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W.P.No.11021 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.04.2025**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.11021 of 2025

and

WMP Nos.12427 and 12428 of 2025

P.Parameswaran

... Petitioner

Vs

1.The Chief Engineer (Personnel)
TANGEDCO Administrative Branch,
144, Anna Salai,
Chennai 600 002.

2.The Superintending Engineer,
Chennai EDC South II,
K.K.Nagar, Chennai 600 083.

3.The Director of Stationery & Printing,
Anna Salai,
Chennai- 600 002.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for
the issuance of a Writ of Certiorarified Mandamus, calling for the records of



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the first respondent herein in Memo No.069846/G.17G.172/2024 dated 05.02.2025 and quash the same and consequently direct the respondents to consider the date of issuance of appointment order of the petitioner i.e. 02.04.2019 for the purpose of calculating the length of service for consideration of the application of the petitioner for internal selection to the post of Assistant Engineer (Electrical) and accordingly direct the respondents to select and appoint the petitioner to the post of Assistant Engineer (Electrical) under the notification of the first respondent 24.01.2024 on the date on which others have been appointed with all service and monetary benefits and pass orders.

For Petitioner : Mr.Dakshayani Reddy
Senior Counsel

For Respondents : Mr.Rajakumar
for R1 (TANGEDCO)

M/s.A.Bakkiyalakshmi
Government Advocate
for R3



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ORDER

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The writ petition has been filed in the nature of certiorarified mandamus seeking records of the first respondent dated 05.02.2025 and quash the same and direct the respondent to consider the date of issuance of appointment order of the petitioner viz., 02.04.2019 for the purpose of calculating the length of service for consideration of the application of the petitioner for the post of Assistant Engineer (Electrical) through internal selection.

2. The petitioner seeks a further direction that he must be selected and appointed to the post of Assistant Engineer (Electrical) consequent to the notification dated 24.01.2024. In the affidavit filed in support of the writ petition, it had been stated that the writ petitioner was working as Assistant in the Stationery and Printing Department, Government of Tamil Nadu.

3. The respondent/TANGEDCO had issued a notification on 28.02.2016 seeking application for the appointment to the post of Technical



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Assistant (Electrical). The petitioner had also applied under the said notification. He was selected and he was issued with order of appointment by letter dated 02.04.2019. He was directed to join on or before 24.04.2019. This letter dated 02.04.2019 was received by the petitioner on 04.04.2019. The petitioner then sought to be released from the Stationery and Printing Department, to join as Technical Assistant in the respondent Board. But however, the Joint Director of the Stationery and Printing Department informed the petitioner that the petitioner could not be immediately relieved owing to the ensuing poll for the Lok Sabha Elections and that order would be issued only after the conclusion of the election and completion of the polling duty.

4. The petitioner completed the duty assigned to him and on conclusion of the election, he was issued with proceedings dated 23.04.2019 relieving him from the post of Assistant in the Stationery and Printing Department. Thereafter, on the very next day, on 24.04.2019, within the stipulated time granted to join duty, he joined in the post of Technical Assistant with the respondent.



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5. The petitioner was already qualified B.E in Electrical and Electronics Engineering. Those who had so qualified themselves would be eligible to be appointment as Assistant Engineer through an inter departmental selection process and would be termed as in service candidates. The respondent had called for such application by notification dated 24.01.2024. The petitioner had also applied for such selection. The respondent then published the seniority list by proceedings dated 02.04.2019 and the name of the petitioner was in Serial No.247. The actual date of joining was given as 24.04.2019. The petitioner claims that his seniority should be counted on and from 02.04.2019 when the appointment letter had been issued and he was not able to join duty under the respondent since he had further obligations to discharge owing to the duties entrusted in the Lok Sabha Elections. It is contended that such duty could not be avoided by the petitioner herein. It is under those circumstances stating that the seniority should be considered as and from 02.04.2019, the present writ petition has been filed.



