BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2024

PRONOUNCED ON :07.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.25381 of 2018

K.Kanthavel ... Petitioner

Vs.

The Chief Engineer (Personnel),
Tamil Nadu Electricity Board /
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai,
Chennai-2. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certioraried Mandamus, to call for records pertaining to the impugned order in Memo No. 067165/233/G25/G252/2012-18, dated 21.05.2015 and the consequential order in Memo. No. 06/165/233/G25/G252/2012-19, dated 21.05.2015 on the file of the Respondent and quash the same as illegal and consequently to direct the Respondent to refix the seniority of the Petitioner in the post of Assessor placing Serial No. 378A & Seniority No.4023A and provide promotion the post of Inspector of Assessment and then Revenue Supervisor with all service and monetary benefits within the time stipulated by this Court.

For Petitioner : Mr.K.Kanthavel
Party in person

For Respondents : No appearance

ORDER

The present writ petition has been filed to call for records pertaining to the impugned order in Memo No. 067165/233/G25/G252/2012-18, dated 21.05.2015 and the consequential order in Memo. No. 06/165/233/G25/G252/2012-19, dated 21.05.2015 on the file of the Respondent and quash the same as illegal and consequently to direct the Respondent to refix the seniority of the Petitioner in the post of Assessor placing Serial No. 378A & Seniority No.4023A and provide promotion the post of Inspector of Assessment and then Revenue Supervisor with all service and monetary benefits within the time stipulated by this Court.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner was originally serving as an Assistant in Tamil Nadu Magnesium and Marine Chemicals Ltd., (TMML) Ramanathapuram which was a Government of Tamil Nadu undertaking. Due to technological problems and unforeseen administrative difficulty the said firm was shut down on 31.01.1993. Consequently as per G.O.Ms.No.59, Industries (MIF-2) Department, dated 20.02.1997 and G.O.Ms.No.371 Industries (MIF-2) Department dated 13.07.1998 came to be issued sorting out the issues pertaining to the Tamil Nadu Magnesium and Marine Chemicals Ltd. Following which, the petitioner was permanently absorbed as Assessor in Tamil Nadu Electricity Board in the time scale of pay Rs. 3370-100-5770 and he was allotted to Tirunelveli Electricity Distribution Circle/ Tirunelveli. He joined duty on 19.01.2002 as Assessor. The petitioner continued his service in the same cadre of Assessor from 19.01.2002 to till his retirement i.e., on 31.05.2016. The grievance of the petitioner is that though he was absorbed as Assessor as early as 19.01.2002, his name was not included in the seniority list of Assessor and consequently he was not promoted as Inspector of Assessment (IA).

(ii) That apart, two of his juniors namely Tmt. V.Janshirani and Tmt.G.Veni who joined duty as Assessor like the petitioner on 12.11.2002 and 11.05.2003 respectively were promoted as Inspector of Assessment (IA) and they joined duty in the promoted post even on 12.04.2012. Further, the above mentioned juniors were promoted as Revenue supervisor and joined duty on 31.03.2015 F.N. Hence, the petitioner sent a representation on 20.10.2012 to the Respondent for inclusion of his name in the seniority list of Assessor and to promote him as Inspector of Assessment (IA) on par with his juniors with all monetary and service benefits. He further made another representation on 24.12.2013. Since there was no reply to the same, the petitioner was constrained to file a Writ Petition in W.P. (MD) No. 19693 of 2014 before this Court and this Court vide order dated 04.12.2014 was pleased to dispose of the same, directing the Respondent to consider the representations dated 20.12.2012 and 24.12.2013 respectively and pass orders on merits.

(iii) Pursuant to the same, the Respondent had passed the impugned order dated 21.05.2015 fixing the seniority of the petitioner in the post of Assessor wrongly at Serial No.429 A and Seniority No.4082 (a) much below the two juniors namely Tmt. V. Janshirani and Tmt. G. Veni who joined duty as Assessor like the petitioner on 12.11.2002 and 11.05.2003, while the petitioner was permanently absorbed as early as on 19.01.2002 as Assessor. The Respondent also passed another consequential order, dated 21.05.2015, refusing the petitioner's promotion. Challenging the same, the present writ petition came to be filed.

