



W.A.(MD)No.334 of 2020

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

DATED : 24.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
and  
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.334 of 2020  
and  
C.M.P.(MD)No.2260 of 2020**

- 1.The Chairman,  
Tamil Nadu Generation and Distribution  
Corporation Ltd.,  
144, Annasalai, Chennai.
  - 2.The Chief Engineer (Personnel),  
Tamil Nadu Generation and  
Distribution Corporation Ltd.,  
144, Annasalai, Chennai.
  - 3.The Superintending Engineer,  
Pudukottai Electricity Distribution Circle,  
Tamil Nadu Generation and  
Distribution Corporation Ltd.,  
Pudukottai.
  - 4.The Executive Engineer,  
(Operation and Maintenance),  
Tamil Nadu Generation and  
Distribution Corporation Ltd.,  
Pudukottai Electricity Distribution Circle,  
Pudukottai.
- ... Appellants / Respondents



W.A.(MD)No.334 of 2020

WEB COPY

Vs.

N.Balakrishnan

... Respondent / Petitioner

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 13.12.2019 passed in WP(MD).No.13585 of 2015 and allow the writ appeal.

For Appellant : Mr.T.Sakthikumaran,  
Standing Counsel.

For Respondent : Mr.A.Rahul

### **JUDGMENT**

**(Judgment of the court was delivered by G.R.Swaminathan, J.)**

Heard the learned standing counsel for TANGEDCO and the learned counsel for the respondent.

2.The respondent joined TNEB as Accounts Supervisor. The next promotional post was that of Assistant Accounts Officer. It is not in dispute that 25.03.2008 was the crucial date for promotion to the post of Assistant Accounts Officer. The respondent / Balakrishnan was very



W.A.(MD)No.334 of 2020

much eligible to be promoted to the said post on that date. On account of the election process, the question of promotion was not considered and the matter was deferred. The respondent retired from service on 31.12.2009. He represented to the employer for conferment of promotion for pensionary and other purposes. He also filed W.P.(MD)No.4568 of 2010. This Court vide order dated 07.03.2012 disposed of the said writ petition in the following terms:-

*“2.According to the petitioner, he joined in the Tamil Nadu Electricity Board as Daily Casual Labour on 02.12.1970 and he was promoted as Supervisor (Accounts) on 06.01.2007 and he is eligible to be promoted to the post of Assistant Accounts Officer. The petitioner's service details were called for on 21.12.2009 and 04.11.2008. However, no promotion order was given to the petitioner till his date of retirement ie., 31.12.2009. While the petitioner was servicing on 15.12.2009, he has submitted a representation before the 2<sup>nd</sup> respondent, who is the competent authority to consider the same.*

*3.Since the matter is now pending on the file of the 2<sup>nd</sup> respondent, without expressing any opinion on the merits of the matter, the 2<sup>nd</sup> respondent is directed to consider the said representation and pass appropriate orders on merits and in accordance with law within a period of 8 weeks from the date of*



WEB COPY



W.A.(MD)No.334 of 2020

*receipt of a copy of this order. If the petitioner eligible to get promotion, he should be given the notional pay for the purpose of pensionary benefits.”*

3.Pursuant to the said direction, the respondent's case was considered and rejected vide order dated 01.10.2012. Challenging the same, the respondent herein filed W.P.(MD)No.13585 of 2015. The writ petition was allowed vide order dated 13.12.2019 in the following terms:-

*“6.Perusal of record shows that the petitioner's junior P.Chellan who was on similar footing and retired on 31.05.2009, has challenged the similar impugned order in W.P.No. 28673/2010, wherein, the Writ Court has passed the following order:-*

*"10.The perusal of the impugned order dated 20.11.2010 also reveals that the petitioner does not suffer from any disqualification and he has already reached the zone of consideration for promotion to the post of Assistant Accounts Officer. It is pertinent to note that the perusal of the impugned order further discloses that the supplementary panel was to be prepared on 25.03.2008 and the process was kept lie over due to Lok Sabha elections in the year 2009 as Code of Conduct. It is fairly submitted by the learned standing counsel for the respondents before this Court that the panel was prepared on 15.05.2009 and the petitioner's name was not considered only on the ground of his retirement on*



WEB COPY



W.A.(MD)No.334 of 2020

*31.05.2009. I am of the considered view that there is absolutely no impediment to promote the petitioner and the panel for promotion was prepared on 15.05.2009 and on that crucial date, the petitioner was very much in service and there is absolutely no justification to deny such benefit to the petitioner inspite of the admitted fact that the petitioner is fully qualified for such promotion.*

