(2007) 01 MAD CK 0144

Madras High Court

Case No: Writ Petition No''s. 32449, 32450 and 32451 of 2004

M.H. Kuppusamy, P.A. Balasubramanian and D. Balasubramanian		APPELLANT
	Vs	
The Tamil Nadu Electricity Board		RESPONDENT

Date of Decision: Jan. 29, 2007

Acts Referred:

- Electricity (Supply) Act, 1948 - Section 79
- Electricity Boards Service Regulations - Regulation 97
- Tamil Nadu Electricity Board Regulations, 1967 - Regulation 7

Citation: (2007) 01 MAD CK 0144

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: V. Surendran, for the Appellant; M. Vaidyanathan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

W.P. No. 32449 of 2004:

The writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondent relating to his office Order No.1793/F1/F12/2004, dated 31.8.2004, rejecting the petitioner''s representation on extraneous grounds already settled by Court orders and quash the same and further to direct the respondent to count the petitioner''s service from 11.5.1953 to 2.11.1960 and to place the petitioner on par with V. Jambunathan, Sl.No.1 in Superintendent''s list, from 9.2.1968 and to notionally calculate the cash benefits on par with the cash benefits he earned in that post and in the further higher posts ending in Chief Internal Audit Officer post till the petitioner retired, on 31.12.1988.

W.P.No.32450 of 2004:

The writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondent relating to his Office Order No.1794/F1/F12/2004, dated 31.8.2004 and quash the same and further to direct the respondent to compute the cash benefits to the petitioner on par with S. Govindarajan, Sl.No.6 in the list of Superintendent from 6.3.1970 and in the further posts on par with him ending in the post of Chief Internal Audit Officer till the petitioner retired, on 31.10.1991 and to pay the difference in cash benefits within a reasonable time to be fixed by this Court.

W.P.No.32451 of 2004:

1. The writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondent relating to his Office Order No.1792/F1/F12/2004, dated 31.8.2004 and quash the same and further to direct the respondent to notionally reckon all the cash benefits on par with V. Jambunathan, Sl. No.1 in the list of Superintendent, from the post of Superintendent/Assistant Audit Officer to the post of Chief Internal Audit Officer and to pay the difference of cash benefits accordingly to the petitioner within a time so fixed by this Court.

2. Since the issues involved in the above writ petitions have arisen out of the same facts and circumstances, a common order is passed.

The brief facts of the case, as stated by the petitioners are as follows:

3. The petitioner in W.P.No.32449 of 2004 had entered into service, on 11.5.1953, after passing B.A. degree examination, as a Lower Division Clerk in Pykara Electricity System of the Department of Electricity of Government of Tamil Nadu. On 1.7.1957, the petitioner was absorbed in service in the Tamil Nadu Electricity Board on its formation. He was posted as a Upper Division Clerk, on 3.11.1960. On 7.6.1963, he was absorbed as an Assistant in the Accounts Wing after its formation in 1961. On 21.4.1972, B.P.No.813 was brought into force for fixing seniority in the post of Assistant in the Accounts Wing by which half the service in the system/circle was to be counted, counting full service as Assistant in the Accounts Wing.

4. Aggrieved by the same, the petitioner had filed a writ petition in W.P.No.11911 of 1993, which had been dismissed by an order of this Court, dated 3.12.1999. The petitioner had filed an appeal in W.A.No.1179 of 1999, which was allowed by an order, dated 28.1.2002, holding that B.P.813, dated 21.4.1972, cannot have application to the petitioner, as he had entered into the Accounts Wing, on 7.6.1963 itself and that his full service as Assistant in the Tamil Nadu Electricity Board is to be counted as per Regulation 97(b) and

directing computation of cash benefits, notionally, reckoning from the date of first entry in service. However, the respondent, while computing the benefits, had granted the petitioner only partial benefits under his order, dated 9.8.2002. Therefore, the petitioner had made a representation, dated 1.9.2002, to the respondent requiring proper calculation of the benefits due to the petitioner. Since there was no response to the representation made by the petitioner, he had filed a writ petition in W.P.No.46035 of 2002. This Court, by an order, dated 30.6.2004, had permitted the petitioner to give a detailed representation to the respondent containing all his claims. Therefore, the petitioner had given a detailed representation, dated 23.7.2004. However, the representation was answered, on 26.9.2004, by the Tamil Nadu Electricity Board, rejecting the representation, without considering the settled principles of law. Therefore, the petitioner has preferred the present writ petition on the various grounds forming part of the affidavit filed in support of the writ petition.

