



W.P.No.35830 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.35830 of 2019 and
W.M.P.No.36733 of 2019

Thiru.V.Vijayamohan

... Petitioner

Vs.

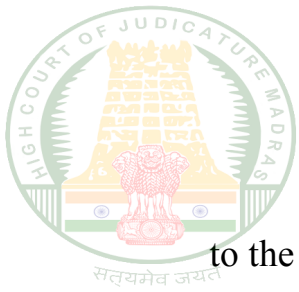
1.Tamil Nadu Generation and Distribution Corporation,
Rep. by its Chairman & Managing Director,
No.144, NPKRR Maaligai, Anna Salai, Chennai - 2.

2.The Secretary
Tamil Nadu Generation and Distribution Corporation,
No.144, NPKRR Maaligai, Anna Salai, Chennai - 2.

3.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation,
No.144, NPKRR Maaligai, Anna Salai, Chennai - 2.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents 1 and 2 to promote the petitioner notionally as Deputy Finance Controller from the post of Accounts Officer, w.e.f 01.06.2019 with consequential benefits as per B.P.(FB).No.182, dated 18.05.1987 by releasing the panel for promotion



W.P.No.35830 of 2019

to the post of Deputy Finance Controller for the year 2018-2019 based on the Letter of the second respondent vide Letter No.008688/06/G.30/G.301/2019-1 dated 07.03.2019 in the light of the order passed in W.P.No.2942 of 2017 dated 28.03.2017.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.Rajkumar, Standing Counsel

ORDER

This Writ Petition has been filed to direct the respondents 1 and 2 to promote the petitioner notionally as Deputy Finance Controller from the post of Accounts Officer, w.e.f 01.06.2019 with consequential benefits as per B.P.(FB).No.182, dated 18.05.1987 by releasing the panel for promotion to the post of Deputy Finance Controller for the year 2018-2019 based on the Letter of the second respondent vide Letter No.008688/06/G.30/G.301/2019-1 dated 07.03.2019 in the light of the order passed in W.P.No.2942 of 2017 dated 28.03.2017.

2. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner, Mr.K.Rajkumar, learned Standing Counsel for the respondents and perused the materials available on record.



W.P.No.35830 of 2019

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3. The petitioner is working as an Accounts Officer in the respondent Board and his next level promotion is Deputy Financial Controller. The petitioner has come within the zone of consideration to the post of Deputy Financial Controller and his name was included in the promotion panel against Serial No.18. A person by name K.Sundaram has filed W.P.No.14442 of 2019 and obtained an interim order of stay to the promotion panel. Subsequently, the above Writ Petition was dismissed on 12.12.2019. As such, there is no impediment for granting promotion to the petitioner. But, the respondent Board did not take any earnest steps to grant promotion to the petitioner. The representation of the petitioner was also not considered. The petitioner had attained the age of superannuation on 31.12.2019 and retired from service. As the petitioner has not been given with promotion as Deputy Financial Controller, despite he has been included in the promotion panel for the year 2018-19, he has filed this Writ Petition seeking notional promotional benefits with effect from 01.06.2019 to the post of Deputy Financial Controller and grant consequential benefits.



W.P.No.35830 of 2019

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4. The learned Standing Counsel for the respondents submitted that the promotion panel prepared in the year 2018-19 has been dropped and a fresh panel was prepared on 24.01.2020 and the said panel was approved by the Chairman-cum-Managing Director / TANGEDCO on 28.01.2020. The promotion order has been issued on 30.01.2020. As the petitioner retired from service on 31.12.2019, he cannot be included in the promotion panel and neither he can be promoted to the said post.

5. It is further submitted that there is no vested interest accrued for the petitioner to seek promotion on the earlier date and the same aspect has been considered by the Division Bench of this Court in ***W.P.No.9328 of 2020 (S.Periasamy Vs. TANGEDCO)*** and it is held that the employee cannot seek retrospective promotion from the date of vacancy that has arisen and that B.P.Ms.(Ch) No.212 (Sectt.Br.) dated 12.06.1987 does not give any enforceable right to the employees to seek retrospective promotion. He also cited an another judgment of this Court held in ***W.P.No.36604 of 2016 dated 24.01.2023 (G.Jayauddin Vs. Tamil Nadu***



W.P.No.35830 of 2019

Generation and Distribution Corporation Ltd., and Another) in support
of the above contention.