*11.In view of such sequence of events and the admitted facts, this Court is of the considered view that deprivation of the benefit of promotion to the petitioner is wholly unjustified and the reason assigned for rejecting the representation of the petitioner dated 30.04.2009 is untenable. The second respondent ought to have atleast considered the representation of the petitioner dated 05.06.2009 which was given prior to the passing of the impugned order dated 20.11.2010 and nothing prevented the second respondent to consider the said representation wherein, the petitioner has sought for the relief of notional promotion with consequential monetary benefits. It is very unfortunate to note that the said representation is not all referred in the impugned order dated 20.11.2010.*

*12.In view of the aforesaid reasons, this court has come to the irresistible conclusion that the impugned order is unsustainable in law. Accordingly, the writ petition is allowed and the impugned order passed by the second respondent dated 20.11.2010 vide Proceedings in Lr.No.100224/G30/G301/2008 is hereby set aside. Consequently, the second respondent is hereby directed to give notional promotion to the petitioner and pay the consequential monetary benefits with effect from 15.05.2009, the date on which the panel was approved, with all other attendant benefits. It is made clear that the above said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs."*



WEB COPY



W.A.(MD)No.334 of 2020

7. One another junior of the petitioner namely, N.Kannaiyan who retired on 31.07.2009, also filed W.P.No. 27273/2010 challenging the similar impugned order and the Writ Court relying on the order made in W.P.No.28673/2010, dated 14.03.2012, allowed the writ petition quashing the similar impugned order challenged therein. It is also stated that against the orders passed in the above two writ petitions, writ appeals were filed and the same were dismissed and the above persons were also given notional promotion and monetary benefits and therefore, there cannot be any different treatment to the petitioner.

8. Thus, in my considered opinion, the above orders are squarely applicable to the present petitioner also. Accordingly, following the above orders, the order impugned in Ref.No. 067668/725/G30/G301/2012-2 dated 01.10.2012 issued by the 2nd respondent, is set aside and the 2nd respondent is directed to give notional promotion to the petitioner to the post of Assistant Accounts Officer and to pay the consequential monetary benefits to him with effect from 21.10.2008, the date on which the panel was approved, within a period of twelve weeks from the date of receipt of a copy of this order. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.”

Questioning the same, TANGEDCO filed this intra-court appeal.



W.A.(MD)No.334 of 2020

WEB COPY

4.The learned standing counsel for the employer drew our attention to the decision of the Hon'ble Supreme Court reported in **[2024] 0 INSC 906 (Government of West Bengal Vs. Dr.Amal Satpathi)**. The Hon'ble Supreme Court in the aforesaid decision held that while the right to be considered for promotion is a fundamental right, the employee does not have an absolute right to the promotion itself. Promotion becomes effective only upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. If the employee got superannuated before the promotion was effectuated, he would not be entitled to retrospective financial benefits associated with the promotional post since he did not serve in the capacity. The learned standing counsel called upon us to follow the aforesaid decision and set aside the order passed by the learned Single Judge and allow the writ appeal.

5.The contention advanced by the learned standing counsel is undoubtedly attractive. But then, we are not persuaded to accept the same. There is more than one reason for taking such a view. It is not as



W.A.(MD)No.334 of 2020

if the case of the respondent herein is being tested by this Court for the first time.

6. After submitting representation seeking promotion, he filed W.P.(MD)No.4568 of 2010 before this Court for consideration of his request. Vide order dated 07.03.2012, a learned Judge of this Court in W.P.(MD)No.4568 of 2010 directed that if the respondent was eligible to get promotion, he should be given the notional pay for the purpose of pensionary benefits. This order has become final. This order was not put to challenge by the employer. It is true that the law subsequently enunciated by the Hon'ble Supreme Court is in favour of the employer. But then, we cannot lose sight of the principle of *res judicata*. When there is a binding direction that if the respondent was eligible to get promotion, he should be given the notional pay for the purpose of pension, the said direction cannot be wished away by citing the subsequent judgment of the Hon'ble Supreme Court with regard to the legal position.



W.A.(MD)No.334 of 2020

WEB COPY

7. That apart, the respondent's juniors had already been granted the benefit. It was also duly confirmed by the Hon'ble Division Bench which has been referred to in the order impugned in this writ appeal. We are therefore of the view that interference with the impugned order is not warranted. We make it clear that the respondent cannot have any claim for payment of arrears. The only benefit that is conferred on the respondent is that he will be given notional promotional with effect from 25.03.2008 and it will be computed for the purpose of the respondent's pensionary benefits.

8. This writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (R.P. J.)**  
**24.01.2025**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
ias



WEB COPY



W.A.(MD)No.334 of 2020

**G.R.SWAMINATHAN, J.**  
**and**  
**R.POORNIMA, J.**

ias

**W.A.(MD)No.334 of 2020**

**24.01.2025**