



WEB COPY



W.P.No.10820 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.10820 of 2020

S.Muruganandam

...

Petitioner

/vs/

1. The Chairman cum Managing Director,
Tamil Nadu Generation & Distribution,
Corporation (TANGED) 10th Floor,
NPKRR Maaligai, No.144, Annasalai,
Chennai – 600 002.
2. The Joint Managing Director,
Tamil Nadu Generation & Distribution,
Corporation (TANGED) 10th Floor,
NPKRR Maaligai, No.144, Annasalai,
Chennai – 600 002.
3. The Chief Engineer (Personnel),
VIII Floor, NPKRR Maaligai,
No.144, Annasalai,
Chennai – 600 002.
4. The Superintending Engineer,
Peramalur Electricity Distribution Circle,
TANGEDCO Four Road, Durai Mangalam,
Perambalur District – 621212.
5. The Secretary,
Tamil Nadu Generation & Distribution,



W.P.No.10820 of 2020

WEB COPY

Corporation (TANGED) 10th Floor,
NPKRR Maaligai, No.144, Annasalai,
Chennai – 600 002.

6. The Personal Assistant to Chief Engineer (Services),
VIII Floor, NPKRR Maaligai,
No.144, Annasalai,
Chennai – 600 002.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondents, especially the third, fourth and fifth respondents to include the name of the petitioner as S.No.84A below the name of S.No.84, Thiru.R.Madhanagopal and above the name of S.No.85, Thiru.S.Ekanthalingam in the panel of 'Assistant Executive Engineers' for the year 2016-17 dated 29.12.2016 fit for promotion as 'Executive Engineers' with effect from 21.04.2017 with arrears of difference in pay from the said date apart from disbursing the difference in arrears of pay entitled to by the petitioner in the cadre of 'Assistant Executive Engineer' from November 2005 to 20.04.2017, the date of his further promotion as 'Executive Engineer'.

For Petitioner ... Mr.A.Amalraj

For Respondents ... Mr.K.Rajkumar
Standing Counsel for TANGEDCO



W.P.No.10820 of 2020

ORDER

WEB COPY This Writ Petition has been filed for the issuance of a writ of mandamus to direct the third, fourth and fifth respondents to include the name of the petitioner as S.No.84A below the name of S.No.84, Thiru.R.Madhanagopal and above the name of S.No.85, Thiru.S.Ekanthalingam in the panel of 'Assistant Executive Engineers' for the year 2016-17 dated 29.12.2016, as fit for promotion as 'Executive Engineers' with effect from 21.04.2017 with arrears of difference in pay from the said date apart from disbursing the difference in arrears of pay entitled by the petitioner in the cadre of 'Assistant Executive Engineer' from November 2005 to 20.04.2017, the date of his further promotion as 'Executive Engineer'.

2. The petitioner who has been appointed as Assistant Engineer was suspended on 20.09.2005 on some grave charges contemplated against him and that a criminal case is under investigation. However his suspension was revoked by virtue of an order dated 06.10.2016 made in W.P.No.9172 of 2015. Thereafter the petitioner was reinstated in service. In the meanwhile



W.P.No.10820 of 2020

on 09.08.2018 he has been given with promotion to the post of Assistant Executive Engineer. The criminal case pending against the petitioner has also ended in acquittal. However the petitioner was given with a charge memo once again for the same set of charges for which he was kept under suspension. Even though the petitioner was facing the charges, he was denied with further promotion for the post of Executive Engineer by not adding his name in the promotion panel for the year 2016- 2017 and that prompted the petitioner to file this Writ Petition.

3. The learned Standing Counsel for the respondent submitted that the acquittal in the criminal charge cannot act as a bar for initiating criminal action and if any charge is pending, it is always open to the Government to defer the promotion of the employee; the promotion can be given in all cases only on the ground of merit and ability and seniority will be considered when merit and ability are approximately equal; however, in the case on hand the promotion to the post of Executive Engineer being an executing post, the petitioner's pending charges are considered as abiding its merit and ability and hence his name has not been included in the



W.P.No.10820 of 2020

promotion panel; further as per Schedule 11 and Rule 18 and 19 of the Tamil Nadu Government Servants (Conditions and Service Acts), the name of member of service shall not be considered if any adverse remarks is recorded against a member of service in his Annual Confidential Report within a period of five years prior to the crucial date and the promotion or appointment shall be considered only after the disposal of the charges and appropriate orders shall be passed on merits for giving promotion even if the petitioner is exonerated or acquitted from charges and if there is no adverse remarks against him.

4. For the sake of clarity Schedule 11 and Rule 18 and 19 of the Tamil Nadu Government Servants (Conditions and Service Acts) is extracted hereunder:

“(18) The performance of a member of service for promotion or appointment shall be assessed on the basis of the Annual Confidential Report or Record Sheet written for a period of five years prior to the crucial date. If any adverse remarks are recorded against a member of service in the Annual Confidential Report or Record Sheet within a period of five years prior to the crucial date, his name shall not be considered for inclusion in the approved list. Any adverse remarks relating to a period of five years prior to the crucial date which have not been shown



to and acknowledged by the member of service shall be ignored and his name shall be considered for inclusion in the approved list.

