



W.P.(MD).No.2632 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.2632 of 2016

and

W.M.P.(MD).No.2334 of 2016

1.T.Kalimuthu

2.M.Sakthivelayutham

3.K.Soneesh Kumar

4.R.Ureka

5.S.Vengatesh

... Petitioners

Vs.

1.Tamil Nadu Generation and Distribution Corporation,
Represented by its Chairman and Managing Director,
144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation,
144, Anna Salai,
Chennai-600 002.

3.The Chairman,
Board of Apprenticeship Training,
Southern Region,
4th Cross Street, C.I.T.Campus,
Taramani, Chennai-600 113.

... Respondents



W.P.(MD).No.2632 of 2016

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring first respondent (Per.) (FB) TANGEDCO proceeding No.10, Administrative Branch, dated 10.12.2015 and Notification No.01/2015 dated 28.12.2015 requiring the Petitioners, who worked as Apprentices in the first respondent, to undergo written examination is illegal and direct respondents 1 and 2 to dispense with written examination for the petitioners for the ensuing direct recruitment to the post of Assistant Engineer(Electrical), Assistant Engineer(Mechanical) and Assistant Engineer (Civil) and also direct respondents 1 and 2 to formulate a scheme for absorbing ex-apprentices as per the amended provision of Section 22 (1) of the Apprentices Act, 1961.

For Petitioners : Mr.K.M.Ramesh
Senior Counsel

For R1 & R2 : Mrs.M.Parameswari
Standing Counsel

For R3 : No Appearance

ORDER

This Writ Petition is filed for Writ of Declaration to declare the first respondent proceeding in (Per.) (FB) TANGEDCO No.10, Administrative Branch, dated 10.12.2015 and Notification No.01/2015 dated 28.12.2015 requiring the Petitioners, who worked as Apprentices in the first respondent



W.P.(MD).No.2632 of 2016

corporation, to undergo written examination is illegal and direct respondents 1 and 2 to dispense with written examination for the petitioners for the ensuing direct recruitment to the post of Assistant Engineer (Electrical), Assistant Engineer (Mechanical) and Assistant Engineer (Civil) and also direct respondents 1 and 2 to formulate a scheme for absorbing ex-apprentices as per the amended provision of Section 22 (1) of the Apprentices Act, 1961.

2. The petitioners are Engineering Graduates in Electrical and Electronics etc. After acquiring Engineering degree, the petitioners enrolled their names with the third respondent namely, Board of Apprenticeship Training and the third respondent sponsored their names to the first respondent for engaging them as apprentices. After conducting certificate verification and based on academic marks, the first petitioner was selected and worked as Graduate Apprentices during the year 2014-2015 and other petitioners have worked as Apprentices for one year for various years from 2008-2009 to 2014-2015.

3. The unamended Section 22 of the Apprentices Act, 1961 has not made any obligation on the part of the employer to offer any employment to any apprentice who had completed the period of apprenticeship. However, the first



W.P.(MD).No.2632 of 2016

respondent was recruiting the apprentices whenever vacancies arises in various posts notwithstanding the fact that there was no obligation under the Act whenever regular vacancy is notified for recruitment. The first respondent following the pattern of calling for names in the ratio of 1:5 from Employment Exchange and separate notification will be issued to the ex-apprentices simultaneously. Even though there is no written policy for recruitment of Ex-Apprentices in the first respondent establishment, the first respondent was giving preference for ex-apprentices when regular vacancies are filled up. The first respondent was not conducting written examination during the recruitment. Now, under the guise of implementing the judgment of this Court in W.A.No. 1027 of 2013 dated 09.06.2014 the first respondent has changed the pattern of selection. The petitioners have no grievance whatsoever with regard to change of pattern for selection by advertising the post and calling for applications from open market and to require the candidates to undergo written examination. However, the said pattern of selection cannot be made applicable to the ex-apprentices, since the ex-apprentices have now acquired right to be considered for appointment as per the amended provision of Section 22 of the Apprentices Act, 1961. The unamended provision of Section 22 did not provide for mandatory or rightful claim to be made by the Ex-apprentices for recruitment.



