followed, 62 employees of Non-Diploma Holders under Regular Work Establishment category were selected to the post of Junior Engineer/Electrical Grade II by Internal Selection on merit basis and as per communal roster on 27.05.2008, 27.06.2008, 22.07.2008 and 14.08.2008 respectively. As alleged by the petitioner there was no discrimination in appointing the petitioner as Junior Engineer II Grade. The cut-off date for the employees belongs to BC Community is 01.01.1994/07.03.1970 (date of first appointment). The petitioner belongs to BC Community and joined as Line Inspector on 01.01.1994, but the date of first appointment is 16.02.1971. The petitioner has not reached the zone of selection on merits. Hence, the petitioner was not considered for the post of Junior Engineer/Electrical Grade II. In the selection made for 135 Non-Diploma Holders, the cut-off date for the employees belongs to BC Community is 01.01.1994/01.02.1971. One B. Karthikeyan belongs to OC Community and joined as Line Inspector on 01.01.1994 and the date of first appointment as TCL is 03.05.1970. Since the petitioner was appointed as TCL on 16.02.1971 and since he has not reached the zone of selection merits, the petitioner was not considered. 391 Diploma holders



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were selected by promotion on December 2008. Simultaneously 135 Non-Diploma Holders from R.W.E category were selected on 29.12.2008, by the time the petitioner has attained superannuation in August 2008 itself. Hence the petitioner was not considered for the Internal Selection. This has been explained in the impugned order and hence the respondents prayed for dismissal of the writ petition.

6. Heard Mr.S.Govindan, learned Counsel appearing for the petitioner and Mr.S.Arivalagan, learned Counsel appearing for the respondents and perused the records.

7. The respondents have issued a letter dated 21.01.2008, wherein, it has been stated in Clause-6 since the panel is required to be drawn urgently, the concern authorities were directed to submit the proposals on or before 29.02.2008. In response to this letter, the Assistant Engineer, Subramaniapuram, has recommended the petitioner's name with a remark that the petitioner is suitable for Junior Engineer/Electrical Grade II post. The contention of the



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petitioner is that if the respondents have considered the entire list prior to August itself, then the petitioner would have come under the zone of consideration. Since the respondents delayed in processing the entire applications and granted promotion in December 2008, that is well after the petitioner's retirement, the petitioner could not get the promotion. The petitioner has applied under Right to Information Act and in reply to the same, vide communication, dated 27.10.2014, it has been stated as under:

“மேற்கண்ட ஒதுக்கீடு செய்யப்பட்ட பணியாளர்களில் திரு.எஸ்.கதிரேசன், வணிக ஆய்வாளர் என்பார் 31.12.2008 அன்று பணி ஓய்வு பெறும் நிலையில் இருந்ததால் பதவி உயர்வு உத்தரவு வழங்கப்பட்டது. மேற்கண்ட பணியாளருக்கு பதவி உயர்வு வழங்கப்பட்டதை மறுக்கப்பட்டதாக ஆகிவிடும் என்பதால் சூழ்நிலை கருதி பணியாளருக்கு பணப்பலன்கள் மற்றும் இதர சலுகைகள் வழங்குவதற்காக சிறப்பு நேர்வாக கருதி மறுதியமன உத்தரவு அன்றைய தினமே வழங்கப்பட்டது என்ற விபரம் தெரிவித்துக்கொள்ளப்படுகிறது.”

It has been stated that the said Kathiresan was granted promotion on 29.12.2008 because the said Kathiresan was on the verge of attaining superannuation on 31.12.2008. If it is delayed, the said Kathiresan would not get any promotional opportunities. Therefore, the said Kathiresan was included in the said panel and



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he was granted promoted as special case. The petitioner relying on this communication and has is claiming that the same treatment ought to have been granted to the petitioner as well.

8. Therefore, this Court is of the considered opinion that the promotion is not a right but considering for the promotion is a right. The respondents ought to have considered the petitioner's case like that of the said Kathiresan. There cannot be any discrimination while considering for promotion. Moreover there was a delay in granting promotion, inspite of vacancies. The respondents ought to have adopted uniformity and ought to have taken into consideration the candidates who are retiring ought to be considered first. It is not new to the respondent's Board to consider any person if they are on the verge of retirement for promotion. The Right to Information communication also confirms the same. Therefore, this Court is of the considered opinion that the respondents ought to have considered the petitioner's case prior to retirement. Hence the respondents are directed to consider the petitioner's case and grant notional promotion. It is made clear that the petitioner is not entitled to any monetary benefits, but shall take this into



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consideration for re-fixing the pensionary benefits. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

9. The respondents ought to have formulated some guidelines to consider this issue so that the respondents can follow uniformity and consider all the candidates who are on the verge of retirement.

10. With the above direction, the Writ Petition is disposed of. No costs.

04.08.2022

Index : Yes / No

Internet : Yes

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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S.SRIMATHY, J

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Pre-delivery Order made in
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