



W.P.(MD).No.13453 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.13453 of 2023

Er.R.Pandiyan, B.E.,
Assistant Engineer/Electrical Retd,
(Erstwhile Thirumayam Rural Electric
Cooperative Society Limited),
Now TANGEDCO, 110 KV/11 KV SS,
Thaniyamangalam /MEDC,
Madurai – 625 109.

... Petitioner

Vs.

1. The Chairman,
TANTRANSCO Building
Annasalai, Chennai.
2. The Chief Engineer (Personnel)
The Tamil Nadu Electricity Board,
Now called as Tamil Nadu Generation
and Distribution Corporation Limited,
Anna Salai, Chennai – 600 002.
3. The Divisional Engineer,
Now called as Tamil Nadu Generation
and Distribution Corporation Limited,
Thirumayamn, Pudukottai,
Formerly called as Managing Director of
Thirumayam Rural Electrical
Cooperative Society (P.A 63),
Thirumayam, Pudukkottai District.



W.P.(MD).No.13453 of 2023

WEB COPY

4. The Superintending Engineer,
Tamil Nadu Electricity Board,
No called as Tamil Nadu Generation
and Distribution Corporation Ltd.,
Pudukkottai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Assistant Executive Engineer as per the senior list by the proceedings of the second respondent Memo No. 026390/389/G18/G181/2019-3, dated 13.09.2022 and based upon the seniority of the petitioner and directing the respondents to refix the salary and pay all retirement and pension benefits.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondents : Mr.B.Ramanathan
Standing Counsel

ORDER

The present Writ Petition has been filed by a retired Assistant Engineer of the respondent Electricity Board, seeking a Mandamus to promote the petitioner to the post of Assistant Executive Engineer as per the seniority list published by the second respondent on 13.09.2022, and refix the salary and pay all retirement and pension benefits.



W.P.(MD).No.13453 of 2023

WEB COPY

2. The petitioner herein was working as an employee of Thirumayam Rural Electric Co-operative Society. He was placed under suspension by the said society. Thereafter, the employees of the said Society have been absorbed by the Tamil Nadu Electricity Board. The petitioner was also absorbed by the Tamil Nadu Electricity Board, though he was under suspension.

3. A panel was prepared for promoting the Assistant Engineers to the post of Assistant Executive Engineer for the panel year 2008. Since the petitioner was under suspension, the name of the petitioner was over looked. The petitioner was acquitted from the criminal case on 29.01.2016. Even thereafter, the petitioner's suspension order was not revoked. Therefore, the petitioner had filed W.P(MD) No.2603 of 2013 to revoke the order of suspension. This Court, by an order, dated 21.06.2016 had allowed the writ petition and directed the Electricity Board to revoke the order of suspension. This order was challenged by the Electricity Board in W.A(MD) No.440 of 2017. The Hon'ble Division Bench of this Court, by an order dated 10.08.2017, had partly allowed the appeal with a direction to the Electricity Board to regularize the period of suspension in view of the judgment of acquittal. The Hon'ble Division Bench of this Court further observed that the



W.P.(MD).No.13453 of 2023

petitioner would not be entitled to any other benefits for the period from the date of suspension till 29.01.2016. Pursuant to the orders of this Court, the petitioner was reinstated in service on 20.04.2017. The petitioner has attained superannuation on 30.07.2022.

4. The petitioner has given a representation on 24.01.2020, to promote the petitioner to the post of Assistant Executive Engineer as per the interse seniority. Since the said representation was not considered, the petitioner has filed W.P(MD) No.10936 of 2022. This Court, by an order dated 08.06.2022 had issued a direction to the Chief Engineer (Personnel) to consider the petitioner's representation dated 24.01.2020 and pass orders on its merits and in accordance with law.

5. Pursuant to the orders of this Court, an order was passed on 13.09.2022, wherein the seniority of the writ petitioner was fixed at Serial No.441 (A). According to the learned counsel appearing for the petitioner, a candidate by name of Mr.A.Nagarathinam, who is arrayed in Serial No.442, was promoted in the year 2008. Therefore, when he is inserted as serial No. 441 (A) he should also have been promoted with effect from the year 2008 on



W.P.(MD).No.13453 of 2023

par with his juniors. Seeking the said prayer, the instant writ petition has been filed.