5. The petitioner in W.P.No.32450 of 2004, had joined as a Lower Division Clerk in the Electricity Department of the Government of Tamil Nadu, on 1.6.1956, after passing Intermediate Examination. He had subsequently passed B.A. degree course in 1960. On the formation of the Tamil Nadu Electricity Board, on 1.7.1957, the petitioner was absorbed as a Lower Division Clerk and he was promoted as a Upper Division Clerk, on 9.4.1962, in the system Office of the Tamil Nadu Electricity Board. He was absorbed as an Assistant in the Accounts Wing, on 30.4.1966. On formation of the Accounts Wing in the Tamil Nadu Electricity Board in 1961, fixing of seniority was taken up. As per B.P.No.813, dated 21.4.1972, full service in the Accounts Wing and half service as Assistant in the system was counted and the petitioner''s seniority was fixed as Sl.No.38. On the representation made by the petitioner, his service from 9.4.1962, was counted and his seniority was advanced to Sl. No.30.

6. Aggrieved by the counting of only 50% of his service and denial of counting of his service from 1.6.1956 to 8.4.1962, the petitioner had filed a writ petition in W.P.No.1850 of 1992. By an order, dated 3.2.1999, this Court had dismissed the writ petition. The petitioner had filed a Writ Appeal in W.A.No.1179 of 1999, which was allowed by an order, dated 28.1.2002, holding that B.P.No.813, dated 21.4.1972, providing for counting of 50% of service cannot have application to the petitioner, as he had joined the Accounts Wing, on 30.4.1966 itself. The order passed by this Court also specifies that the benefits have to be reckoned from the date of first entry in service. However, the respondent had passed an order, dated 9.8.2002, calculating the benefits in the annexure and without properly calculating the notional benefits. Therefore, the petitioner had made a representation to the respondent, dated 1.9.2002, requesting for recalculation of the benefits. Since the respondent had not replied to the representation of the petitioner, dated 1.9.2002, the present writ petition has been filed on the various grounds forming part of the affidavit filed in support of the writ petition.

7. The petitioner in W.P.No.32451 of 2004, had joined as an Assistant in the Electricity Department of Tamil Nadu, on 9.10.1956, after passing B.Com. degree. The Tamil Nadu

Electricity Board was formed, on 1.7.1957 and the petitioner was absorbed as an Assistant in the system/circle of the Tamil Nadu Electricity Board, on 10.11.1961. In the list of Assistants of the Tamil Nadu Electricity Board, the petitioner was fixed in Sl.No.53 omitting his service rendered in the Government Service from 1956 to 1961. Regulation 7 of the Tamil Nadu Electricity Board Regulations, 1967, requires the full service under the Government to be counted. On the petitioner''s representation, his service with the Government was counted and his seniority was advanced and fixed between Sl No.10 and Sl No.11. B.P.No.813, dated 21.4.1972, of the Tamil Nadu Electricity Board was brought into force for fixing the seniority of Assistants in the Accounts Wing. Applying B.P.No.813, the petitioner was placed in the Superintendents'' category between Sl.No.5 and Sl.No.6.

8. Aggrieved by the said fixation of seniority, the petitioner had filed a writ petition before this Court in W.P.No.11979 of 1991, which was dismissed by an order of this Court, dated 3.2.1999. The appeals filed by the petitioner and two others were numbered as Writ Appeal Nos.1178 to 1180 of 1999, and the same were ordered by an order of this Court, dated 28.1.2002. By the said order, it was held that B.P.No.813, dated 21.4.1972, was brought in as Regulation of the Tamil Nadu Electricity Board and that it can have only prospective application governing those who entered on or after the date on which it was brought in as a regulation and since it cannot have retrospective application, it cannot be applied to the petitioner, who had entered the Accounts Wing, on 10.11.1966. It was further held that Regulation No. 97(b) of the Tamil Nadu Electricity Board regulation would alone apply to the situation. As per the said Regulation, full service as Assistant in the system/circle of the Tamil Nadu Electricity Board was counted. Accordingly, the respondent was directed to compute the cash benefits of the petitioner, basing upon the notional seniority to be counted reckoning his date of first entry in the service. Accordingly, the respondent had passed an order, dated 9.8.2002, by which a certain sum had been granted to the petitioner and denying certain other benefits, which were due to him. The petitioner had made a representation, dated 1.9.2002. However, since there was no response, the petitioner had approached this Court by way of filing the present writ petition.

