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W.P.No.22179 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.22179 of 2014
and
W.M.P.Nos.1,2 and 3 of 2014

1. S.Palanisamy
2. K.Murugesan
3. M.Chennakesavan
4. R.Seerangan
5. Bhaarithiya Electricity Employees Federation
Rep. by its General Secretary
Mr.R.Muralikrishnan,
177, 5th main road, Sri Iyyappa Nagar,
Virugampakkam Post,
Chennai - 600 092.

...Petitioners

Vs.

1. The Chairman Cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai- 600 002.
2. The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai- 600 002.



W.P.No.22179 of 2014

3. Tamil Nadu Transmission Corporation Ltd.,
(TANTRANSCO)
Rep. by its Managing Director,
144, Anna Salai,
Chennai- 600 002.
4. The Superintending Engineer,
Namakkal Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Namakkal.
5. The Executive Engineer,
O &M, P.Vellore,
Namakkal Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
P.Vellore, Namakkal District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the entire records pursuant to the order dated 21.07.2004 in Koo.AAa.No.5970/NEEPEE2/NEEVOO2/Koo.Foremen/2014 on the file of the fourth respondent, quash the same and consequently direct the respondents Board not to alter the service conditions of the employees, who were members of the petitioner's union, before, finalizing the issues relating to convergence of different cadre in various categories in the existing double channel promotion as provided in the Section 12 (3) Settlement dated 09.01.2014.



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W.P.No.22179 of 2014

For petitioners : Mr.R.Muralikrishnan
for Mr.G.B.Saravanabhavan
For respondents : Mr.K.Purushothaman
Standing Counsel

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ORDER

This writ petition is filed seeking to issue a certiorarified mandamus, to set aside the order dated 21.07.2014 in Koo.AAa.No.5970/NEEPEE2/NEEVOO2/Koo.Foremen/2014 of the fourth respondent and direct the respondents not to alter the service conditions of the petitioners as provided in the Section 12 (3) Settlement dated 09.01.2014.

2. The petitioners were working in the third respondent Corporation in various cadres. A panel was prepared for promotion as Foreman Grade – I, in which the petitioners names were also included. Accordingly, they were promoted as Foreman Grade – I from the respective feeder categories, as per the proceeding dated 26.06.2013 *vide* Memo No:443/Adm.II/A.2/F,F,M.-IGr./2013 which runs as under:



"A panel of candidates selected for promotion to the post of Foreman-I Grade is communicated to the persons concerned duly indicating the order of priority in which the promotion will be issue to them".

In case if any employee wishes to prefer an appeal against the approve list, they, may prefer an appeal to the undersigned within a period of Two months as prescribed in the BP.MS (FB) No.42) (SB) Dt: 05.04.1983 from the date of communication, falling which the approved list communicated here with shall be deemed as final".

3. However, on 21/7/2014, fourth respondent issued proceedings reverting the petitioners from Foreman Grade I post to their respective feeder posts. Persons who were similarly reverted have approached this Court in W.P.No.19883 of 2014 challenging the reversion orders and this Court, by an order dated 30.11.2020 has set aside the impugned order therein. The petitioners herein have also been seeking for similar relief in this present writ petition.

4. Mr.K.Purushothaman, learned counsel for the respondents



submitted that the promotion that was given on 26.06.2013 *vide* Memo No:443/Adm.II/A.2/F,F,M.-IGr./2013, was only temporary in nature, as there were some issues in respect of seniority of persons eligible to be promoted as Foreman Grade – I. In order to resolve the same, a committee was constituted to consider the issue of seniority. In the meanwhile the petitioners were promoted temporarily by specifically mentioning, in the proceedings that on receipt of the report of the committee, the seniority list will be revised. Accordingly, after the submission of the report, taking into consideration the date of joining as a criterion, the seniority list is revised on account of which, the petitioners were reverted back to their feeder categories.

5. Heard both the sides and perused the materials available on record.

6. The petitioners were promoted as Foreman Grade I on 26.06.2013. As per the Tamil Nadu Electricity Board (TNEB) Service Regulations, any person who wishes to prefer an appeal against his non-



inclusion in the approved list shall file application within a period of three years from the date of communication of the approved list. Rule 97(d) of the of Tamil Nadu Electricity Board Service Regulation which read as thus:

“97(d) application for the revision of the seniority of a person in service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts”.

