

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.6853 of 2012

K.Baskar

...Petitioner.

Versus

- 1.The Chief Engineer Personal
Tamil Nadu Generation and Distribution Corporation Ltd.,
Chennai.
- 2.The Superintending Engineer
P&A
Mettur Thermal Power Station,
Mettur Dam,
Salem District.

3.N.Murugan

...Respondents.

Prayer: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records of the proceedings of the 2nd respondent in No.015716/202/Nipi.2(1)/2011 dated 11.10.2011 and quash the same.

For petitioner : Mr.A.Sundaravadhanan

For respondents : Mr.David Sundar Singh

[R1 and R2]

ORDER

This writ petition is filed questioning the proceedings bearing No. 015716/202/Nipi.2(1)/2011 dated 11.10.2011 issued by the 2nd respondent altering the seniority in the cadre of drivers, by placing the petitioner at serial No.2 and the respondent No.1 at serial No.1, by altering the seniority that was finalized as early as on 29.06.2006 through a memo No.1032/ADM II (1) of 2006 and to declare the same as illegal and arbitrary.

2. Though notice is served on respondent No.3, as early as on 18.04.2012, no appearance is entered on behalf of respondent No.3. The respondent Nos.1 and 2 filed a counter-affidavit. The admitted facts are that the seniority among the drivers including the petitioner and respondent No.3 herein was finalized through a memo No.1032/ADM II (1) of 2006 dated 29.06.2006 which is extracted hereunder:

ANNEXURE

Refer to the Order Memo No. 1082 Salem-District, dated 28.04.2004

Sl.No	Name and Designation	Date of Birth	Division which now working	Level of pay	Division - Final	Order to which report be done
1	K. Balaji	15.02.1961	CTP-II	DE	CHP-D	REGULARIZATION
2	A. Venkatesh	05.05.1972	General Store	DE	CHP-D	REGULARIZATION
3	S. Subbaraj	27.03.1973	CHP-II	DE	CHP-D	REGULARIZATION
4	J. Balaji	21.04.1977	CHP-D	DE	CHP-D	REGULARIZATION
5	A. Murugan	26.05.1986	CHP-D	DE	CHP-D	REGULARIZATION

SUPERINTENDENT, NERESA,
Salem District, Tamil Nadu

3. While that being so, the impugned proceedings came to be issued by altering the said seniority purportedly basing on an Award dated 13.04.2007 in I.D.No.41/2002 passed by the learned Labour Court, Salem District. Through the said Award the services of 188 contract labourers were directed to be regularized with effect from 01.05.1999 on concluding that all the contract labourers are entitled for regularization consequent upon abolition of the contract labour system with effect from 01.05.1999.

4. As seen from the counter-affidavit filed by respondent Nos.1 and 2, the respondent No.3 herein joined the services of the respondent Nos.1 and 2 on 06.06.2000. However, in terms of the order passed by the

learned Labour Court, the services of respondent No.3 are stated to have been regularized with effect from 01.05.1999. In the light of the categorical factual statement made by respondent Nos.1 and 2 in their counter-affidavit stating that respondent No.3 had joined the services of respondent Nos.1 and 2 only on 06.06.2006, the question of regularization of the services of respondent No.3 from the date anterior to joining the services i.e., with effect from 01.05.1999 is totally illegal and arbitrary.

5. The Award that was passed by learned Industrial Labour Court, Salem District, which is the basis for regularizing the services of respondent No.3 with effect from 01.05.1999 was at the instance of union and principle is only decided therein and individual cases were not the subject matter of the said Award. It is only on deciding the principle that the learned Labour Court directed for regularization of 188 employees with effect from 01.05.1999 on the premise that the contract labour system was established on 01.05.1999. But the respondent while implementing the said Award is an obligation to be seen, the facts of each individual and then consider the cases for regularization but in the instant case, the respondent Nos.1 and 2 appears to have failed to take

note of the fact that the respondent No.3 was not in services of R1 and R2 as on 01.05.1999 but only joined on 06.06.2000 and erroneously appears to have regularized the services of respondent No.3 with effect from 01.05.1999. Thus the respondent No.3 is sought to be placed above the petitioner herein in the impugned seniority list, prepared under the impugned proceedings.

6. Further there is no dispute that the petitioner herein also joined the services of respondent Nos.1 and 2 on 01.05.1999 and assuming that the respondent No.3 is entitled for regularization with effect from 01.05.1999 and in no circumstances, the respondent No.3 can be said to be senior to the petitioner herein who was already in service much prior to the passing of the Award by the learned Labour Court. Thus the action of the respondents in treating the petitioner as well as the respondent No.3 as the persons appointed on the same date and treating the respondent No.3 as senior by taking into consideration the age of him is totally arbitrary in nature and illegal. The source of recruitment for the petitioner as well as respondent No.3 is different and therefore, the respondent No.3 who got the service regularized by virtue of an order of

the learned Labour Court cannot be said to be a senior to the person who was already in service by the date of regularization of the service of the respondent No.3.

7. In addition to the above, before issuing the impugned proceeding, adversely affecting the interest of the petitioner herein, the respondent Nos.1 and 2 have not followed any procedure of placing the petitioner herein on notice and not followed the principles of natural justice. The factual aspects as narrated by respondent Nos.1 and 2 and the petitioner has not contradicted by respondent No.2 and it has chosen not to enter appearance in spite of service of notice.

8. In the circumstances and for the reasons stated above, the impugned proceedings affecting and altering the seniority of petitioner by placing him below the respondent No.3 is illegal and arbitrary and is in violation of Article Nos.14 and 16 of the Constitution of India. Accordingly, the the impugned proceeding is set aside duly restoring the seniority of the petitioner in terms of the memo dated 29.06.2006 and writ petition stands allowed accordingly. No costs.

14.12.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case: Yes/No

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To:

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