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WA.No.3022 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

WA.No.3022 of 2021
and
CMP.No.20710 of 2021

R.Bhagavathi Ammal
Private Secretary
Office of the Member Distribution
Tamil Nadu Electricity Board
No.144, Anna Salai
Chennai-600 002.

... Appellant

Vs.

1. Tmt.Gracy Darling
2. Tamil Nadu Electricity Board
Rep. by its Secretary,
Secretariat Branch,
Tamil Nadu Electricity Board
No.144, Anna Salai, Chennai-600 002.
3. The Chairman
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.
4. The Deputy Secretary (Personnel)
Secretariat Branch,
Tamil Nadu Electricity Board,
No.144, Anna Salai, Chennai-600 002.



WEB COPY



WA.No.3022 of 2021



WA.No.3022 of 2021

5. S.B.Selvi
6. S.Usha Rani

... Respondents

Prayer: Writ Appeal filed under Clause 15 of The Letters Patent, praying to set aside the order dated 04.10.2021 passed in WP.No.9410 of 2009 and allow the Writ appeal.

For Appellant : Mr.A.Jinasenan
For Respondents : Mr.Balan Haridas for R1
Mr.K.Rajkumar
Standing Counsel (TANGEDCO)
for R2 to R4
No Appearance for RR5 & 6

JUDGMENT

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The present intra-Court appeal on hand has been instituted challenging the writ order dated 04.10.2021 passed in WP.No.9410 of 2009. The 4th respondent in the writ petition is the appellant before us. The first respondent instituted the writ petition challenging the proceedings dated 18.04.2009 issued by the Secretariat branch of TANGEDCO revising the seniority of the first respondent by placing her below the name of the appellant herein. Perusal of the proceedings dated 18.04.2009 would reveal that both the writ



WA.No.3022 of 2021

appellant and the first respondent submitted representations on various dates and such representations were taken into consideration for deciding the seniority between the appellant and the first respondent. Considering the claim of the appellant, the TANGEDCO Secretariat branch placed the name of the appellant above the first respondent in the Seniority list, which resulted in institution of the writ proceedings.

2. The learned counsel for the appellant Mr.A.Jinasenan would contend that the writ appellant no doubt was appointed to the post of Steno Typist/Personal Clerk on 12.02.1999 and the first respondent Smt.Gracy Darling was appointed in the same post on 21.10.1995. However, the appellant acquired the requisite qualification of Shorthand Senior Grade-English in 2003 and the first respondent has not cleared the said requisite qualification. Though the first respondent was not qualified for promotion to the post of Personal Assistant, she was promoted on 30.06.2004 along with the appellant with a condition that the first respondent should acquire Shorthand Senior Grade-English within a period of two years on or before 29.06.2006. Therefore, the promotion of the first respondent was a conditional promotion granted by the respondents. But the appellant was fully qualified to hold the post of Personal Assistant as on 30.06.2004, since she



WA.No.3022 of 2021

possessed requisite qualification of Shorthand Senior Grade-English in the year 2003 itself.

3. It is brought to the notice of this Court that the first respondent-Smt.Gracy Darling has not acquired the essential qualification of Senior Grade in English even today. However, TANGEDCO withdrew the condition imposed on 30.06.2004.

4. The next avenue for promotion is to the post of Private Secretary. The appellant was promoted to the post of Private Secretary on 03.12.2010 on regular basis. But the first respondent was promoted to the post of Private Secretary in the year 2013 on regular basis. Therefore, the appellant became senior to the first respondent in the post of Private Secretary. The post of Private Secretary is the feeder category for further promotion to the post of Additional Senior Private Secretary. The appellant was promoted to the post of Additional Senior Private Secretary on regular basis on 20.09.2016. But the first respondent was promoted to the post of Additional Senior Private Secretary on 06.05.2021 based on the order passed by this Court in WP.No.13796 of 2020 dated 05.02.2021. It is amply clear that the appellant became senior to the first respondent both in the post of Private Secretary and Additional Senior Private Secretary. The further promotion is to the post of



WA.No.3022 of 2021

Senior Private Secretary. Since the Appellant became senior to the first respondent in the post of Additional Senior Private Secretary, her name was considered and she was promoted to the post of Senior Private Secretary on 04.07.2019 on regular basis. The first respondent is now working in the cadre of Additional Senior Private Secretary, which is the feeder category to the post of Senior Private Secretary. It is admitted that the first respondent has not been promoted to the post of Senior Private Secretary.