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6. A counter affidavit has been filed on behalf of the first respondent

wherein, it had been stated that in accordance with the rules and regulations of TANGEDCO a seniority list was published for the post of Technical Assistant during the year 2019. The petitioner was also promoted to the post of Junior Engineer. It had been stated that the petitioner had joined duty on 24.04.2019 after being relieved from the Department of Stationery and Printing on 23.04.2019. It had been stated that the seniority of the petitioner would be calculated only from the date of joining of TANGEDCO. With respect to the time limit given for joining, it had been stated that in the letter dated 02.04.2019 the petitioner had been directed to join before 5.00 pm on 24.04.2019. It had been stated that the petitioner had joined on 24.04.2019 and therefore cannot seek that his notional date of appointment should be 02.04.2019 instead of the actual date of assumption of post. The petitioner was not even in the service of the respondent till 23.04.2019. However, the issue that the petitioner was called for poll duty was not answered in the counter affidavit.



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7. Heard learned Senior Counsel for the petitioner and learned Standing Counsel for the respondents.

8. It is contended by the learned Senior Counsel for the petitioner that the petitioner had applied for the post of Technical Assistant (Electrical) while he was working as Assistant in the Stationery and Printing Department. He was also issued with an order of appointment on 02.04.2019. He was directed to join the respondent on or before 5.00 pm on 24.04.2019.

9. Learned Senior Counsel pointed out that the petitioner had been called upon to discharge duty owing to the Lok Sabha Elections. In this regard, he also produced the order of appointment of the Presiding and Polling Officers and the petitioner was designated as Polling Officer No.2 in Hall P02/10 at Girls Higher Secondary School, Madhavaram High Road, Perambur, Chennai and that training would be conducted on and from 24.03.2019 at 9:00 am.

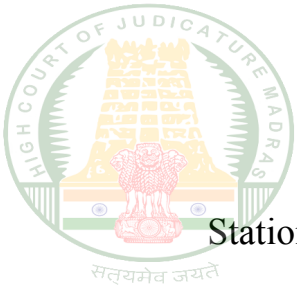


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10. It had been further stipulated in the said order which had been issued by the District Election Officer & Commissioner, Greater Chennai Corporation that breach of election duty is a cognizable offence punishable under Section 134 of Representation of People Act 1951. The petitioner was directed to discharge duties during the general elections to the Lok Sabha/ at the Perambur Assembly Constituency. The elections were scheduled to be held on 18.04.2019. Pointing out this particular communication received by the petitioner, learned Senior Counsel stated that the petitioner could not have joined the respondent Board on 02.04.2019 and therefore, argued that the service of the petitioner should be taken into consideration on and from 02.04.2019, the date on which the appointment order had been issued.

11. Learned Standing Counsel for the respondent however refuted this contention and stated that the petitioner actually physically joined the respondent only on 24.04.2019 and it is on and from that date his services can be taken into consideration. It is further pointed out that there cannot be a deemed fiction of the petitioner working both in the Department of



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Stationery and Printing and also the TANGEDCO in the same period and therefore, contended that the date of physically joining the post alone should be taken into consideration and that particular date was 24.04.2019. Till that date, the petitioner had not joined respondent Board and therefore, his seniority cannot be considered on any date prior to that particular date.

12. I have carefully considered the arguments advanced. There is no dispute regarding the fact that the petitioner was working as Assistant in the Stationery and Printing Department, Government of Tamil Nadu and had applied for appointment to the post of Technical Assistant (Electrical) called for vide notification dated 28.02.2016 by the respondent. There is also no dispute that the petitioner was selected and was issued with an appointment order dated 02.04.2019. There is also no dispute over the fact that the petitioner actually physically joined the respondent board only on 24.04.2019. There is further no dispute over the fact that the relieving order by the Stationery and Printing Department was issued only on 23.04.2019.



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13. A cursory examination of the above facts would show that the petitioner can claim seniority only on and from 24.04.2019, the date on which he actually joined the respondent board.

