



W.P.(MD) No.18579 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.09.2023

ORDERS PRONOUNCED ON : 20.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.18579 of 2016

1.D.Ganesh (Died)
2.Sornam
3.Subha
4.Suresh

... Petitioners

*[Petitioners 2 to 4 substituted vide order dated
17.08.2023 in W.P.(MD) No.18579 of 2016]*

Vs.

1.The Chairman,
M/s.Tamilnadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
144, Anna Salai, Chennai-600 002.

2.The Chief Engineer/Personnel,
Tamilnadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
144, Anna Salai, Chennai-600 002.



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3. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamilnadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
Tirunelveli-11, Tirunelveli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondents to give notional promotion to the petitioner to the post of Junior Engineer/electrical I Grade with effect from the date when it was due and consequentially to pay the amount due to the petitioner and to revise his retirement and pensionary benefits accordingly.

For Petitioners 2 to 4: Mr.V.Kannan

For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

This writ petition is filed seeking Writ of Mandamus, directing the respondents to give notional promotion to the 1st petitioner to the post of Junior Engineer/Electrical I Grade with effect from the date when it was due and consequentially to pay the amount due to the 1st petitioner and to revise his retirement and pensionary benefits accordingly.



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2. During the pendency of this writ petition, the 1st petitioner died and his legal representatives were brought on record as Petitioners No.2 to 4.

3. Heard Mr.V.Kannan, learned counsel for the Petitioners No.2 to 4 and Mr.S.Arivalagan, learned Standing Counsel appearing for the respondents and perused the material available on record.

4. The case of the Petitioners No.2 to 4 is that the 1st petitioner was recruited directly through Employment Exchange and appointed in the post of Helper by the proceedings of the Chief Engineer/Personnel and allotted to Tirunelveli Electricity System. On 29.04.1987, he reported for duty before the Assistant Divisional Engineer. Meter and Relay Tests, Thalayuthu as directed by the Superintending Engineer, Tirunelveli. He was promoted to the post of Commercial Assistant with effect from 01.02.1991 and then he was promoted to the post of Commercial Inspector with effect from 03.04.1995 and was transferred and posted in the office of the Assistant Engineer (Distribution), Manoor. He was further promoted to the



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post of Foreman with effect from 19.09.2002 and was transferred and posted in the office of the Assistant Engineer (Distribution), Vannikonanandal. Then he was transferred and posted in the office of the Assistant Engineer/Distribution, Palayapettai. He was further promoted to the post of Junior Engineer Grade-II with effect from 14.05.2009 and was transferred and posted in Sub Station, Manoor.

5. The next avenue for promotion is to the post of Junior Engineer Grade-I. The posts of Assistant Engineer and Junior Engineer Grade-I are interchangeable and the scale of pay is also the same. The Chief Engineer/Personnel sent a list consisting Junior Engineers/Electrical II Grade to all the Superintending Engineers and by his proceedings under Letter No.061885/387/G-1/G.12/2011-3, dated 27.12.2011 called for suitability report and remarks in respect of the said listed persons to prepare the panel to fill up the existing and anticipated vacancies of Junior Engineer/Electrical I Grade fixing the crucial date 25.03.2010. Similar letters were sent on 03.12.2013 and 29.01.2014.



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6. The further case of the Petitioners No.2 to 4 is that after an inordinate delay, the panel for promotion was approved only on 11.11.2015 and the 1st petitioner's name found place in the said approved list. Though the legal proceedings against the Board in respect of the said post of Junior Engineer/Electrical I Grade was cleared on 27.04.2016, but citing the code of conduct in connection with the assembly election, there was a further delay in publishing the promotion list. Therefore, the 1st petitioner made a representation on 26.05.2016 to the respondents to promote him by releasing the promotion list for the post of Junior Engineer/Electrical I Grade immediately enabling him to retire from service on attaining the age of superannuation on 31.05.2016. But, no promotion order was given till the 1st petitioner was allowed to retire from service on attaining the age of superannuation. The Chief Engineer/Personnel by his proceedings dated 30.06.2016 and 02.07.2016 promoted Junior Engineers/Electrical II Grade, who have been selected for promotion to the post of Junior Engineers/Electrical I Grade and directed the Superintending Engineers concerned to issue appointment on promotion to those persons.



