



WP(MD) No.10012 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.10012 of 2023

and

W.M.P(MD)Nos.8786, 10955 to 10958 of of 2023

P.Vasantha

... Petitioner

Vs.

1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation Limited,
TANGEDCO,
8th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai - 2.



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2.The Secretary

Tamil Nadu Generation and Distribution Corporation Limited,
TANGEDCO,
9th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai - 2.

3.The Chief Engineer / Personnel,

Tamil Nadu Generation and Distribution Corporation Limited,
TANGEDCO,
8th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai - 2.

4.The Superintending Engineer

Tamil Nadu Generation and Distribution Corporation Limited,
TANGEDCO,
Ramnad Electrical Distribution Circle,
Ramanathapuram,
Ramnad District – 623 503.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for



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the records relating to the impugned order passed by the 2nd respondent dated 25.05.2023 in (Per.) CMD TANGEDCO Proceedings No.76 and quash the same and consequently direct the respondents 1 to 3 to consider the petitioner for promotion to the post of Senior Administrative Officer in accordance with her seniority, merit and ability without referring to the order of punishment, dated 05.01.2021 passed by the Superintending Engineer, Tuticorin Circle, which was given effect on 01.01.2022 with all attendant and consequential benefits.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.B.Ramanathan

Standing Counsel

ORDER

The petitioner has filed this Writ Petition seeking for a Writ of Certiorarified Mandamus to call for the records pertaining



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to the impugned order in No.048/2023 dated 04.12.2023 on the file of the respondent No.2 and to quash the same as illegal and consequentially for a direction, directing the respondent No.2 to accept the Voluntary Retirement application dated 31.10.2023 and to grant Voluntary retirement from service to the petitioner from the post of the Secondary Grade Teacher in the 2nd respondent College along with all consequential benefits.

2. Heard Mr.N.Dilipkumar, learned counsel for the petitioner and Mr.B.Ramanathan, learned Standing Counsel for the respondents.

3. The petitioner was working as a Administrative Officer in the fourth respondent office and she was also included in the panel for promotion to the post of Senior Administrative Office for the year 2019 – 2020 and her name appears as against Serial No. 15 in the list. However, the petitioner did not get the promotion because the vacancy got expired and she was waiting for the



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promotion as and when the vacancy arises in future. But unfortunately the petitioner was given with the punishment of stoppage of one increment on the allegation that she failed to initiate disciplinary action against the subordinates and to that effect a proceedings have been issued on 05.01.2021. The stoppage of increment was without cumulative effect and the punishment was also suffered by the petitioner from 05.01.2021 to January, 2022. The petitioner's name has been included in the next panel list for promotion in the panel list for the year 2021-2022. However, the petitioner was not given with any promotion as she was overlooked. The petitioner's name has been included in the subsequent promotion panel for the year 2022-2023. Still the petitioner has not been given with promotion even during the year 2022-2023 on some old allegations that the punishment is pending against him.

4. In fact the petitioner ought to have been given with the promotion in the year 2021-2022 itself, because the crucial date



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for preparing the panel is 1st May, 2021 or atleast in the year 2022-2023, during which time there is no currency of punishment and it was over by January, 2022. The petitioner's promotion was withheld on the very same allegations of pending punishment, which is factually wrong.

5. If once the petitioner had suffered the punishment and the currency of the punishment was also over, nothing would prevent the respondent from considering the petitioner to the promotion atleast in the year 2022-2023.

6. In fact the petitioner stood in Sl.No.3 among 10 persons in the list. Despite the chances of promotion was bright and the petitioner was also eligible for the same, she was not given with the promotion.

7. Even the allegations against the petitioner was not very serious and she was not given with any major punishment.



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Citing the reasons of punishment, promotion to the employees cannot be overlooked repeatedly.

8. In this regard, it is relevant to quote the judgment of this Court held in ***G.Selvamoorthy Vs The Chief Engineer (Personnel), Chennai and another (W.P.No.6294 of 2021 dated 17.10.2023)***. The relevant portion is extracted hereunder :

“11. The purpose of limiting the 'check period' for five years is with a view that no one should be deprived of his promotional prospectus for his entire span of service, if he happened to get a punishment any time during his service. So, the five years limitation is a cap on the period under consideration for promotion. That means, a person's dossiers not more than 5 years need to be digged to appreciate his suitability for taking him to the next cadre. However, the punishment within that period also is not a strict obstacle for taking a favourable decision on his promotion. It is at the discretion and appreciation of the Appropriate Authority, who would take into consideration of all



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other attendant facts for weighing the merits.

12. That is the reason why, the rule is not in a language that would convey in unequivocal terms that no promotion should be given to a person for five years, if he had suffered any punishment. On the other hand, the language of the Rule only conveys that promotion for a person cannot be denied for more than five years. In my opinion, this cannot be further expanded and interpreted that a person who had suffered punishment should not be given with any promotion at all during entire 'check period', even though the punishment is just a stoppage of increment and that too, not current at the relevant point of time. Even if a rule about penalty or punishment is capable of giving two interpretations, the interpretation which is favourable to the employee should be given effect to. Such interpretation in service jurisprudence is possible, because it is as similar as to penal jurisprudence where also, when two views are possible, the view which is favourable to the accused is given to his benefit. The similarity is due to the imposition of penalty and its consequences



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on the employee, while dealing him under the Service Rules.

13. Taking into consideration of the broader meaning and object of the Regulation and also considering the nature of the lapse which resulted in the punishment and its relative gravity, the petitioner's request for promotion can be considered for the purpose of retirement benefits. In the event of considering the petitioner's request for promotion, it can only be considered as a notional promotion and not as an actual promotion which could carry monetary benefit.

14. Hence, this Writ Petition is disposed and the respondents are directed to consider the petitioner's request for promotion for the purpose of enhancing his retirement benefits. Since the petitioner has already retired from service, in the event of considering the petitioner's request for promotion, it can only be considered as a notional promotion and not as an actual promotion. No costs."



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9. In view of the above reasons, this Writ Petition is

allowed and the impugned order is set aside and the respondents are directed to promote the petitioner to the post of Senior Administrative Officer on par with her junior with effect from the date on which her immediate junior was given with promotion in the year 2022-2023, by giving notional effect from the said retrospective date of promotion and with monetary effect from the date of assumption of charges in the promotional post with all other service and attendant benefits within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

29.04.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM



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R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.10012 of 2023

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