

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.6294 of 2021

G.Selvamoorthy

... Petitioner

Vs.

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

2.The Superintending Engineer,
Tiruvannamalai Electricity Distribution
Circle, TANGEDCO,
Tiruvannamalai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to consider the representation of the petitioner's dated 01.03.2021 with regard to select and appoint petitioner as Junior Engineer/Electrical, Grade II, on par with his immediate junior in the selection list issued by the first respondent by his Memo No.06318/212/G.12/G.122/2021 dated 26.02.2021 with consequential benefits.

For Petitioner : Mrs.Radhika

For Respondents : Mr.K.Rajkumar
Standing Counsel for TANGEDCO

ORDER

This Writ Petition has been filed seeking issuance of Writ of Mandamus to direct the respondents to consider the representation of the petitioner's dated 01.03.2021 with regard to selection and appointment of the petitioner as Junior Engineer/Electrical, Grade II, on par with his immediate junior in the selection list issued by the first respondent by his Memo No.06318/212/G.12/G.122/2021 dated 26.02.2021 with consequential benefits.

2. Heard Mrs.Radhika, learned counsel for the petitioner and Mr.K.Rajkumar, learned Standing Counsel for the respondents.

3. The petitioner is said to have been imposed with the punishment of stoppage of annual increment for one year with cumulative effect.

4. According to the learned Standing Counsel for the respondents, the petitioner's name was not considered to be included in the promotion panel in view of the earlier punishment imposed on him. He further submitted that once a punishment is imposed on a person, he will not be included in the promotion panel for the next five consecutive years.

5. Mrs.Radhika, the learned counsel for the petitioner submitted that the petitioner did not have any adverse remarks during the subsequent period of his service and he had also retired from service. She requested that a notional promotion atleast should be given to the petitioner in order to enable him to get better terminal benefits. In support of her contentions, she relied on the decision of this Court rendered in *W.P.No.19287 of 2005 dated 30.08.2022*, wherein, it is held as under:

"9. As far as this case is concerned, the only issue to be decided is that the period of currency of the punishment imposed on the first respondent. The punishment imposed on the first respondent is stoppage of increment for one year with cumulative effect besides

recovery of Rs.1,479/- towards the theft of transformer oil from his future pay. The date of issuance of the punishment order is 16.10.1995, as per which, the punishment period of one year gets over on 16.10.1996. Even if, the period is calculated from the date of rejection of the Appeal filed by the first respondent i.e., from 29.01.1996, the period of one year gets over on 29.01.1997, whereas, the panel list for promotion to the post of Wireman was prepared by the petitioner only on 14.03.1997.

10. It is crystal clear that on 14.03.1997, the date on which the panel list for promotion to the post of Wireman was prepared by the petitioner, there was no currency of punishment against the first respondent. In spite of that, the name of the first respondent was not considered by the petitioner for promotion to the post of Wireman."

6. In the case in hand also the petitioner was punished on 21.10.2019 with stoppage of one increment with cumulative effect for one year.

7. Mr.K.Rajkumar, learned Standing Counsel for the respondents submitted that as per the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, Schedule XI(1), *the merit, ability and other aspects of the employees shall be assessed over a period of five years as per annual confidential reports and punishments, if any, imposed for the purpose of promotion.*

8. This five years period is usually called as the '*check period*'. It is submitted that the petitioner's punishment fell within five years from the date of the promotion panel i.e., 26.02.2021 and hence, he was not included in the panel. The punishment for stoppage of one increment has been imposed on the petitioner on 21.10.2019, in which case, one year period would have got expired on 21.10.2020. The learned Standing Counsel for the respondents submitted that one year period will be counted only after the order is received and it is enforced. The order does not state that the period of punishment should be started to be implemented from any time later than 21.10.2019, though there may be

some practical inconvenience in effecting the stoppage of increment immediately from 21.10.2019.

9. However, as on 26.02.2021, there is no currency of punishment. Now let the focus be on five years '*check period*'. The eligibility of the candidate for promotion is considered based on his merits. One among the several parameters for promotion is 'no previous punishment for any misconduct'. If the punishment is imposed on the employee within a period of five years, before the date of consideration, normally, it will be read against the employee. However, it cannot be strictly interpreted in such a way that the promotion should not at all be granted for all those persons who had been imposed with punishment even though the punishment is not current.

10. According to the Tamil Nadu Electricity Board Disciplinary and Appeal Regulations, one of the punishments for the erring employee is withholding the increment or promotion. When an increment is withheld, the petitioner cannot be denied with promotion. If promotion is

stopped, then the increment also cannot be stopped. It is like punishing twice for the same lapse. It is not in dispute that the petitioner has been imposed only with the penalty of stoppage of increment and not stoppage of promotion.

11. The purpose of limiting the '*check period*' for five years is with a view that no one should be deprived of his promotional prospectus for his entire span of service, if he happened to get a punishment any time during his service. So, the five years limitation is a cap on the period under consideration for promotion. That means, a person's dossiers not more than 5 years need to be dugged to appreciate his suitability for taking him to the next cadre. However, the punishment within that period also is not a strict obstacle for taking a favourable decision on his promotion. It is at the discretion and appreciation of the Appropriate Authority, who would take into consideration of all other attendant facts for weighing the merits.

12. That is the reason why, the rule is not in a language that would convey in unequivocal terms that no promotion should be given to a person for five years, if he had suffered any punishment. On the other hand, the language of the Rule only conveys that promotion for a person cannot be denied for more than five years. In my opinion, this cannot be further expanded and interpreted that a person who had suffered punishment should not be given with any promotion at all during entire '*check period*', even though the punishment is just a stoppage of increment and that too, not current at the relevant point of time. Even if a rule about penalty or punishment is capable of giving two interpretations, the interpretation which is favourable to the employee should be given effect to. Such interpretation in service jurisprudence is possible, because it is as similar as to penal jurisprudence where also, when two views are possible, the view which is favourable to the accused is given to his benefit. The similarity is due to the imposition of penalty and its consequences on the employee, while dealing him under the Service Rules.

13. Taking into consideration of the broader meaning and object of the Regulation and also considering the nature of the lapse which resulted in the punishment and its relative gravity, the petitioner's request for promotion can be considered for the purpose of retirement benefits. In the event of considering the petitioner's request for promotion, it can only be considered as a notional promotion and not as an actual promotion which could carry monetary benefit.

14. Hence, this Writ Petition is disposed and the respondents are directed to consider the petitioner's request for promotion for the purpose of enhancing his retirement benefits. Since the petitioner has already retired from service, in the event of considering the petitioner's request for promotion, it can only be considered as a notional promotion and not as an actual promotion. No costs.

17.10.2023

Index : Yes
Internet : Yes
Speaking
Neutral Citation : Yes
gsk

R.N.MANJULA, J.

gsk

To

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

2.The Superintending Engineer,
Tiruvannamalai Electricity Distribution
Circle, TANGEDCO,
Tiruvannamalai District.

W.P.No.6294 of 2021

17.10.2023