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7. The Petitioners No.2 to 4 further submits that though the 1st petitioner was eligible for the said promotion, no order of promotion was issued to him till his retirement. Therefore, the 1st petitioner made another representation on 24.08.2016 requesting to give notional promotion to the post of Junior Engineer/Electrical I Grade and consequentially to pay the amount due to the 1st petitioner and to revise his retirement and pensionary benefits. Since no action was taken by the respondents, the 1st petitioner filed this writ petition.

8. Learned counsel for the Petitioners No.2 to 4 contends that treating persons from same cadre differently, denying equal protection of law and equality, is violative of Article 14 of the Constitution of India. Further, the act and omission of the officials in not issuing the order of promotion in time is not only against the interest of the petitioner, but also against to the concept of justice and prays for allowing the writ petition.

9. A counter affidavit has been filed by the 3rd respondent on behalf of the respondents.



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10. It is averred in the said counter affidavit that the 1st petitioner was working as Junior Engineer/Electrical II Grade and the next avenue for promotion to the 1st petitioner ought to be Junior Engineer/Electrical I Grade. Suitability reports of 392 Junior Engineers/Electrical II Grade were called for *vide* letter of the Chief Engineer/Personnel, dated 03.12.2013 fixing the crucial date as 25.03.2013. But, after receipt of the above particulars, the panel could not be finalized due to order of *status quo* in W.P.No.1871 of 2014 filed by some of the Junior Engineers/Electrical II Grade. The said writ petition was disposed of on 10.07.2015. Thereafter, 205 Junior Engineers/Electrical II Grade were selected for promotion to the post of Junior Engineer/Electrical I Grade, which was approved by the Chief Engineer/Personnel *vide* his Memo No.60296/290/G1/G11/2015-65, dated 11.11.2015.

11. It is further averred in the counter affidavit that in the meanwhile, some of the diploma holders in the RWE category were promoted to the post of Junior Engineer/Electrical II Grade based on the orders in W.P.No.43061 of 2002. Based on their seniority, suitability reports



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of 50 Junior Engineers/Electrical II Grade were called for *vide* letters dated 28.05.2012, 17.08.2012 and 22.08.2012, since their juniors were already promoted as Junior Engineer/Electrical I Grade. Thereafter, selection list of 30 Junior Engineers/Electrical II Grade was issued by the Chief Engineer/Personnel *vide* his Memo No.88345/330/G.1/G.2(2)/2015-3, dated 11.11.2015 based on the judgment and order dated 22.06.2015 and 10.07.2015 in W.A.Nos.1571 to 1575 of 2012 and W.P.No.1871 of 2014 respectively.

12. It is further averred that one Thiru.Mohammed Raffi and others filed a writ petition in W.P.(MD) No.20714 of 2015 against the above said two selection lists of Junior Engineers/Electrical I Grade issued by the Chief Engineer/Personnel. Another writ petition was filed by one Thiru.Iruthayaraj and others in W.P.No.36838 of 2015 against the selection list issued *vide* Memo No.88345/330/G.1/G.1(2)/2015-3, dated 11.11.2015. This Court by its order dated 20.11.2015 granted an order of interim stay. Later, this Court by its order dated 27.04.2016, vacated the interim stay granted on 20.11.2015 subject to the condition that in the event of success



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in the writ petition, the petitioners may be appropriately considered for their promotion by keeping seven posts vacant.

13. Learned Standing Counsel for the respondents submits that after vacation of the stay granted on 20.11.2015, allotment orders were issued to the selected Junior Engineers/Electrical II Grade on 30.06.2016 and 02.07.2016. Though the 1st petitioner's name was included in the panel for promotion to the post of Junior Engineer/Electrical I Grade, approved on 11.11.2015, he could not be promoted, since he was already retired from service on 30.05.2016 on attaining the age of superannuation and prays for dismissing the writ petition.

14. This Court gave anxious consideration to the submissions made by the respective counsels and carefully examined the material placed on record.