9. In the counter affidavit filed on behalf of the respondent in W.P.No.32449 of 2004, it has been stated that the writ petition is not maintainable on the ground of res judicata, as the petitioner had filed a similar writ petition for the same relief in W.P.No.11911 of 1993 and the same had been dismissed, on 3.2.1999. Subsequently, a writ appeal had been filed against the said order in W.A.No.1178 of 1999 and the same was allowed, on 28.1.2002, with the following observations:

These matters relate to the seniority of the appellants in the post of Assistant Audit Officer. The pertinent orders are contained in B.P.No.813, dated 21.4.1972 to be read and construed along with Regulation 97(b) of the Electricity Board''s Service Regulations. Under Regulation 97(b) of the said Regulations the transfer of a personnel from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter post for the purpose of seniority, and the seniority of the person so transferred shall be determined with reference to the rank in the category or grade from which he was transferred. This regulation has got statutory force having been framed u/s 79(c) and (k) of the Electricity (Supply) Act, 1948. Coming to B.P.No.813, dated 21.4.1972, the retrospective operation to the seniority for the personnel joining the Accounts Wing is 15th Juanuary 1968. It is not disputed that the appellant in W.A.No.1180 of 1999 was transferred and joined the Accounts Wing on 7.6.1963, while the other appellants on 30.4.1966 and 10.11.1966 respectively. If that be the case, they fall squarely within the scope of Regulation 97(b) as stated above. But, Mr. V. Radhakrishnan, learned Counsel appearing for the Electricity Board submits that the settled ranks will be unsettled, if the seniority as sought for by the appellants is granted. We make it clear that the relief, which can be granted, is only monetary one, not affecting the seniority, and as such the question of unsettling the seniority will not arise at all. The relief which is granted in these writ appeals is computation of the cash benefits, basing upon the notional seniority to be given reckoning the dates of the first entry of the appellants in the service. For reckoning and payment of differential amount, time of six months is granted from the date of receipt of a copy of this order. All the three writ appeals are thus allowed as indicated above. No costs.

10. It has been further submitted that based on the order passed by this Court, the respondent had revised the seniority and re-fixed the pay scale of the petitioner vide order, dated 9.8.2002. The petitioner having accepted the same, received the amount of Rs. 10,159/- towards cash benefit thereon. However, the petitioner had filed a writ petition in W.P.No.46035 of 2002 and this Court had passed an order with a direction to the petitioner to give a comprehensive representation to the respondent Board. Accordingly, the petitioner had given a representation, on 23.7.2004. After considering the representation in detail, the respondent Board had passed an order, vide Office Order No. 1793, dated 31.8.2004.

11. The petitioners had been granted the revised pay scale only as per the order passed by this Court earlier in W.A.Nos.1178 to 1180 of 1999. The petitioner''s service from his date of entry as Assistant in subordinate service was taken into account by re-fixing his seniority in the post of Assistant in Accounts Wing by placing him above T.Natarajan as per Office Order No.1840 dated, 9.8.2002. The notional seniority in the post of Assistant Audit Officer was also given on par with T.Natarajan.

12. The respondent had further submitted that the petitioner''s notional seniority cannot be fixed on par with T.Natarajan in the post of Internal Audit Officer, since he did not pass the internal Audit Officer test at the time of promotion of T.Natarajan as Internal Audit Officer.

13. The order passed in the above mentioned Writ Appeal did not specify that the service rendered by the petitioner as Junior Assistant, for the period from 11.5.1953 to 2.11.1960,

should be counted. Further, the petitioner is bound by the Board proceedings No.1287, since he was in service, on 11.7.1973.