6. According to the learned counsel appearing for the writ petitioner, the petitioner was suspended due to his implication in DVAC proceedings. Later, he was acquitted and the Electricity Board has not initiated any departmental action and they have permitted him to retire from service. In such circumstances, the petitioner should have been restored with the seniority and promoted on par with his juniors.

7. Per contra, the learned Standing Counsel appearing for the Electricity Board had contended that when the juniors of the writ petitioner were promoted in the year 2008, the petitioner was under suspension for his implication in a criminal case. He was acquitted only on 29.01.2016. He also relied upon the judgment of the Hon'ble Division Bench of this Court in W.A. (MD) No.440 of 2017, wherein it is observed that the petitioner is not entitled to any benefits from the date of suspension till the date of acquittal i.e., on 29.01.2016. Therefore, the petitioner cannot seek promotion from the year 2008 onwards, while he was in suspension.



W.P.(MD).No.13453 of 2023

WEB COPY

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The petitioner had challenged the order of suspension in W.P(MD) No.2603 of 2013, and the same was allowed on 21.06.2016. When the Electricity Board had filed an appeal in W.A(MD) No.440 of 2017, the same was partly allowed by the Hon'ble Division Bench of this Court dated 10.08.2017. Paragraph Nos.4 and 5 of the order of the Hon'ble Division Bench of this Court are extracted as follows:

“4. The writ petitioner was admittedly an employee of Thirumaiyam Rural Co-operative Society. He was only under suspension. The employer employee relationship does not get snapped during suspension. Therefore, when the Tamil Nadu Electricity Board took over the said society, obviously the appellant was taken as an employee of Tamil Nadu Electricity Board. It is a matter of record that the appellant had been paying 100% pay during the period of suspension as subsistence allowance. Since the writ petitioner was also acquitted on 29.01.2016, he is entitled to get all the benefits from the said date.



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W.P.(MD).No.13453 of 2023

5. The appellants are directed to regularize the period of suspension in view of the Judgment of acquittal. However, it is made clear that the appellant will not be entitled to any other benefits for the period from the date of suspension when he was under suspension from service till 29.01.2016. this writ appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

10. A careful perusal of the judgment of the Hon'ble Division Bench of this Court makes it clear that the petitioner will not be entitled to any other benefits from the date of suspension till 29.01.2016. Therefore, it is clear that the petitioner cannot claim any monetary benefits or any other benefits during the said period. Therefore, the request of the petitioner for granting promotion on par with his juniors from the year 2008, is not legally sustainable in view of the above said observations of the Hon'ble Division Bench of this Court. However, since the Hon'ble Division Bench of this Court has made an observation that the petitioner would be entitled to benefits after 29.01.2016, the Electricity Board should have considered the request of the petitioner for his promotion to the post of Assistant Executive Engineer after 29.01.2016,



W.P.(MD).No.13453 of 2023

especially in the light of the fact that they have not chosen to initiate any departmental action as against the writ petitioner.

11. The writ petitioner herein has filed a review application seeking to review the order passed in W.A.(MD) No.440 of 2017, with regard to the portion of the order wherein his benefits were rejected. The Hon'ble Division Bench was pleased to partly allow the review application to the extent of disbursing the monetary benefits alone. Therefore, the question of seeking promotion orders now with effect from the year 2008 onwards is not legally sustainable.

12. In view of the above said facts, the respondents herein are directed to consider the request of the petitioner for promotion to the post of Assistant Executive Engineer with effect from 01.02.2016 and pass consequential orders, within a period of twelve weeks from the date of receipt of a copy of this order.



W.P.(MD).No.13453 of 2023

WEB COPY

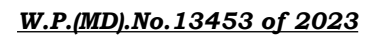
13. With the above said observations, this Writ Petition stands partly allowed to the extent as stated above. There shall be no order as to costs.

07.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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W.P.(MD).No.13453 of 2023

R.VIJAYAKUMAR,J.

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W.P(MD)No.13453 of 2023

07.11.2024