W.P.(MD).No.2632 of 2016

The amended Section 22(1) states that every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment. The above amendment now creates a mandatory obligation on the employer to formulate or evolve a policy or scheme to recruit the apprentices who have completed the period of apprenticeship training in the establishment. The third respondent being under the control of the respondents 1 and 2, is bound to frame a policy. The Hon'ble Supreme Court in the case of *U.P. State Road Transport Corporation and another Vs U.P. Parivahan Nigam Shighukha Burosgar Sangh and others* reported in (1995) 2 SCC has laid down various guidelines in respect of considering the apprentice trainees for employment. Subsequently, the Supreme Court has also issued guidelines in Civil Appeal Nos.5285 to 5328 of 1996 dated 03.10.1996. Pursuant to this judgment, the Government of Tamil Nadu issued G.O.Ms.No.142 dated 10.11.1998 superseding earlier G.O.Ms.No. 1151 Labour and Employment dated 18.07.1979 read with Govt. Letter No. 35631 dated 06.12.1980, to the effect that apprentices acquiring training under the same Management need not be required to sit in the written test, but they are required to undergo only viva-voce test. The said G.O.Ms.No.142 has been adopted and accepted by the respondent Board and selections were made for all



W.P.(MD).No.2632 of 2016

technical posts as per the guidelines issued in the above Government Order till now. Subsequent to issuance of G.O.Ms.No.142 dated 10.11.1998, when Respondent Board insisted for written test, one K. Lal Robert filed W.P.No. 20730 of 2000 challenging the holding of written test for apprentices and this Court vide order dated 23.12.2004 allowed the Writ Petition by following G.O.Ms.No.142. The Government Order in G.O.Ms.No.18 dated 25.02.2008 was issued in suppression of the earlier Government Orders and guidelines regarding fixation of ratio for sponsoring the candidates and to ensure expeditious filling up of vacancies. The above said Government Order deals only with sponsoring candidates from Employment Exchange in the ratio of 1:5. This Court has disposed of the batch of Writ Petitions by judgment dated 05.01.2015 in respect of the Respondent Board wherein, in paragraph No.3, G.O.Ms.No.142 dated 10.11.1998 has been considered and the respondent did not deny the fact that they are following G.O.Ms.No.142 and no written test was insisted for selection to technical posts.

4. The Government owned Departments and public sector undertakings were recruiting ex-apprentices in their establishment whenever vacancies arise for regular posts. The first respondent without taking any steps to formulate a



W.P.(MD).No.2632 of 2016

policy for recruiting ex-apprentices, has now changed the policy for recruitment and issued Board Proceedings dated 10.12.2015 and also recruitment notification dated 28.12.2015. In the said recruitment notification, Clause 6 prescribes the process of selection, which provides for written examination and interview fixing 85 marks and 15 marks respectively. Though it has been stated that other things being equal, preference shall be given to those who have undergone one year graduate Apprenticeship Training and the notification did not say that there will be no written examination for graduate apprentices. As per the amended provision of Section 22 of the Apprentices Act, 1961 the 1st respondent is bound to formulate a scheme for absorbing ex-apprentices and fill up the vacant posts only by resorting to recruitment from among the eligible ex-apprentices, only after exhausting that mode can resort to outside recruitment from open market. The 1st respondent cannot ask the ex-apprentices to apply along with open market candidates and compete with them by writing written examination as that will cause and mean the very provision introduced by the Parliament nugatory and meaningless. Aggrieved over the same, the present Writ Petition is filed.



