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W.A.No. 631 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.06.2024

DELIVERED ON: 08.07.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE KUMARESH BABU

W.A.No. 631 of 2023

R. Joseph

.. Appellant

Vs

1. Tamil Nadu General and Distribution Corporation Ltd.,
Rep by its Chairman-cum-Managing Director,
No.14, Anna Salai, Chennai-600002.

2. The Chief Engineer/Personal,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.800, Anna Salai,
Chennai -600002.

3.The Superintendent Engineer,
Kadamparai Generation Circle,
Tamil Nadu Electricity Board,
Minparai - 642101

..Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.09.2022 in W.P.No.39308 of 2016.

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For Appellant : Ms. S.Meenakshi

For Respondents : Mr.David Sundar Singh, Standing Counsel

J U D G M E N T

D.KRISHNAKUMAR, J.

Aggrieved by the order passed by the writ court in W.P.No.39308 of 2016, dated 12.09.2022, the present writ appeal has been filed by the appellant.

Facts in brief:

2. The appellant joined the service of the 2nd respondent as a Helper on 07.09.1994 and was subsequently promoted to the post of Foreman Grade I. The next avenue for promotion is Special Grade Foreman. Even though vacancies arose for the post of Special Grade Foreman before his retirement on 30.09.2014, the respondent authority did not take steps to fill the posts, citing the pendency of a case related to Foreman Grade I. After



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his retirement, his juniors were granted promotion. The appellant filed a writ petition in W.P.No.39308 of 2016 seeking notional promotion and consequential benefits on par with his juniors. The writ court, by order dated 12.09.2022, dismissed the said writ petition. Challenging the same, the present writ appeal has been filed.

3. The learned counsel for the appellant submitted that the appellant became eligible for further promotion to the post of Special Grade Foreman. Though his name was placed at serial no.1 in the seniority list and approved for promotion to the said post by order of the respondent dated 22.09.2014, the respondent authority delayed the process without any valid reason. The learned counsel for the appellant further submitted that the respondent Board sent communication regarding the promotion to the post of Special Grade Foreman on 18.09.2014 to the Divisions of Kadamparai Circle, and the suitability report was issued on 22.09.2014 in favor of the appellant. Subsequently, the final suitability report was also obtained on 26.09.2014, which was before the date of retirement of the appellant. Hence, the contention of the respondent that the panel list for the post of Special Grade



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Foreman was issued on 11.12.2014 is not valid in granting promotion even after the preparation of the final suitability report on 26.09.2014. Therefore, the order passed by the writ court without considering the above factual aspects is liable to be set aside.

4. Per contra, the learned standing counsel appearing for the respondent submitted that the respondent Board, by proceedings No. 35 dated 23.07.2014, constituted a Committee to assess the promotional avenues for regular work establishment employees working in all the Hydro Generation Circles. In view of the above, four additional posts of Special Grade Foreman were created, and the existing one post was increased to five posts of Special Grade Foreman.

5. The learned standing counsel appearing for the respondent-Board further submitted that the respondent-Board sent a communication dated 18.09.2014 requesting the subordinate officers from all the divisions in the Kadamparai Circle to provide suitability reports for the post of Special Grade Foreman. A suitability report in favor of the appellant dated



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22.09.2014 was received on 23.09.2014, and the final suitability reports from other divisions were received by the 3rd respondent's office on 26.09.2014. The communication dated 18.09.2014 was for a supplementary list and not the final promotion panel list. The final list for the post of Special Grade Foreman was prepared on 11.12.2014, but the petitioner retired from service on 30.09.2014. Therefore, there was no delay on the part of the respondent-Board in finalizing the promotion list as contended by the appellant. The writ court rightly considered all the aspects and dismissed the writ petition, and the same does not require any interference by this court.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-Board and perused the materials available on record.

