



W.P.(MD)No.5383 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.5383 of 2018
and
W.M.P.(MD)No.5329 of 2018**

R.Venkatesan

... Petitioner

Vs.

1. The Tamil Nadu Generation and Distribution Corporation Limited,
Represented by its Chairman-cum-Managing Director,
No.144, Anna Salai,
Chennai - 600 002.
 2. The Secretary,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.
 3. The Chief Engineer (Personnel),
Administrative Branch,
TANGEDCO,
N.P.K.R.R. Maligai,
No.144, Anna Salai,
Chennai - 600 002.
- ... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Memo No.031379/1346/F.1/F.12/2017, dated 08.12.2017 and the consequential order in Office order No. 164/F.1/F.12/2018, dated 07.02.2018 on the file of the third respondent and quash the same as illegal and consequently to direct the respondents to revise the seniority of the petitioner in the post of Junior Auditor with effect from 12.08.2016 by calculating the period of probation in the post of Junior Auditor for the petitioner with effect from 12.08.2016 and award further promotion to the post of Auditor on par with others brought to the Audit Branch in pursuance to the internal selection orders vide O.O.No. 1242/F1/F12/2016, dated 03.08.2016.

For Petitioner : Mr.S.Louis

For Respondents : Mrs.M.Parameswari

ORDER

This Writ Petition has been filed to call for the records of the impugned order in Memo No.031379/1346/F.1/F.12/2017, dated 08.12.2017 and the consequential order in Office order No.164/F.1/F.12/2018, dated 07.02.2018 passed by the third respondent, quash the same as illegal and consequently, direct the respondents to revise the seniority of the petitioner



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in the post of Junior Auditor with effect from 12.08.2016 by calculating the period of probation in the post of Junior Auditor with effect from 12.08.2016 and award further promotion to the post of Auditor on par with others brought to the Audit Branch in pursuance to the internal selection orders vide O.O.No.1242/F1/F12/2016, dated 03.08.2016.

2. The case of the petitioner is that he joined as Assessor Grade-II on 17.09.2009 in TANGEDCO and posted at Srirangam Section, AE/O&M/Srirangam Division/Trichy EDC and thereafter, he was promoted as Assessor in Srirangam Division. While so, the Chief Engineer (Personnel) published the communication in Letter No. 021983/99/G56/G561/2015-1, dated 14.01.2016 calling for applications in various categories of TANGEDCO to fill up the vacant post of Junior Auditor by transfer. As per the conditions, the petitioner had requisite qualification of B.Sc., (Chemistry) and he applied for the post of Junior Auditor. He was selected among with others from various offices of TNEB to the post of Junior Auditor in Audit Branch of TNEB and he joined duty as Junior Auditor at the office of the Deputy Chief Internal Audit Officer,



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Trichy Region on 12.08.2016. In the meanwhile, the Chief Engineer (Personnel), vide proceedings dated 18.11.2016 addressed to the third respondent stated that all the 45 Junior Auditors were surplus and they need to exercise their option to work as Junior Assistant in Secretariat Branch / Administrative Branch or revert back to their parent circle as Assessor. Pursuant to the same, the third respondent has sent the consequential communication vide proceedings dated 21.11.2016 calling upon the petitioner to give his willingness to work as Junior Assistant in Secretariat Branch / Administrative Branch or revert back to the parent circle as the Assessor on or before 28.11.2016. The petitioner has given a letter dated 26.11.2016 requesting for a further period of 15 days to respond to the said communication dated 21.11.2016. In the meanwhile, without taking any willingness from the petitioner, the third respondent cancelled his appointment to the post of Junior Auditor and immediately passed the consequential relieving order dated 03.12.2016. However, similarly situated persons like that of the petitioner have approached this Court in W.P. (MD)Nos.23538 of 2016 etc., batch of Writ Petitions and obtained an order of interim stay of the impugned orders therein continued in the same post of



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Junior Auditors. Similarly, the petitioner has filed a Writ Petition in W.P. (MD)No.758 of 2017 and obtained an interim order of stay and he was allowed to join duty as Junior Auditor only on 30.06.2017.

3. It is further stated that, all those who came to the Audit Branch as Junior Auditors along with the petitioner with the same internal selection order dated 03.08.2016, are now promoted as the Auditor whereas, the petitioner alone retained till date as Junior Auditor. Hence, he made a request to the respondents to consider him on par with others who came along with him to the Audit Branch by giving him seniority in the post of Junior Auditor with effect from the date of joining, i.e., 12.08.2016. But without considering his request, the third respondent has passed the impugned order dated 08.12.2017 rejecting his claim that he has not completed his probation. Subsequently, the third respondent has issued the consequential impugned order of declaration of probation vide order dated 07.02.2018 stating that the probation of the petitioner in the post of Junior Auditor commenced only from 30.06.2017 to 31.12.2017. But the petitioner is entitled to be counted for probation from 12.08.2016 to 11.02.2017.



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Hence, the impugned orders are non-est in law and on the sole ground the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner would submit that admittedly the petitioner has joined duty on 12.08.2016 as Junior Auditor vide proceedings dated 03.08.2016, however, the same has not been taken into consideration for declaring the probation, since the probation was declared from 30.06.2017 is non est in law and the same is contrary to the order of this Court in W.P.(MD)No.758 of 2017. Accordingly, he prayed for allowing the Writ Petition.

5. Per contra, the learned counsel appearing for the respondents would submit that admittedly the petitioner was promoted to the post of Junior Auditor purely on temporary basis and subsequently, the third respondent has issued the consequential order dated 03.12.2016 cancelling his appointment to the post of Junior Auditor. Though similarly situated persons have filed Writ Petitions challenging the cancellation order in the year 2016 immediately after the issuance of the relieving orders, however,



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the petitioner has not challenged the same at that point of time. He approached this Court only in the year 2017 taking his own sweet time. The reasons for approaching this Court belatedly has not been explained anywhere. However, in order to grant benefits to similarly situated persons, the petitioner was also given appointment to the post of Junior Auditor and he joined in the said post on 30.06.2017 and therefore the said date has been taken into consideration for declaring probation. Therefore, the impugned probation order passed in favour of the petitioner is not illegal or contrary to regulations. Further the petitioner was also given promotion to the post of Auditor on 13.04.2018. Hence, the prayer sought for in the Writ Petition has become infructuous. Accordingly, she prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly the petitioner entered into service in the year 2009 as Assessor Grade II and thereafter, he was promoted to the post of Assessor. Since the Assessor post



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is feeder category to the post of Junior Auditor, he was temporarily promoted as Junior Auditor on 12.08.2016 and subsequently, the same was cancelled on 03.12.2016.

8. It is also an admitted fact that the petitioner has not joined hands with similarly placed persons who had challenged the 2016 relieving order immediately after the issuance of such orders and had challenged the consequential order dated 03.12.2016 belatedly i.e., only in the year 2017. Thereafter, the petitioner has approached this Court and obtained an interim order in W.P.(MD)No.758 of 2017 and in pursuance to the same, he was allowed to join duty as Junior Auditor only on 30.06.2017 and the said joining date is taken into consideration for calculating the probation period. The probation period was declared from 30.06.2017 to 31.12.2017 by impugned consequential order dated 07.02.2018, which, in the considered opinion of this Court is not illegal or untenable. Subsequently, the petitioner was given promotion as Auditor on 13.04.2018. Hence, the prayer sought for in the Writ Petition cannot be granted.



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9. Accordingly, this Writ Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

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No.144, Anna Salai,
Chennai - 600 002.
2. The Secretary,
Tamil Nadu Generation and Distribution Corporation Limited,
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