14. On the side of the respondent, it is further contended that the petitioner had not raised any objections for a period of six years and much later had contended that his seniority should be considered on and from 02.04.2019, the date on which the appointment order had been issued. It had been further contended that if the petitioner is placed in the seniority as on 02.04.2019, it would affect the credentials of various other individuals, and therefore, the court should not interfere.

15. On the side of the respondent, reliance had been placed on the judgment of the Hon'ble Supreme Court reported in (1995) Supplementary 1 SCC 311 in ***S.D.K.Puri vs R.S.Bhatia and another***, wherein the Hon'ble Supreme Court has held that the High Court had not committed any error in applying the Rules of the Punjab Service of Engineers (Electricity Branch) Recruitment and Conditions of Service Rules, 1939 relating to inter-se



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seniority, which has to be determined on the basis of joining the post of Assistant Engineer. Further reliance had been placed on the judgment of the Hon'ble Supreme Court reported in (2001) 10 SCC 567, ***M.Bheemaiah and Others vs Deputy Commissioner of Excise, Hyderabad and Others***, wherein the Hon'ble Supreme Court had held that if any date anterior to the date is assigned, it would affect the seniority of all the candidates in other districts then necessary parties should also be heard before taking a decision on revising the seniority. The same decision had been upheld in (2014) 1 SCC 144, in the ***State of Rajasthan vs Ucchab Lal Chhanwal***, wherein the Hon'ble Supreme Court had further stated that the junior who had been promoted earlier would become seniors in the promotional cadre, and since they were not arrayed as parties, an adverse order cannot be passed against them.

16. The only issue is whether the seniority of the petitioner is to be considered on and from 24.04.2019, the date on which he actually joined the post or from 02.04.2019 when he was issued with the appointment order directing him to join the post of Technical Assistant (Electrical). The



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reasons advanced by the petitioner was that he had been already served with

an order, directing him to discharge election duties for the Lok Sabha

Elections and specific order had been passed that he should discharge his

duties at Girls Higher Secondary School, Madhavaram High Road,

Perambur, Chennai and that, the training for the same would commence

from 24.03.2019. He was appointed as Polling Officer No.2 for the

Perambur Assembly Constituency for the General Elections to the Lok

Sabha, 2019, which was scheduled to be held on 18.04.2019. It is trite in

law to point out that public servants, who had been issued with direction to

discharge duty by the Election Commissioner of India must discharge such

duty. He had no option. If he fails to discharge, then he would be

committing a cognizable offence punishable under Section 134 of

Representation of People Act 1951. It had also been stated that questioning

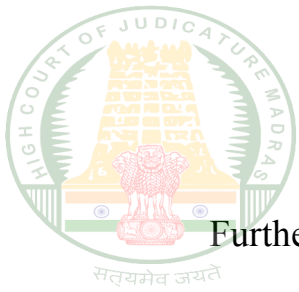
such proceedings under Section 134 of the Representation of People Act

1951, no suit or legal proceedings can be initiated. It is also to be noted

that many person deputed for election duty would be deemed to be on

deputation to the Election Commissioner of India and subject to the Control

Superintendence and Discipline of Election Commissioner of India.



Further, it is the Election Commissioner of India which would be the disciplinary authority under Section 23(A) of the RT Act, 1951.

17. Section 134 of the Representation of People Act, 1951 stipulates the punishment for breach of official duty in connection with election. The said provision is as follows:

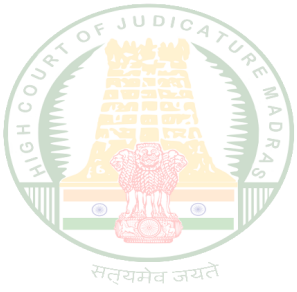
Breaches of official duty in connection with election.—

(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(1A) An offence punishable under subsection (1) shall be cognizable.]