5. The impugned order in the writ petition dated 18.04.2009 would reveal that the appellant was fully qualified and possessed the requisite qualification of Shorthand Senior Grade English in the year 2003. But the first respondent has not possessed the said qualification even today. The TANGEDCO granted exemption from passing the requisite qualification in favour of the first respondent with effect from 01.07.2006. The withdrawal of condition will have prospective effect. Therefore, the first respondent was promoted to the post of Private Secretary later on in the year 2013, subsequently after the promotion of the appellant to the post of Private Secretary on 03.12.2010. This aspect was considered by TANGEDCO by stating that the exemption granted in favour of the first respondent will have prospective effect and the appellant possessed the requisite qualification in the



WA.No.3022 of 2021

year 2003 itself and accordingly, the seniority of the appellant was upgraded and she was placed above the name of the first respondent.

6. Mr.Balan Haridas, learned counsel appearing on behalf of the first respondent would oppose by stating that as per the Regulation 97A, no person shall be eligible for appointment to any class of service, category or grade or any post borne on the cadre thereof unless he possesses such special qualification and has passed such special test as may be prescribed in that behalf in these Regulations. In cases where the Regulations prescribe a period of practical or other experience in addition to educational/technical qualifications, for an appointment, such a period of practical or other experience, as the case may be, should have been acquired after obtaining the educational or technical qualifications prescribed for such appointment, unless and otherwise specified in the Regulations.

7. In our opinion, the said clause may not have application with reference to the factual matrix on hand. The Regulation referred by the first respondent is relating to practical or other experiences in addition to educational/technical qualifications. However, in the present case, the first respondent has not possessed the requisite educational qualification of Shorthand Senior Grade in English. It is the post of Personal Assistant, Private



WA.No.3022 of 2021

Secretary, Additional Senior Private Secretary and Senior Private Secretary.

Therefore, Shorthand Senior Grade in English is the essential qualification for appointment or promotion. Even now, the first respondent has not possessed the requisite qualification of shorthand Senior Grade in English. That being the factum, the promotion granted to the first respondent by relaxing the essential qualification of Shorthand Senior Grade in English itself is a concession granted by TANGEDCO during the relevant point of time. In the post of Private Secretary, the appellant was promoted on 03.12.2010, but the first respondent was promoted in the year 2013. Thus, the first respondent became junior to the appellant even in the cadre of Private Secretary. Further, in the cadre of Additional Senior Private Secretary, the appellant was promoted on 20.09.2016 and the first respondent was promoted on 06.05.2021 pursuant to the order passed in WP.No.13796 of 2020. Therefore, both in the cadre of the Private Secretary and Additional Senior Private Secretary, the first respondent became junior to the appellant and based on the seniority in the feeder category, the appellant was further promoted to the post of Senior Private Secretary. That being the case, the appellant remained senior in two feeder categories and she got her regular promotion to the post of Senior Private Secretary with effect from 04.07.2019 on regular basis. But the first



WA.No.3022 of 2021

respondent is yet to be considered for promotion to the post of Senior Private Secretary.

8. The governing legal principles for promotion and seniority are that:-

1. Promotion *per se* cannot be claimed as an absolute right by an employee.
2. Consideration for promotion is a fundamental right of an employee.
3. All promotions are to be considered strictly in accordance with the Service Rules in force.
4. After taking an Administrative decision by the Competent Authorities, a panel must be prepared considering the names of all the eligible employees, who all are waiting to secure promotion in the order of seniority.
5. Granting exemption of essential qualification is an exception and in violation of Rules.

9. With reference to the principles, the seniority of the appellant was placed above the name of the first respondent in the cadres of Private Secretary and Additional Senior Private Secretary. That being the factum, the case of the appellant was rightly considered by TANGEDCO, Secretariat Branch and we do not find any infirmity in respect of the revision of seniority effected in proceedings dated 18.04.2009.



WA.No.3022 of 2021

10. The Writ Court though considered all the facts has not crystallised the principles to be adopted in the matter of consideration of seniority with reference to the feeder category post and the essential qualifications to be acquired for promotion. Thus, we do not concur with the view taken by the Writ Court.

11. Accordingly, the writ order impugned dated 04.10.2021 passed in WP.No.9410 of 2009 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
19.06.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes/No

To

1. The Secretary,
Tamil Nadu Electricity Board, Secretariat Branch,
Tamil Nadu Electricity Board
No.144, Anna Salai, Chennai-600 002.
2. The Chairman
Tamil Nadu Electricity Board,
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