7. The contention of the appellant is that he was due for promotion to the post of Special Grade Foreman, and the post was vacant during the relevant time. The respondent-Board failed to promote the appellant while



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he was in service. Due to the delay on the part of the respondent-Board in filling the promotional post, the appellant lost his opportunity for promotion, and his juniors were promoted. Therefore, the appellant is eligible for notional promotion and consequential monetary benefits on par with his juniors.

8. Admittedly, the panel list for the post of Special Grade Foreman was issued by the respondents on 11.12.2014, and the appellant retired from service on 30.09.2014. It is seen from the records that one Muthusamy, an employee of the respondent department, filed a writ petition seeking promotion to the post of Foreman Grade-I. Since Foreman Grade-I is the feeder category to the post of Special Grade Foreman, the respondent department prepared the list after the disposal of the said writ petition.

9. The records also reveal that during the pendency of the said writ petition, the respondent-Board sent a communication on 18.09.2014 requesting the subordinate officers from all the divisions in the Kadamparai Circle to provide suitability reports for the post of Special Grade Foreman.



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The suitability report in favor of the appellant was received on 23.09.2014, and the final suitability reports from other divisions were received by the 3rd respondent's office on 26.09.2014. This was only a supplementary list and not the final promotion panel. From the above communications, it is seen that the respondent-Board took steps to prepare the promotion panel.

10. It is settled proposition of law that an employee does not have a fundamental right for promotion, however, he has a fundamental right for being considered for promotion. In the present case, as discussed above, the respondent-Board had obtained the suitability report in respect of the appellant for promotion to the cadre of Special Grade Foreman and prepared a supplementary list on 26.09.2014. In view of pendency of a writ petition, the respondent Board could not finalise the promotion panel and subsequently, the promotion panel was prepared after disposal of the writ petition, which occurred after retirement of the appellant. Therefore, as per settled provisions of law, the respondent-Board had considered for promotion of the appellant and there was no delay on the part of the respondent-Board as contented by the appellant.



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11. With regard to the other ground raised by the appellant that he is entitled for notional promotion and consequential monetary benefits after retirement of his service, one of us (D K K J) has dealt with a similar issue in W.P.No.14092 of 2015 dated 01.07.2020 [*V.Vijayakumarasamy v. The Government of T.N. & another*] reported in 2020 (2) WLR 321, wherein this Court, by relying upon the decisions of the Delhi High Court in 1. *Ram Krishna Sharma v. Union of India and others in W.P. (C) No. 5359 of 2009* and 2. *Ranvir Singh Vs.Government of NCT of Delhi & Others W.P(C) No. 2969 of 2012, dated 24.05.2013* and observed as follows:

“23.....Therefore considering the facts and circumstances of the case on hand and by relying upon the various decisions of the Hon'ble Apex Court cited supra, the following principles of law has been laid down in the aforesaid decisions:

(i) Service Jurisprudence does not recognize retrospective promotion i.e a promotion from a back date.



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(ii) If there exists a rule authorising the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii). Since malafides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the malafide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a malafide act i.e deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

11. In view of the stand taken by the respondents in the counter affidavit and in the light of the decisions of the Delhi High Court cited supra and followed by this Court in W.P.No.14029 of 2015 dated 01.07.2020 [2020 (2) WLR 321], this Court finds no merit in this writ petition. Accordingly, this Writ Petition stands dismissed. No costs.”



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12. In view of the aforesaid decision, it is clear that promotion cannot be granted after retirement, unless there is any malafide, deliberate delay in considering promotion or depriving the rights of the eligible candidates. In the case at hand, as discussed above, there are no such averments in the affidavit to satisfy the court that the appellant is entitled for notional promotion. Therefore, We have no hesitation to accept the contentions of the learned standing counsel appearing for the respondents and the order of the writ court is perfectly valid and does not require any interference by this Court.

13. In the result, the writ appeal is dismissed. No costs.

[D.K.K., J.,]

[K.B., J.]

08.07.2024

Index: yes

Internet:yes

Speaking Order

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To

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