3. The petitioner appeared before this Court in person and submitted that the petitioner had worked as a Selection Grade Assistant in TMML, Ramanathapuram, thereafter, the petitioner was absorbed in TNEB as Assessor (Low Category) on 19.01.2002. Even, after 14 ½ years of regular service in TNEB, he had served only as Assessor, without any promotion in the entire service till his retirement i.e. on 31.05.2016. The impugned order of rejecting his promotion dated 21.05.2015 was assailed by him, on the ground that, two of his juniors who joined duty much later than the petitioner being permanently absorbed as Assessor, were promoted as Inspector of Assessment (IA) and further promoted as Revenue Supervisor while the petitioner was continuously placed under the cadre of Assessor. Assailing the order of rejection of his promotion, he submitted that the charge memo framed on 12.04.2010 ended with a minor punishment of stoppage of next increment with cumulative effect for one year including

leave spent if any and also expired long back before his retirement.

4. He further submitted that when he was allowed to retire from service without any prejudice or preconditions, he should have been considered for the promotions with all service and monetary benefits. He categorically refuted the charge of unauthorized absence for the period form 19.01.2009 to 21.01.2009 and from 03.02.2009 to 05.02.2009 as false, since the casual leave was duly sanctioned on the permission letter by the petitioner and later the period was regularized as the duty period and salary was also provided to the petitioner. Hence, even if the promotion could not have been given to the petitioner on the crucial date of 20.03.2012 and 20.03.2014, the same should have been given in the subsequent years up to 2016. Having not done the same, the impugned order dated 21.05.2015 would amount to colourable exercise of power in administration. Hence, he pressed for quashing the impugned order and allowing the writ petition.

5. Though the case was posted for respondent side arguments on 30.08.2023, 14.09.2023, 26.09.2023, 04.12.2023 and 07.12.2023 there was no representation on the side of the respondents. Finally, this case was

posted on 04.01.2024 for the arguments of the respondents. Despite vakalat has been filed on behalf of the respondents, on 04.01.2024, when the matter was taken up for hearing, there was no representation on the part of the respondents. Accordingly, the matter was reserved for orders. However, the respondents have filed a counter.

6. Heard, the arguments of the petitioner and carefully perused the counter affidavit filed by the respondents and the materials available on record.

7. I carefully perused the various contents of the counter of the respondents and the relevant portion is extracted as follows:

> "*The post of Assessor is a Feeder post for the post of Inspector of Assessment. A suitability report is called for before consideration of the promotion and only based on the suitability report, eligible employees would be considered for promotion. However, as per the regulations an employee should neither be undergoing any disciplinary proceeding nor any punishment is imposed to make him eligible for considering his name for further promotion. If any disciplinary proceedings are pending against the employee on the date of consideration or an employee was undergoing any punishment, he shall not be considered for promotion.*

The promotion process for the post of Inspector of Assessment was done in the year 2012 and the crucial date was 20.03.2012. On that dat, disciplinary action was pending against the petitioner and, therefore, as per Departmental Rules, the petitioner was not considered for promotion.

Subsequently, the punishment of increment cut for one year was imposed on the petitioner. It was in these circumstances, that the petitioner did not qualify himself to be considered for promotion. Till 2015 also the petitioner was not eligible for promotion as at all times he was either facing disciplinary proceedings or was under-going punishment or was not reporting for work. It was in these circumstances that the petitioner was not considered for promotion, and he ritred as an Assesor."