14. It has also been stated in the counter affidavit filed on behalf of the respondent that the order passed by this Court in Writ Appeal No.1179 of 1999 was specific only with respect to revision of seniority. The petitioner is not governed by Service Regulation 97(b), as the Pay Scale/Increment/Period of Increment drawn by the petitioner in Government Service, Subordinate Service i.e., Chief Engineer/Electrical and Financial Controller Officer were not identical with that of the erstwhile now Audit Branch Accounts Wing at the time of the petitioner''s transfer to Audit Branch. The petitioner''s seniority was duly considered and fixed notionally by taking into account his 100% Government Service/Subordinate Service as per the order passed by this Court in the said appeal. The respondent Board cannot relax the pre-requisite qualifications as per B.P.No.1287, dated 11.7.1973 for the petitioner, while revising the seniority, as the Board cannot overlook those persons, who are rightly promoted after acquiring the pre-requisite qualifications as per B.P.No.1287, dated 11.7.1973.

15. It has also been stated that the necessary amendments to the Board''s Service Regulations were issued in the year 1980, incorporating the criteria in B.P.No.1287, dated 11.7.1973, in the Service Regulation. In practice, any changes in the service conditions of the employees are made, after duly consulting and negotiating with the employees Unions concerned. While doing so, the changes are made effective through executive orders, so as to give immediate application in the interest of the employees, duly stating that necessary amendments will be issued latter. On a later date, to give statutory force to the executive orders already implemented from a particular date, amendments to the relevant regulations of the Board''s Service Regulations are issued. They are effective from the date of effect of the original executive orders, unless otherwise specified.

16. In the present case, the Board''s proceeding No.1287, dated 11.7.1973, prescribing the qualifications for promotions in Audit Branch was operative, with effect from 11.7.1973 and it is only the amendment that was issued in the year 1980. It does not mean that B.P.No.1287, dated 11.7.1973, was made operative only from 1980. The petitioner cannot claim the extension of the benefits passed in the order in W.P.No.1906 of 1990. Initially, as per B.P.No.813, dated 21.4.1972, 50% of the petitioner''s service in Assistant post in subordinate office was considered. Subsequently, as per the order passed by this Court in W.A.No.1178 of 1999, 100% of Subordinate service in Assistant post was considered and cash benefit was computed based on the notional seniority in the Assistant post in Audit Branch.

17. The petitioner does not have substantial merit in the writ petition, since the Office Order, dated 9.8.2002, issued by the Chief Internal Audit Officer gives benefits in seniority, as directed in the earlier order of this Court, dated 28.1.2002 in W.P.No.1179 of 1999.

18. With regard to the W.P.No.32450 of 2004 filed by P.A.Balasubramanian, it has been stated in the counter-affidavit filed on behalf of the respondent that the respondent had revised the seniority and re-fixed the pay scale of the petitioner vide order, dated 9.8.2002. The petitioner had also accepted and received the amount of Rs. 28,917/- towards cash benefits thereon. Not being satisfied of the said order, the petitioner had filed another writ petition in W.P.No.46036 of 2002, before this Court and the same was disposed of with a direction to the petitioner to give a comprehensive representation to the respondent Board. Accordingly, the petitioner had given a representation, on 23.7.2004 and after considering the representation in detail, the respondent Board had passed an order, vide Office Order No.1794/F1/F12/2004, dated 31.8.2004. The petitioner was granted the revised pay scale as per the order passed by this Court in W.A.No.1178 to 1180 of 1999. Notional seniority was fixed as per the Office Order No.1840 dated, 9.8.2002, considering that the petitioner had passed the accountancy higher only in the month of November, 1974. The petitioner''s claim under the provisions of the service Regulations 97(b) could not be considered, since the order passed by the Division Bench of this Court was only for computation of cash benefits based on the re-fixation of the national seniority. The said order does not provide for reckoning seniority, including the promotion, ignoring the pre-requisite qualifications prescribed in B.P.No.1287, dated 11.7.1973.