15. It is an admitted fact that the 1st petitioner's name was included in the panel for promotion to the post of Junior Engineer/Electrical I Grade



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and the same was approved on 11.11.2015 by the competent authority. But, as per the contentions of the respondents, he could not be promoted, since he had already retired from service on 30.05.2016 on attaining the age of superannuation. The averments made in the counter affidavit reveal that the 1st petitioner does not suffer any disqualification and he was in the zone of consideration for promotion.

16. Learned counsel for the Petitioners No.2 to 4 also fairly submits that due to the reason that the 1st petitioner was retired on 30.05.2016, his name was not considered for the promotion basing on the panel approved on 11.11.2015. It appears, there is no any justification to deny promotion to the 1st petitioner, inspite of the admitted fact that he was fully qualified for such promotion and as on the date of approval of the panel, i.e., on 11.11.2015, the 1st petitioner was very much in service. The respondents, at least, ought to have considered the representation submitted by the 1st petitioner on 24.08.2016 and nothing prevented them to consider the said representation, wherein he sought for the relief of notional promotion and consequential monetary benefits. It is very unfortunate to

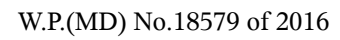


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note that the said representation was not at all considered during the life time of the 1st petitioner.

17. Learned counsel for the Petitioners No.2 to 4 placed a copy of the order dated 13.12.2019 in W.P.(MD) No.13585 of 2015 in support of his contention. On perusal of the same, in the opinion of this Court, the said order was passed in identical circumstances arise in the present case. This Court, while allowing the said writ petition, relied on the order in W.P.(MD) No.28673 of 2010 and W.P.No.27273 of 2010. As the writ appeals filed against the said orders were dismissed, the said orders have become final. In these three writ petitions, this Court categorically held that deprivation of the benefit of promotion to a person is wholly unjustified and ordered for notional promotion and for monetary benefits.

18. In the considered opinion of this Court, the orders passed by this Court in the writ petitions mentioned in the above paragraph are squarely applicable to the 1st petitioner in this writ petition. As and when the similarly situated persons were given notional promotion and monetary



19. Learned counsel for the Petitioners No.2 to 4 also placed a copy of a Memo No.25/54/Adm.2/A.1./F.FM/2012, dated 09.11.2012 issued by the third respondent, wherein similarly situated employees were granted notional promotion after their retirement. The relevant portion of the memo is extracted hereinunder:

“In accordance with the orders passed by the Honorable High Court/Madras on 08.02.2011 in WP.No. 23057/2010 and with reference to Memorandum (Per) No.063258/606/G.46/G.462/2010-1, dated 18.09.2010, the following Foreman-I Grade who retired from Board's Service on attaining the age of superannuation have been notionally promoted as Special Grade Foremen as on 30.11.2010 (ie) on the retirement date of the Junior in the seniority list.”

20. On perusal of the said memo, it is clear that two persons, who worked as Foremen-I Grade, who retired from service on attaining the age



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of superannuation, had been promoted as Special Grade Foremen as on 30.11.2010, i.e., on the retirement date of the junior in the seniority list. It is also mentioned in the said memo that their pay will be fixed in the notionally promotion post as on 30.11.2010 and consequential retirement benefits will be admitted.

21. In view of the above, it appears that in several cases, the respondents have considered to grant notional promotion and monetary benefits after their retirement, basing on their eligibility for promotion at the relevant point of time, i.e., before their retirement. Therefore, there cannot be any different treatment to the petitioner. Otherwise, it violates Article 14 of the Constitution of India.

22. For the above said reasons, this Writ Petition is allowed with the following directions:

- i. The respondents are directed to give notional promotion to the 1st petitioner and pay the consequential monetary benefits with effect from 11.11.2015, i.e., the date on which the panel was approved with



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all other attendant benefits; and

- ii. The above said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

23. There shall be no order as to costs.

20.10.2023

Note: Issue order copy by 26.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1.The Chairman,
M/s.Tamilnadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
144, Anna Salai, Chennai-600 002.

2.The Chief Engineer/Personnel,
Tamilnadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
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3.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamilnadu Generation and
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(TANGEDCO),
Tirunelveli-11, Tirunelveli District.



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BATTU DEVANAND, J.

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Pre-delivery Order made in
W.P.(MD) No.18579 of 2016

20.10.2023