8. The crux of the case is that, the petitioner was originally serving as the Assistant, from 31.01.1993 in Tamil Nadu Magnesium and Marine Chemicals Ltd., Ramanathapuram. Thereafter, the petitioner was permanently absorbed as Assessor in Tamil Nadu Electricity Board, in the time scale of pay Rs. 3370-100-5770 with effect from 19.01.2002. Two of his juniors namely Tmt. V.Janshirani and Tmt.G.Veni who joined duty as Assessor like the petitioner on 12.11.2002 and 11.05.2003 respectively were promoted as Inspector of Assessment (IA), they joined duty in the promoted post even on 12.04.2012. Though the petitioner joined in service

as early as 19.01.2002, he was not at all considered for promotion by including his name in the seniority list of Assessor and promoting him as Inspector of Assessor and then as Revenue Supervisor at par with his juniors with all monetary and service benefits. Aggrieved over the same, the petitioner sent two representations to the respondents on 20.10.2012 and 24.12.2013 respectively. However, the same came to be rejected by the impugned order of the respondent dated 21.05.2015 and the relevant portion of the said order is extracted as follows:

> *"2) You are informed that your turn for promotion to the post of Inspector of Assessment came up on the crucial date of 20.03.2011. Accordingly, your request for promotion is examine on the crucial date of 20.03.2011. On that date, the following charges framed on 12.04.2010 is pending against you.*
>
> *(i) As per the instruction of Assistant Engineer / Pernali, you have refused to perform the Assessment work.*
>
> *(ii) Due to non-perform of Assessment work loss sustained by the Board.*
>
> *(iii) Unauthorized absence for the period from*

19.01.2009 to 21.01.2009 and 03.02.2009 to 05.02.2009.”

9. That apart, vide another order dated 21.05.2015, the petitioner's name was placed in Serial No.429 A and Seniority No.4082 (a) much below the two juniors namely Tmt. V.Janshirani and Tmt.G.Veni. A careful perusal of the materials available on record would reveal that the crucial date for promotion to the post of Inspector of Assessor came on 20.03.2012 and 20.03.2014. However, on those dates, his case was not considered for promotion only because of the fact that the three charges framed against him on 12.04.2010 was pending against the petitioner. Hence, the petitioner's case for promotion was not considered due to the pendency of the charge memo dated 12.04.2010. That apart, the petitioner was also under suspension from 18.04.2011 onwards and the same was revoked on 21.10.2011. Though his suspension was revoked on 21.10.2011, he did not duly join duty immediately after the revocation of the suspension. He joined only on 09.10.2013. Hence, the case of the petitioner for promotion could not be considered for promotion on the crucial date on 20.03.2012 as well. That apart, due to non joining of duty by the petitioner, even after revocation of suspension till 08.10.2013, the panel issued a order of

punishment of stoppage of increment for a period of one year with cumulative effect dated 30.11.2012 which took effect from 09.10.2013, that is, his date of rejoining duty. Since the currency of punishment was prevailing during the year 2014, the petitioner's case for promotion was not further considered by the respondents on the crucial date on 20.03.2014 as well.

10. Normally, the panel of list for promotion would be prepared before the crucial date. It is possible that actual promotion may be given within a short time or after a few months. Promotion is an administrative prospective for the employees, and the right to be promoted is not a fundamental right. In those circumstances, when there is a delay in granting promotion due to the imposition of the punishment of stoppage of increment with cumulative effect on the employee, such punishment would have an adversary effect till the expiry of one year from the date of imposing of the punishment by the competent authority. The very concept of considering the adverse service records for grant of promotion is essential for public administration.

11. In the lis in hand, the crucial dates for consideration of the panel for promotion during the years 2012 and 2014, fell on 20.03.2011, 20.03.2012 and 20.03.2014 respectively. However, the petitioner's name was not included only due to the pending charges framed on 12.04.2010 at the first instance, for not having joined duty after revocation of suspension, in the second instance and due to the prevailing currency of the punishment during the year 2014. Hence, observing the fact that though an employee has a fundamental right to be considered for promotion, the same would not provide a right to be promoted as a matter of course. The prior conduct of the employee would be the prime yardstick of consideration, for an employee to become an eligible person for promotion within the crucial date for grant of promotion.

12. In view of the same, I am not inclined to interfere with impugned order passed by the respondents.

13. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

07.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

Note: Issue order copy on 07.02.2024.

L.VICTORIA GOWRI, J.,

Sml

W.P.(MD)No.25381 of 2018

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