7. It is submitted by the learned counsel for the respondents that the petitioners were promoted in the year 2013 as Foreman basing on the seniority list prepared in the year 2008. As per the Rule 97 (d), application for the revision of the seniority should have been made within a period of three years, from the year 2008.

8. Furthermore, a Memorandum of Settlement was arrived at between the parties under Section 12(3) of the Industrial Disputes Act, 1947, and it runs as follows:



WEB COPY



W.P.No.22179 of 2014

“3. It is agreed that based on the representations, to avoid hardships, the TANGEDCO agreed not to make any reversion/retrenchment consequent on the present revision of work allocation and staff pattern. Many demands raised by the Unions for creating promotional avenues and formulating staff pattern in non-workload areas will be examined separately”.

9. On going through the proceedings dated 27.06.2013, it is clear that the promotion orders issued are purely on temporary basis and they do not confer on them any right for their further probation, promotion and they will be reverted to their original post at any time without any notice and without assigning any reasons thereof.

10. However, seniority list was originally approved in the year 2008 should not have been canceled or revised and further, the respondents should not have been reverted the petitioners, since the Department has agreed not to revert any employees, as per 12 (3) Agreement. Similarly, date of joining should not have been taken into consideration for promotion however, same



was taken as a criterion for promotion, contrary to 12 (3) Agreement.

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11. Further, according to petitioners, the respondents have reverted the petitioner suddenly without giving any notice, without explaining the reasons and without giving an appointment to explain. In respect of this, the learned counsel for the petitioners has cited a decisions reported in CDJ 2013 MHC 3175, in T.L.Ranganathan Vs. The Inspector General of Police, Chennai & Others, the relevant portion runs as follows:-

“

Since the matter of seniority has been well settled and this Court in Plethora of cases had held that the seniority/promotion granted on the strength of DPC selection should not be unsettled after a lapse of time”

15. *The above principle that once the seniority of the petitioners is well settled, the same should not be unsettled after a lapse of time will equally apply to the case of the petitioners. Therefore, the impugned orders are liable to be set aside.*

16. *Moreover, a reference can be made from the decision of the Apex Court in BIMLESH TANWAR Vs. STATE OF HARYANA AND OTHERS (2003 (5) SCC 604), wherein it has been held thus:*

“Furthermore, it is now well settled that a settled seniority



WEB COPY



W.P.No.22179 of 2014

position should not be unsettled.”

17. The non-issuance of prior notice before passing the impugned order could be well seen in paragraph 13 of the counter affidavit filed by the respondents wherein, they have clearly admitted the fact that the petitioners were not issued prior notice before passing the impugned order. The above admitted mistake of the respondents is per se amounting to violation of principles of natural justice. Time and again, this Court as well as the Apex Court has held that no one should be condemned before being heard. That principle is also violated. Moreover, the second rule that “Audit Alteram Partem” i.e. “hear the other sider” is also flagrantly violated. Therefore, the impugned order passed by the respondents settling the concluded seniority benefits of the petitioner is apparently against the approved rule of fair play and the same is liable to be interfered with.

12. Above all, in W.P.No.19883 of 2014, filed by similarly placed persons was allowed while holding categorically that the reversion of the petitioner there is in violation of the earlier settlement and thereby, the same was set aside.

13. Taking into consideration of Rule 97 (d) of the Tamil Nadu Electricity Board Service Regulation, 12 (3) Settlement and the order passed by this Court in W.P.No.19883 of 2014, this Court is of the opinion that the



W.P.No.22179 of 2014

seniority finalised in the year 2008, should not have been altered on 21/7/2014.

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14. In view of the above, writ petition is allowed, setting aside the impugned order dated 21.07.2004 in Koo.AAa.No.5970/NEEPEE2/NEEVOO2/Koo.Foremen/2014 issued by the fourth respondent. No costs. Consequently, the connected writ miscellaneous petitions are closed.

15.12.2023

vca/mvs.

Index : Yes/No

Neutral Citation : Yes/No



W.P.No.22179 of 2014

WEB COPY

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WEB COPY



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