

(2011) 07 MAD CK 0136

In the Madras High Court

Case No : Writ Petition (MD) No. 3938 of 2006

M. Gladwin Chellakumar

APPELLANT

Vs

The Chairman, The Superintending Engineer and The
Additional Chief Engineer, Trichy Electrical Distribution Circle
Metro, Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0136

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T. Ravi Chandran, for the Appellant; V. Kasinathan for Tamil Nadu Electricity Board, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner prays for issuance of a writ in the nature of certiorari, to quash the order dated 31st May, 2005,

passed on the representation filed by the Petitioner.

2. The admitted case leading to the filing of the writ petition, is that the Petitioner was appointed as casual labourer with the Tamil Nadu Electricity

Board on 1st January, 1969. On 21st August, 1974, the Petitioner was ordered to be absorbed as Helper on regular basis. Thereafter, a list of

persons absorbed as Helper was circulated, wherein the name of the Petitioner was shown at serial No. 1 and one P. Chinnappan was shown at

No. 60.

3. The Petitioner was thereafter, transferred to Trichy, where he was assigned the job of Cleaner. This assignment was in terms of letter of

appointment as Helper as it was classified that the persons appointed as helper

could be deputed to any post. The Petitioner is performing the duty as a Cleaner being a Helper.

4. The pay scale of the Cleaner and Helper is identical. A circular was issued by the Tamil Nadu Electricity Board, stipulating therein, that the person opting for the post of Cleaner, was to forego his seniority as a Helper.

5. In pursuance to the instruction, no offer was made to any of the Helper to opt for the post of Cleaner, by undertaking to forego the seniority of the post of Helper. In absence of an option, it is not open to employer to depute and employee to another post and denying him benefit of seniority on the previously held post.

6. The Petitioner cause to know that the person who was much below in seniority, as Helper was getting higher salary than the Petitioner. The Petitioner filed a representation requesting to pay him the salary at par with junior on the principle of step up.

7. In response to the representation of the Petitioner, the impugned order has been passed, which reads as under:

Thiru.M. Gladwin Chellakumar, Wireman (Retired) is informed that his request to restore his seniority from the date of Joining as Helper on 1.5.74 is not feasible of complaine.

A reading of the order shows, complete non-application of mind. The officer has passed the order without knowing the subject, he was dealing with. The request was for step up of salary to be at par with his junior, where as order talks of restoration of seniority.

8. The non-application of mind is further proved, on reading of the counter, as in the counter, now the stand taken by the Respondent is that the person shown at Serial No. 60 stood promoted to the post of lineman. The promotion of junior is prima facie without considering the claim of the seniors. It will be open to the Petitioner to challenge the promotion of his junior without considering his claim, if so advised.

9. It is for the authorities to consider, and for the Petitioner to challenge by way of appropriate proceedings the promotion of junior.

10. For the present, it is sufficient to observe that it is unfortunate, that the impugned order has been passed with total non-application of mind. The reading of order makes no sense at all, because there was neither change of seniority, nor the prayer was made by the Petitioner to restore his

seniority, as noted in the impugned order.

11. Consequently, the Writ Petition is allowed and the impugned order is set aside, and the writ in the nature of mandamus is issued directing the

1st Respondent to consider the representation of the Petitioner dated 24.01.2001, in accordance with law by appreciating the true facts and the

claims raised. The needful shall be done within one month from the date of receipt of a copy of the certified copy of the order. The Respondents

are also directed to supply the promotion orders of the junior to the Petitioner, to enable him to challenge those orders, if so advised.

12. The Petitioner who is class IV employee, has not been dealt with properly, therefore, shall be entitled to the costs of this petition, which are

assessed at Rs. 20,000/- (Rupees Twenty Thousand only).

13. The Tamil Nadu Electricity Board shall be at liberty to recover the costs from the officer, who has passed the impugned order.