(19) The case of a member of service whose promotion or appointment has been deferred on account of any pending charges, shall be reopened after disposal of the charges and appropriate orders shall be passed on merits, either giving him promotion or appointment if he is exonerated or acquitted of the charges and if there is no other adverse factor to be reckoned or denying him promotion or appointment or giving promotion or appointment from a later date, depending upon the nature of punishment and other factors to be reckoned in other cases. In all such cases, the appointing authority shall take suo moto action within fifteen days from the date of issue of final orders in the departmental disciplinary case or criminal case.”

5. The learned counsel for the petitioner cited the judgment of the Hon'ble Supreme Court of India in ***PV.Mahadevan Vs. M.D.Tamil Nadu Housing Board*** reported in ***2005 (4) CTC 403***. The relevant part of the judgment of the extracted hereunder:

“7. The Tribunal, however, held that the memo dated 31.07.1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay inframing the charges and conducting the enquiry against the respondent and that there was no



justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage. This Court, in para 19 has observed as follows:

“It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes



prejudice to the charged officer unless it can be shown that he is not blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations”

8. This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.07.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 01.06.1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.”

6. If the respondent is not concerned about the outcome of the criminal proceedings, there would not have been any bar to issue charge memo subsequent to the suspension of the petitioner. However, no charge memo has been given to the petitioner for several years. After the criminal case was ended in acquittal, once again the same issue has been racked up and the petitioner was charged for the same set of facts for which he was agitating for several years. Having considered the petitioner for earlier promotion for the post of Assistant Executive Engineer, now the fifth respondent had failed to consider the petitioner for further promotion by indicating the very old charge on which a criminal proceeding has been initiated and that also ended in acquittal.



W.P.No.10820 of 2020

WEB COPY

7. It is not the submission of the learned counsel for the petitioner that subsequent to his service in the cadre of Assistant Executive Engineer, the petitioner was facing any adverse remarks in Annual Confidential Report. Even according to the settled principles on promotion, an employee's five years period from the crucial date will be considered for deciding his merit and ability. In the case on hand, when the petitioner was considered for promotion on 09.08.2018, the petitioner's earlier five years period has been considered for his promotion. Unfortunately the petitioner has failed to challenge the charge memo but had chosen to face the charges obediently and that should also be taken into consideration by the respondents.

8. It is not the case of the respondents that the petitioner had faced any charge subsequent to 09.08.2018 from which date he has been promoted to the post of Assistant Executive Engineer. Even according to the Schedule 11 and Rule 18 and 19 of the Tamil Nadu Government Servants (Conditions and Service Acts), the petitioner did not have any adverse



W.P.No.10820 of 2020

remarks for the five years preceeding to the crucial date. In fact the respondents have also not stated that there are any such adverse remarks pending against the petitioner during the relevant period. Hence in all fairness, I feel it is appropriate for the fifth respondent to consider the petitioner for promoting him to the post of Executive Engineer by considering his seniority by placing him in 2016 – 17 promotion panel.

9. At this point of time, the learned Standing Counsel submitted that the petitioner shall not be entitled to any back-wages in the event of his seniority is restored in the promotion panel and he is given with promotion. However, he submitted that “No work no pay” principle has to be invoked and for the period for which the petitioner has not worked in the capacity of Executive Engineer shall not attract the wages.

10. However, the principle of “No work no pay” will stand good only if the fault is upon the petitioner. It has already been observed that the charge memo issued against the petitioner has already lost its value in view of the criminal case ended into acquittal. Hence, I feel that the petitioner is



W.P.No.10820 of 2020

entitled for further promotion as 'Executive Engineer' with all consequential attendant benefits.

11. In view of the reasons stated above, this Writ Petition is disposed and the respondents are directed to include the petitioner's name in the promotion panel of the year 2016-2017 and grant all consequential attendant benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs.

17.10.2023

Index: Yes / No
Speaking order / Non-speaking order
bkn



W.P.No.10820 of 2020

To:

WEB COPY

1. The Chairman cum Managing Director,
Tamil Nadu Generation & Distribution,
Corporation (TANGED) 10th Floor,
NPKRR Maaligai, No.144, Annasalai,
Chennai – 600 002.
2. The Joint Managing Director,
Tamil Nadu Generation & Distribution,
Corporation (TANGED) 10th Floor,
NPKRR Maaligai, No.144, Annasalai,
Chennai – 600 002.
3. The Chief Engineer (Personnel),
VIII Floor, NPKRR Maaligai,
No.144, Annasalai,
Chennai – 600 002.
4. The Superintending Engineer,
Peramalur Electricity Distribution Circle,
TANGEDCO Four Road, Durai Mangalam,
Perambalur District – 621212.
5. The Secretary,
Tamil Nadu Generation & Distribution,
Corporation (TANGED) 10th Floor,
NPKRR Maaligai, No.144, Annasalai,
Chennai – 600 002.
6. The Personal Assistant to Chief Engineer (Services),
VIII Floor, NPKRR Maaligai,
No.144, Annasalai,
Chennai – 600 002.



WEB COPY



W.P.No.10820 of 2020

R.N.MANJULA ,J.

bkn

W.P.No.10820 of 2020

17.10.2023