19. With regard to the writ petition No.32451 of 2004, filed by D. Balasubramanian, it has been stated in the counter-affidavit filed on behalf of the respondent that a similar writ petition for the same relief had been filed by the petitioner in W.P. No. 1850 of 1992, and the same was dismissed, on 3.2.1999. Subsequently, Writ Appeal No.1179 of 1999, had been filed before this Court and the same was allowed, on 28.1.2002. In compliance with the order passed by this Court in W.A.No.1178 of 1999, the services of the petitioner from his date of entry as Assistant in Government Service has been taken into account by re-fixation of the seniority in Assistant post in Accounts Wing as per the Office Order No.1840 dated, 9.8.2002. The notional seniority in the post of Assistant Audit Officer was also placed on par with late V.Jambunathan, considering his B.Com., qualification, which he had acquired at the time of the promotion. However, his notional seniority could not be fixed on par with late V. Jambunathan in the post of Internal Audit Officer, due to his not passing the Internal Audit Officer Test at the time of his promotion as Internal Audit Officer, since there was no mention in the orders in W.A.No.1178 of 1999, to consider his notional seniority in the promoted post, also without considering his pre-requisite qualification, as required in B.P.No.1287, dated 11.7.1973. Since B.P.No.1287, dated 11.7.1973, was applicable from 11.7.1973 onwards and since the petitioner was in the Board''s Service, on the said date B.P.No.1287, was applicable to him. Since the petitioner did not fall under 97(b), as contemplated in Order in W.A.No.1178 of 1999, his case was considered taking into account his 100% Government Service, Subordinate Office Service and his seniority was fixed notionally in Office Order No.1840, dated 9.8.2002. In the absence of specific mention in the said order about revision of notional seniority in the promotional post, the respondent Board cannot presume in favour of the

petitioner that the revision of seniority will apply to the promotional post also by placing him above the persons, who had been duly promoted after their acquiring the pre-requisite qualifications as per B.P.No.1287, dated 11.7.1973. Further, the Office Order No.1840, dated 9.8.2002, of the Chief Internal Officer, giving benefits in seniority, as directed in the common order of this Court, dated 3.2.1999, in W.A.No.1178 to 1180 of 1999 fully meets the requirements specified by the petitioner.

20. On a perusal of the records and on analysing the rival contentions of the learned Counsel appearing on behalf of the petitioners as well as the respondent, it is seen that the notional seniority of the petitioners have been fixed in accordance with the order passed by this Court, on 28.1.2002, in W.A.Nos.1178 to 1180 of 1999 batch and accordingly, the monetary benefits have also been paid to them.

21. The main contention of the petitioners seems to be that the respondent Board has not rightly calculated the notional seniority, while applying the directions issued by this Court by its order, dated 28.1.2002.

22. The learned Counsel appearing on behalf of the petitioners had submitted that from the order, dated 28.1.2002, passed by the Division Bench of this Court in W.A.Nos.1178 to 1180 of 1999, it has been made clear that the writ petitioners would fall squarely within the scope of Regulation 97(b) and that they are eligible for all the benefits due to them, including subsequent promotions. However, the learned Counsel appearing on behalf of the respondent Board submits that the promotions due to the petitioners were granted in accordance with the order passed by this Court in W.A.Nos.1178 to 1180 of 1999, dated 28.1.2002, and the entire cash benefits were also disbursed to them, taking into consideration their past services and by fixing their notional seniority. However, for subsequent promotions, the petitioners had to pass the eligibility Tests, as provided for in B.P.No.1287, dated 11.7.1973, and since the petitioners had not obtained the required qualifications at the relevant time, they could not be considered for promotions, as claimed by them.

23. The case of the petitioners is that the order passed by the Division Bench of this Court, on 28.1.2002, in W.A.Nos.1178 to 1180 of 1999 has not been rightly interpreted by the respondent Board in applying the order, while granting the benefits due to the petitioners. If that be so, it was open to the petitioners either to have gone before the same Division Bench for a clarification of its orders, dated 28.1.2002, or by way of contempt proceedings, if the petitioners had felt that the respondent Board had disobeyed the directions issued by the said Division Bench. Re-agitating the matter at this later stage by way of filing fresh writ petitions may not be open to the petitioners. However, it is also seen that the petitioners were considered for promotion based on their qualifications, as prescribed by B.P.No.1287, dated 11.7.1973. It is clear that if the petitioners did not possess the required qualifications at the relevant point of time in accordance with B.P.No.1287, dated 11.7.1973, they would not be eligible for the promotions, as claimed by them, even if the petitioners had obtained the qualifications subsequently. If a different

interpretation is given by this Court by granting the benefits, as prayed for by the petitioners, it would cause grave prejudice to other persons, who have been duly promoted in according with the then prevailing procedure for such promotions.

24. In such view of the matter, this Court is not persuaded by the contentions raised by the petitioners to grant the prayers, as prayed for by them. Therefore, the writ petitions stand dismissed. No costs.