IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.32953 of 2022
and W.M.P.No.32347 & 32349 of 2022

M.Kumar ... Petitioner

Versus

1. The Chairman-cum-Managing Director
TANGEDCO,
No.144, Anna Salai, Chennai – 600 002

2. The Joint Managing Director
TANGEDCO,
No.144, Anna Salai, Chennai – 600 002

3. The Secretary
TANGEDCO,
No.144, Anna Salai, Chennai – 600 002

4.The Chief Engineer/Personnel
TANGEDCO,
No.144, Anna Salai, Chennai – 600 002

5.N.Mahendran
6.V.Savitha
7.B.Rajeswari
8.V.Rajeswari
9.K.Balakrishnan
10.K.R.Srividhya
11.R.Krishnaswamy
12.C.S.Lakshmanan

13.V.Balasubramanian
14.K.Dhanalakshmi
15.V.Kasi
16.D.Suresh Kumar
17.N.Prabakaran
18.R.Ahila
19.S.Sumathi ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records of the 1st respondent pertaining to 97th Bord Meeting of Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) held on 16.12.2020 in AGENDA S.No.TG-97.28 CE / Per Approving the Issue of Regularization for having given promotion to the post of Accounts Officer during 2005- without passing Accounts officer Test and to quash the same as illegal, arbitrary and not maintainable which violates the TNEB Service Regulations Rules and consequently, direction to the Respondents 1 to 4 to consider the petitioners representation dated 09.10.2021, his seniority may kindly be re-fixed and promote him to the higher posts (AAO to AO AO to DFC DFC to FC and FC to CFC) notionally as and when vacancy arose in the above higher posts and ahead of the disqualified 15 officers/respondents 5 to 19 mentioned above and fix the pay accordingly by following the provisions of TNEB Service Regulations.

For Petitioner : Mr.G.Govarthanan

For Respondents : Mr.K.Rajkumar for R1 to R5
Standing Counsel

Mr.Balan Haridas for R6, 7 & 11

No appearance for R8,9,10,12 to 19

ORDER

This writ petition has been filed challenging the records of the 1st respondent pertaining to 97th Bord Meeting of Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) held on 16.12.2020 in AGENDA S.No.TG-97.28 CE / Per Approving the Issue of Regularization for having given promotion to the post of Accounts Officer during 2005- without passing Accounts officer Test and to quash the same as illegal, arbitrary and not maintainable which violates the TNEB Service Regulations Rules and consequently, direct the Respondents 1 to 4 to consider the petitioner's representation dated 09.10.2021 that his seniority may kindly be re-fixed and promote him to the higher posts (AAO to AO AO to DFC DFC to FC and FC to CFC) notionally as and when vacancy arose in the above higher posts and ahead of the disqualified 15 officers/respondents 5 to 19 mentioned above and fix the pay accordingly by following the provisions of TNEB Service Regulations.

2. The case of the writ petitioner is that the respondents 5 to 9 & 11 were appointed in the year 1997; 10th respondent in 1998 and 12 to 19 were appointed in the year 2000. As per the regulation 95(a) of the TNEB Service Regulation, persons appointed initially as Accounts Officer/Assistant Accounts Officer shall be on probation for a total period of two years on duty from the

date of taking over charges on first appointment within a continuous period of three years and as per Regulation 96(1)(a), officers shall pass the tests or acquire the qualification (Departmental Test for Accounts Officers) within the period of probation, if they are not already passed the test before. Further, Rule 95 (d)(2)(i) stipulates that if the person fails to acquire the special tests, the Board or the appointing authority shall order discharge them from the class of service. Rule 95(d)(2) of Service Regulation makes it clear that order discharging a probationer under clause (i) shall not entitle him to be deemed to have satisfactorily completed his probation. Hence, according to the learned counsel for the petitioner despite the Regulation 95(g) stipulating the maximum period of time within which the departmental test has to be acquired by the probationer is 5 years, the private respondents 5 to 9 were neither issued extension order beyond three years for probation nor issued show cause notice for termination of probation, however, the Board has promoted them to the higher posts without considering the above qualifications. They are tabulated as follows:

Sl. No	Name of the person (All are appointed as Assistant Accounts Officer)	Date of joining in Board Service	Date of Passing the (AO) Special Test	No. of years after whcih test passed.
1.	N.Mahendran	04.12.1997	24.05.2005	7
2.	V.Savitha	17.12.19997	23.12.2004	7
3.	B.Rajeswari	17.12.1997	24.05.2006	8
4.	V.Rajeswari	06.12.1997	23.12.2004	7
5.	K.Balakrishnan	03.12.1997	23.12.2004	7
6.	K.Srividhya	05.06.1998	23.12.2004	6
7.	R.Krishnasamy	22.12.1997	23.12.2006	9
8.	C.S.Lakshmanan	20.07.2000	23.12.2005	5
9.	V.Balasubramanian	19.07.2000	23.12.2003	3
10.	K.Dhanalakshmi	04.08.2000	24.05.2004	3
11.	V.Kasi	02.08.2000	23.12.2004	4
12.	D.Sureshkumar	12.07.2000	23.12.2004	4
13.	N.Prabakaran	22.07.2000	24.05.2005	4
14.	R.Ahila	27.07.2000	24.05.2005	4
15.	S.Sumathi	30.06.2000	23.12.2005	5

3. The petitioner was appointed as Assistant Accounts Officer on 25.08.2003 as in-service candidate. According to him, he completed the Departmental Test for Accounts Officer as prescribed in the Regulation 95(1)(a) during May 1996. Therefore, now the Board has passed a resolution approving the examinations of the private respondents. Therefore, it is the grievance of the

writ petitioner that the private respondents' seniority has to be reverted and the petitioner should be placed above the seniority.

4. The Counter has been filed by the seventh respondent to the effect that she went on Extraordinary Leave for a period of five years from 08.03.2001 to 28.02.2006 for the purpose of taking foreign employment which was sanctioned by the Chief Engineer (Personnel). In the meanwhile, her batch mates got two promotions to Deputy Financial Controller during the year 2004 and she was informed that once she joined back, her name will be reviewed in the ensuing panel. On 01.03.2006, she joined and thereafter, she was promoted as Deputy Financial Controller on 24.09.2008. Subsequently, first respondent vide proceedings dated 29.10.2012 restored the original seniority and by order dated 30.03.2012, she was promoted to the post of Financial Controller and by an order dated 30.12.2021, she was promoted to the post of Chief Financial Controller. Hence, it is the main contention of the respondents that the writ petitioner has filed the writ petition at a later stage which suffers from latches.

5. On perusal of the 95(a) of the TNEB Service Regulation though it

stipulates persons appointed initially as Accounts Officer/Assistant Accounts Officer shall be on probation for a total period of 2 years on duty from the date of taking over charges shall complete Departmental Test within the period of probation. The fact remains that the private respondents completed departmental examinations only after three years. Regulation 95(g) of the Service Regulation makes it clear that that if the person has not acquired the test qualification, even within the maximum period of five years, his probation shall be terminated. However, no such action has been taken by the official respondents as per the Regulation 95(g). Regulation 95(5) makes it clear that any such qualifications has already been acquired, the Board can consider the same and take a decision that specific qualification need not be acquired once again. The relevant Agenda in 97th Board Meeting dated 16.12.2020 is as follows:

TG-97.28 CE/Per.	**Personnel**: Establishment – Administrative Branch Class I Service – Issue of regularisation for having given promotion to the post of Accounts Officer during 2005 – without passing Accounts Officer Test – Approval Requested for Regularize. Approval of the Board requested.

6. The Board has also approved the qualification acquired by the private respondents by the above Board Meeting. Be that as it may, though the private respondents have not passed the accounts test as per the Regulations of

maximum period of 5 years, the Board has not taken any action as per the Regulations and in fact, they have been given further promotions and later they have been allowed to complete the departmental test ranging from 2004-2005, that has been taken into consideration and subsequently, the promotion was given to the private respondents as Chief Financial Controller on 30.12.2021. It is relevant to note that the petitioner has gone to the cadre of the Assistant Accounts Officer only in the year 2003, wherein, the private respondents had already joined the service during the year 1997. Though there are some violations in Regulations, the Board has approved the same at a later stage and the promotion has also been given.

7. Such view of the matter, any seniority issue ought to have been claimed by the petitioner within a period of three years as per the Regulation 97(d) which would read as follows:

"...97

...

(d) Application for the revision of seniority of a person in a science, 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 order 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."

8. Therefore, when there is a specific time limit to challenge the seniority, now, the petitioner cannot question the same at a later stage. It is further to be noted that when the official respondents themselves had not taken any action and allowed the private respondents to continue in service, extended the benefits and even regularized the delay in acquiring account tests, at this stage, the petitioner cannot challenge the same and the writ petition suffers from latches.

9. Accordingly, I do not find any merits in the case and this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

01.09.2023

dhk
Internet: Yes/No
Index : Yes/No
Neutral Citation : Yes/No

N. SATHISH KUMAR, J.

dhk

To

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(1/2)