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the 2 3 district election officers, returning officers, assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with 4 the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

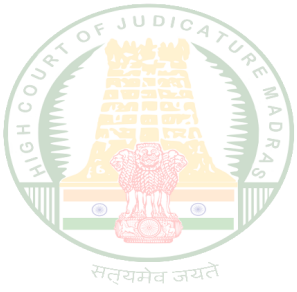


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18. It is seen that any person to whom this Section applies, does commit breach without reasonable cause the official duty, he shall be punishable with fine which may extend up to Rs.500/- .

19. Further, Section 23(A) of the Representation of People Act stipulates that the Election Commissioner of India would be the disciplinary authority and it is thus seen that when the petitioner was assigned to discharge duties as directed by the Election Commissioner of India/District Election Officer and Commissioner, Greater Chennai Corporation, he came under the direct control, superintendence and disciplinary authority of the Election Commissioner of India. The Department of Printing and Stationery had no administrative control over him. They could not even issue their relieving order. They could issue their relieving order only after the elections are completed. The elections were held on 18.04.2019. Thereafter, they issued the relieving order on 23.04.2019. The petitioner joined duty on 24.04.2019. It is not his fault that he joined duty on 24.04.2019.



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20. On the side of the respondent, it is contended that the petitioner

had not raised this issue during the period of his service but only at the time when seniority of in-service candidates were to be examined, and he had raised the issue after a period of six years. But the fact which cannot be disputed is that he was under election duty even before 02.04.2019 and till 18.04.2019, and he was issued with a relieving order only on 23.04.2019. During the time when he had to discharge duty as Poll Officer No.2, for the Lok Sabha Elections, 2019, he was under the direct control and supervision and discipline of the Election Commissioner of India. This is a fact which the respondent will have to accept and suitably grant consideration for the petitioner. There was an impossible situation which prevented him from joining duty on 24.04.2019. The bonafide of the petitioner can be gauged from the fact that he was relieved on 23.04.2019. He joined the respondent on the very next day/24.04.2019. The bona fide of the petitioner could further be gauged from the fact that out of several public servants, he was chosen to discharge poll duty, which is a significant duty entrusted, and which he should not avoid and could not have avoided and sensibly, did not avoid. But, he could not be penalized for that fact he was discharging public



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duty. That discharge is also a compulsory duty and he could not be faulted for it. Both the Department of Printing and Stationery and the respondent Board should have appreciated that particular fact. No doubt, there is a delay in the petitioner claiming his right to be considered to be on duty from 02.04.2019 but, mere delay could not be held against the petitioner. The other factor is about those who would be affected if the petitioner seniority is considered on and from 02.04.2019. Necessarily they will have to be heard. But that cannot be a factor to prevent respondent from granting the opportunity to the petitioner of being considered as being in service on and from 02.04.2019.

21. I hold that the reason advanced that the petitioner had discharged election duty is a reason which should be viewed with considerable force by this Court. But at the same time, the Court cannot be oblivious to others whose seniority would be affected if the petitioner's seniority is dated back to 02.04.2019. It would only be therefore appropriate that the respondent places the petitioner in the appropriate seniority position and invites objections from others who would be affected by the petitioner being placed



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in that particular position in the seniority list and thereafter, take a final decision about placement of the petitioner in the particular place in the seniority list. But the respondent cannot deny the claim of the petitioner that his service should be considered on and from 02.04.2019. They may place him in that particular position and invite objections and then take a final decision. The petitioner should also explain, whether, if he had not been called for election duty, he would have joined immediately on 02.04.2019 or would have availed the joining time till 24.04.2019. That is a nebulous issue and necessary reasons will have to be given by the petitioner. He would also have to give the reason for not taking up this issue earlier. All these factors will have to be examined and thereafter, a decision has to be taken by the respondent but for all practical purposes, he should be placed as if he had joined duty on 02.04.2019 and then a final decision must be taken by the respondent.



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22. The writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/no
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To

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TANGEDCO Administrative Branch,
144, Anna Salai,
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2.The Superintending Engineer,
Chennai EDC South II,
K.K.Nagar, Chennai 600 083.

3.The Director of Stationery & Printing,
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C.V.KARTHIKEYAN, J.



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(mrn)

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