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W.P.No.14424 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.14424 of 2022

V.Mohan

... Petitioner

Vs.

1.The Chairman cum Managing Director

Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai, Chennai – 600 002.

2.Tamil Nadu Transmission Corporation Ltd.,

(TANTRASCO) Represented by its Managing Director
144, Anna Salai,
Chennai – 600 002.

3.The Chief Engineer / Personnel,

Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai – 600 002.

4.The Superintending Engineer,

Tamil Nadu Generation and Distribution Corporation Ltd.,
Namakkal Circle,
Namakkal.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating 3rd respondent authority's impugned order bearing No. Memo No. 032237/ 493/G.58/ G.582/ 2015- 6 dated 14.02.2022 and quash the same



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as illegal and consequently direct the 3rd and 4th respondent authorities for re-fixing the petitioner's seniority for the post of helper from 10.09.2009 based on BP. No. 45 dated 06.09.2007 and BP.No. 09 dated 23.05.2012 and further revise the petitioner's promotion to the post of Commercial Assistant with all attendant monetary benefits suitably.

For Petitioner : Mr.R.Murali Krishnan

For R1 to R4 : Mr.V.Anand Gopalan
for M/s.T.S.Gopalan & Co.

ORDER

This writ petition has been filed challenging the order of the 3rd respondent, dated 14.02.2022, rejecting the representation of the petitioner, dated 20.12.2021, to re-fix his seniority by promoting him as Helper from 10.09.2009 and consequently to promote him to the post of Commercial Assistant with effect from 03.05.2014 with all attendant monetary benefits.

2.It is the case of the petitioner that, originally he joined the services under the respondent Corporation as Casual Labourer on 01.04.1990 and the petitioner's services were regularized as Mazdoor on temporary basis on 09.09.2007 and the same was confirmed on



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09.03.2008. It is the contention of the petitioner that, since his services were confirmed, the respondent authorities ought to have considered the petitioner's case for promotion as Helper in terms of B.P.No.45, as there existed huge vacancies in the post of Helper in the year 2009. However, the petitioner was promoted to the post of Helper only in the year 2012. It is the grievance of the petitioner that, despite the fact that he was eligible for promotion as Helper in terms of B.P.No.45 and there were vacancies in the said post in the year 2009, the petitioner was promoted only in the year 2012, due to which, he has suffered a loss of seniority by three years. Hence, it is the contention of the petitioner that the in-service seniority has to be re-fixed by promoting him to the post of Helper with effect from 10.09.2009 and consequently, promoting him to the post of Commercial Assistant with effect from 03.05.2014. In this regard, the petitioner submitted a representation dated, 20.12.2021, to the respondent authorities. However, the 3rd respondent, by the impugned order, dated 14.02.2022, has rejected the representation of the petitioner. Challenging the same, the present writ petition has been filed.

3.Learned counsel for the petitioner would submit that, even as per Justice Khalid Commission's Report, the Board has to fill the vacancy



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of Helper by absorption of Contract Labourers and recruitment of I.T.I.

Helpers in the ratio of 1:1 including those appointed as Helper with lesser qualification on compassionate grounds and due to land acquisition for the Board. It is his contention that the Commission's Report has been accepted by the Board and hence, while undertaking the process of promotion to the post of Helper, the promotion ought to have been given in the ratio of 1:1 following the Commission's recommendations. However, the same has not been done in the case of the petitioner and the petitioner has been promoted only in the year 2012. It is his contention that, if the ratio of 1:1 was adopted during the year 2009, the petitioner would have been promoted to the post of Helper in the year 2009 itself and his seniority would have been placed above others. Since the same was not done, the petitioner has lost his seniority and other attendant monetary benefits. Hence, the learned counsel submitted that the impugned order is liable to be set aside.

4.A counter affidavit has been filed, wherein, it is the stand of the respondents that the contract labourers, including the petitioner, were absorbed as per settlement under Section 12(3) of the Industrial Disputes Act, 1947 and thereafter, they have been promoted to the post of Helper



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and subsequently, they were also promoted to the promotional posts and

the petitioner herein was promoted to the post of Commercial Assistant. It

is the stand of the respondents that the petitioner cannot claim seniority on par with the persons who were directly recruited as Helpers in the year 2009, as they possessed requisite qualification at the relevant point of time. It is their stand that the petitioner did not possess the requisite qualification and he was absorbed only as per the Settlement and therefore, he cannot claim seniority or benefits on par with the direct recruits who possessed the requisite qualification. It is their contention that, in any event, the seniority already fixed in the year 2009 cannot be now unsettled after a lapse of 14 years.

5.Heard the learned counsel for the petitioner and Mr.V.Anand Gopalan for M/s.T.S.Gopalan & Co., learned counsel appearing for the respondents 1 to 4.

6.The main issue that arises for consideration in this writ petition is whether the petitioner is entitled to re-fixation of seniority on par with the persons who were directly recruited to the post of Helper in the year 2009.



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7.It is not in dispute that the petitioner was originally appointed as Contract Labourer in the respondent Corporation in the year 1990. Thereafter, as per the settlement reached between the employer and the employees' Union under Section 12(3) of the Industrial Disputes Act, the contract labourers were absorbed and given regularisation from the year 2007. Since the contract labourers were made permanent, it appears that there were some recommendations made by Justice Khalid Commission that a ratio of 1:1 has to be followed among the direct recruits and the absorbed contract employees in the matter of promotion. However, it is the stand of the respondents that the Justice Khalid Commission's recommendations have been modified by a subsequent Settlement dated 10.08.2007. Be that as it may, it is the main contention of the petitioner that, had the ratio of 1:1 been followed at the time of promotion to the post of Helper in the year 2009, the petitioner's seniority would have been placed higher than others. It is relevant to note that the petitioner is competing with the persons who were directly recruited to the post of Helper based on certain qualification, whereas, the petitioner did not possess the requisite qualification at the relevant point of time and their services were regularized only based on a Settlement between the



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employer and the employees. In such view of the matter, when the seniority has already been finalized and promotion has been made in the year 2009, after this length of time, i.e., after 14 years of gap, the seniority cannot be unsettled, even assuming that some mistakes had crept in while fixing the seniority. Hence, in the absence of any objection by the petitioner at the earlier point of time to re-fix the seniority, he cannot seek re-determination of the seniority after a lapse of 14 years. If such claims are entertained by Courts, it will lead to uncertainty in service matters.

8.Hence, I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed for delay and laches. No costs.

20.09.2023
(1/2)

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Internet : Yes
Index : Yes / No
Neutral citation : Yes / No
Speaking order / Nonspeaking order



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N. SATHISH KUMAR, J.
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