6. It is seen from the records that the promotion panel to the post of Deputy Financial Controller has been prepared for the panel year 2018-19 and the petitioner's name has also been included, unfortunately the same was stayed by the order of this Court in view of the interim order passed in W.P.No.14442 of 2019. Hence, the respondents said to have dropped the panel and a fresh panel has been prepared only on 24.01.2020.

7. It is the contention of the petitioner that for none of his fault, he was denied with the promotion and the respondents did not consider that the stay order has been vacated. In this regard, the learned counsel for the petitioner cited a decision rendered in the case of ***Amarjeet Singh and Others Vs. Devi Ratan and Others, reported in (2010) 1 SCC 417***, wherein, it is held that the act of Court shall not prejudice any one. In the said case, it is held as under in paragraph No.17:



W.P.No.35830 of 2019

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"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter, blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court."

8. In the instant case, in view of some litigation raised by one employee, the earlier promotion panel for the year 2018-19 has become



W.P.No.35830 of 2019

unsuccessful and before the next promotion panel was prepared, the petitioner got his retirement due to superannuation. In the Writ Petition filed by one K.Sundaram in W.P.No.14442 of 2019, an interim order has been passed to stay the promotion panel prepared for the year 2018-19. Subsequently, the above Writ Petition has also got dismissed on 12.12.2019. So, it is claimed by the petitioner that just because some undeserving person has taken some unfair advantage by invoking the jurisdiction of this Court and thereby caused prejudice to the petitioner by obstructing his promotion, that ought not to have been taken advantage by the respondents also in not granting promotion to the petitioner. The petitioner has also raised a concern that the person junior to the petitioner has been given with promotion and the petitioner only was prejudiced.

9. Even though it is right to say that the promotion is not a matter of right, the right to consider the persons who are eligible for promotion is very much a right. Even though the promotion panel is rightly prepared for the panel year 2018-19, the same could not meet the end of its



W.P.No.35830 of 2019

purpose in view of the litigation raised by the individual. The subsequent promotion was given to one individual for the panel year 2019-20.

10. In the case cited by the learned Standing Counsel for the respondents, it appears from the fact that the junior of that petitioner had retired on 31.05.2009 after the panel was approved, but the petitioner had retired on 31.03.2009 before the approval of the panel. The petitioner who has been working as an Accounts Officer for several years and whose name has been included in the promotion panel for the year 2018-19, would have got legitimate expectation that he would be given with promotion and his retirement benefits would be fixed on the scale of pay which might be fixed on the promotional post. When similar persons as that of the petitioners who might be standing at the verge of the retirement, it would have been fair on the part of the respondents to take serious steps to vacate the stay order, if any obtained by any other employee by preferring Writ Petitions before the Court.



W.P.No.35830 of 2019

WEB COPY

11. In the instant case, in pursuant to the Writ Petition filed by one K.Sundaram, the promotion panel for the year 2018-19 was stayed. No effective steps have been taken to vacate the stay order. In fact, the said Writ Petition got dismissed on 12.12.2019, meaning to say that the promotion panel which was under attack was indirectly held to be not suffering from any infirmity. Had the respondents contested the Writ Petition effectively, that would have saved the interest of not only the petitioner and the persons similar to him who were at the verge of retirement. It is unfortunate that the promotion panel for the year 2018-19 cannot be given effect to and the promotion has been given only for the subsequent financial year i.e., 2019-20. Hence, I feel the respondents can consider the case of the petitioner empathetically by taking into consideration of the over all circumstances that delayed the promotion for the petitioner while he was in service. As the petitioner's eligibility and suitability for promotion has been decided even before his retirement and has been included for promotion panel for the year 2018-19, I feel the representation of the petitioner can be considered by the respondents fairly.



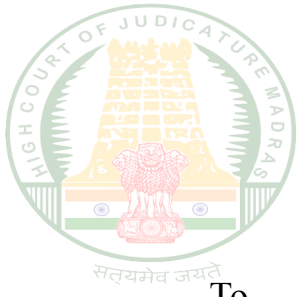
W.P.No.35830 of 2019

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12. In view of the above stated reasons, this Writ Petition is disposed and the respondents 1 and 2 are directed to consider the representation of the petitioner in the light of the above observations and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

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W.P.No.35830 of 2019

To
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