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W.P.No.36604 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.36604 of 2016

G. Jayauddin

... Petitioner

Vs.

1.Tamil Nadu Generation and Distribution Corporation Ltd,
Rep. by its Chairman,
144, Anna Salai, Chennai – 2.

2.The Chief Engineer/(Personnel)
TANGEDCO Ltd,
144, Anna Salai, Chennai – 2.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling the entire records connected with the impugned order of the second respondent in Letter No.027298/233/G30/G301/2016-2 dated 30.05.2016 and quash the same and direct the respondents to promote the petitioner as Assistant Accounts Officer notionally w.e.f. 31.03.2009, by extending the benefit of the order passed in W.P.No.28673 of 2010 dated 14.03.2012 and board proceedings in (per) CMD. TANGEDCO Proceedings No.142 dated 2.12.2013 and revise the scale of pay of the petitioner and settle all the consequential terminal pensionary benefits to him.



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For Petitioner : Mr.S.N. Ravichandran
For Respondents : Mr.K. Rajkumar

ORDER

The petitioner herein who had retired from the post of Accounts Supervisor on 31.03.2009, seeks for notional promotion to the post of Assistant Accounts Officer, based on the promotional panel which was approved on 15.05.2009. The claim is based on the case of his junior namely P. Chellan who was granted notional promotion through orders of this Court dated 14.03.2012 passed in WP.No.28673 of 2010. It is stated that the orders passed in the Writ Petition came to be challenged by the respondents in W.A.No.510 of 2013, which came to be dismissed on 09.04.2013 and thereafter, the petitioner's junior was granted notional promotion by the Board's proceedings dated 02.12.2013.

2. The learned counsel for the respondents submitted that the petitioner's junior had retired from service on 31.05.2009 and since the panel was approved even prior to his retirement, the petitioner cannot seek for notional promotion in comparison with the case of P. Chellan since the petitioner had already retired from service on 31.03.2009.



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3. It is a settled proposition of law that mere inclusion of the name of the Government servant will not give him a right to seek for promotion, particularly after his retirement. In the case of '**Union of India & others Vs. N.R. Banerjee & others**' reported in '**(1997) 9 Supreme Court Cases 287**', the Hon'ble Supreme Court had placed reliance on its Constitution Bench decision, as well as other decisions and held that mere inclusion of one's name in the promotional panel list will not confer any right of appointment and does not amount to selection or creation of a vested right to appointment. The relevant portion of the order reads as follows:-

..... *“Considered from that perspective, the question arises: whether the view taken by the Tribunal is justified in law? It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one’s name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In Shankarasan Dash v. Union of India [(1991) 2 SCR 567], the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant*



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recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in arbitrary manner. In Babita Prasad & Ors. v. State of Bihar & Ors. [(1993) Supp. 3 SCC 268] it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In Union Territory of Chandigarh v. Dilbagh Singh & Ors. [(1993) 1 SCC 154] it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In State of Bihar & Ors. v. Secretariat Assistant Successful Examinees Union 1986 & Ors. [(1994) 1 SCC 126] it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary.....”



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4. In this case, apparently P. Chellan was granted with notional promotion to the post of Assistant Accounts Officer with effect from 15.05.2009, the date on which the panel was approved. Since the petitioner's junior P. Chellan was in service as on 15.05.2009, there is no infirmity in the grant of such notional promotion. On the other hand, the petitioner herein had retired on 31.03.2009, which was prior to the date of approval of the promotional panel. Thus, merely because his name was found in the promotional panel earlier, will not give him a right to take the ground of discrimination on par with the employee who was in service at the time of approval of the promotional panel. As such, the grounds raised by the learned counsel for the petitioner cannot be sustained.

5. Accordingly, the Writ Petition stands dismissed. No costs.

24.01.2023

Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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M.S.RAMESH,J.

Sni

To

- 1.The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd,
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- 2.The Chief Engineer/(Personnel)
TANGEDCO Ltd,
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