W.P.(MD).No.2632 of 2016

WEB COPY 5. The Learned Counsel appearing for the respondents submitted that several writ petitions were filed before the Principal Bench and the Madurai Bench and the respondents have taken consistent stand that as per the amended provisions the policy decision is taken wherein the apprentice would be considered when other things being equal, preference shall be given to apprentices. However, they cannot be exempted from writing examination. The respondent produced the counter filed in W.P.(MD)No.1759 of 2016 wherein it is stated that TANGEDCO is following the TNEB Service Regulations. Under Regulation 89(5)(1) the selection shall be made on the results of written examination OR interview OR based on the performance in the qualifying examination prescribed for the respective post OR by awarding marks for the performance in the qualifying examination OR by combining any of the methods as considered suitable. Before taking a decision to recruit, a committee was constituted in CMD TANGEDCO Proceedings No.64, Administrative Branch dated 30.03.2015, wherein the committee considered the recruitment rules of TANGEDCO and the mode adopted by the TNPSC for the recruitment process for Highways Department, including the apprentice candidates in TNPSC notification i.e.



W.P.(MD).No.2632 of 2016

“Provided that other things being equal, preference shall be given to those who have undergone one year Apprenticeship Training under the Government of India Scheme or the State Government Apprenticeship Scheme”

and recommended that the posts by direct recruitment may be filled up by advertisement and also from employment exchange, that the marks obtained in competitive written examination for 85% and interview 15% and the selection be on merits, communal roster and when other things being equal preference would be given to apprentice. The training imparted for apprentice is social obligation in the interest of the society at large in terms of statutory mandate under the Apprentice Act, 1961 and there is no choice for respondent to deny training to the apprentices sponsored by the BOAT. The respondents ought to protection the fundamental rights guaranteed under Article 14 and 16 of the Constitution to the candidates from open market. The amendment to the Apprentice Act came into effect from 05.12.2014. Subsequent to the amendment the respondents have considered the issue and has taken a policy decision in (Per) (FB) TANGEDCO Proceeding No.08 dated 31.08.2017. Based on the same the present recruitment process is followed and hence the respondents prayed to dismiss the writ petition.



W.P.(MD).No.2632 of 2016

WEB COPY

6. Heard Mr.K.M.Ramesh, learned Senior Counsel, for the petitioner and Mrs.M.Parameswari, learned Standing Counsel for the respondents 1 and 2 and perused the records.

7. In the respondent corporation the recruitment prior to 2016 was restricted to candidates sponsored by the Employment Exchange. However, the said recruitment practice without issuing paper publication to open market was deprecated and held it is against the fundamental rights guaranteed under Article 14 and 16 by the Hon'ble Supreme Court in Union of India and others vs N. Hargopal and others, reported in 1987 [3] SCC 308 and in Excise Superintendent Malkapatanam Vs K.B.N. Vishveswar Rao and others reported in 1996 (6) SCC 216. The High Court of Madras in P.M.Malathi Vs State of Tamil Nadu reported in (2012) 3 MLJ 669 had held that any Rule of the State restricting the right of consideration of the eligible candidates for public appointment is unconstitutional and is violative of Articles 14 and 16 of the Constitution. In Renu and others Vs District & Sessions Judge, Tis Hazari and another reported in 2014 (2) SCALE 262 had held that "post shall be filled up by issuing the advertisement in atleast two newspapers and one of which must



W.P.(MD).No.2632 of 2016

be in vernacular language having wide circulation in the respective State, apart from calling for a list from the local employment exchange and any vacancy filled up without advertising as prescribed shall be void ab-initio and would remain unenforceable and inexecutable except the appointment on compassionate grounds as per the rules applicable. The Hon'ble Division Bench vide order dated 09.06.2014 passed in the case of the Commissioner Vs K.P.Jaganathan in W.A.No.1027 of 2013 has directed the government to follow the decisions stated supra while filling up the public posts.

8. When different mode of calling applications is prescribed then necessarily the merits of the candidates ought to be ascertained. When the candidates are appointed for training under the Apprentice Act, the said candidates are not undergoing any scrutiny to assess their merits. Infact the candidates after acquiring Engineering Degree enroll their names with the third respondent namely, Board of Apprenticeship Training and the third respondent sponsor their names for engaging them as apprentices. Then the institution engaging them would conduct certificate verification and based on academic marks would be impart training to the said candidates for a period of one year. In the present case the Service Regulations prescribes to conduct examination



and / or interview. Therefore, the respondents have taken into consideration Regulation 89(5)(1) of the TNEB Service Regulations, Section 22(1) of the amended provision of Apprentice Act, Articles 14 and 16 of the Constitution and the judgments stated supra and in order to select the meritorious candidates has formulated a scheme in (Per) (FB) TANGEDCO Proceeding No.08 dated 31.08.2017 and the relevant portion of the proceeding is extracted hereunder:

5) Hence, the matter has been placed before the Board of TANGEDCO and Board after careful consideration has decided that the Apprentice Trained in the TNEB/TANGEDCO/TANTRANSCO will have to appear in the examination conducted by TNEB and also decided the following exclusive policy with regard to the apprentice is framed under the Section 22 (1) of the Apprentice Act 1961 and direction of the Hon'ble High Court of Madras.

(1) All apprentices who have undergone training in the Board have to go through the process of selection provided in the Regulations. Pursuant to G.O.Ms.No.44, dated 11.03.2015, the Board has decided to conduct written examination for all categories of candidates. Therefore, the apprentice candidates must also appear in the competitive written examination.

(2) Other things being equal, apprentice will be given preference in appointment as per the law laid down by the Hon'ble Supreme Court of India in U.P. State Road Transport Corporation Vs U.P.Parivahan Nigam Shishukha (1995) 2 SCC 1 and clarified in U.P. Rajya Vidyut Parishad Apprentice Welfare Association and Another -vs- State of Uttar Pradesh and others 2000 LLR 869 (SC) = 2000 (3) SCR 1201, as has been followed hitherto followed.

(3) Age relaxation will be allowed to the extent of the actual period of apprentice training undergone in the TNEB/ TANGEDCO/ TANTRANSCO.



W.P.(MD).No.2632 of 2016

Where the respondents have granted age relaxation to the apprentices and also stated that preference will be granted to the apprentices, if other things are being equal, then the respondents have already formulated a scheme as per the guidelines issued by the Hon'ble Supreme Court and the same is implemented. Therefore, the petitioners cannot have any grievances. Moreover, the employer has every right to choose meritorious candidate and such policy decision to select meritorious candidate cannot be found fault with.

9. It is an admitted fact that there was an amendment in the Apprentice Act. Earlier it was not obligatory on the part of the employer to grant employment. Subsequently, the amended Act states that the employer shall formulate a scheme in order to recruit them by considering their apprenticeship training. The learned counsel appearing for the petitioner submitted that it is obligatory on the part of the employer to recruit them. Therefore, they should not conduct any examination, since they have already undergone examination while they were recruited as apprentices. But they can be allowed to participate in the viva-voce. This Court is not able to accept the contention of the petitioners, since while they were recruited as apprentices, the respondents had conducted only certificate verification and based on the academic marks, they



W.P.(MD).No.2632 of 2016

WEB COPY
were selected as apprentices. They had never undergone the scrutiny of written examination or viva-voce. Therefore, they should subject themselves to the written examination and viva-voce. Moreover, it is a regular process of recruitment to assess the merit and ability, written examination and viva-voce are necessary. Therefore, the petitioner cannot seek to dispense with the written examination, since the petitioners never ever attended any written examination even in the apprenticeship recruitment process. Therefore, the prayer to dispense with the written examination and viva-voce cannot be entertained.

10. However, the scheme formulated by the respondents have not granted adequate representation to the apprentices in consonance with the amended provisions. Earlier, it was not obligatory on the part of the employer. After amendment, a mandate is fixed on the employer to consider the apprentices who have undergone training within their own institution. Infact, they had spent one year time to train themselves and the said training will be beneficial for both the employer and the employee, that cannot be wasted and it should be utilized in the proper perspective. Therefore, this Court is of the considered opinion that the scheme formulated by the respondents that “if other things are equal, they will be given preference” is not adequate consideration. If any



W.P.(MD).No.2632 of 2016

weightage is granted to the “one year training” period by awarding some marks, that would be the proper mode of consideration. Therefore, the scheme is not adequate which is not in consonance with the amended provisions. Therefore, this Court is remitting back the case to the respondents to consider the case of the petitioners in consonance with the amended provisions. This Court is making clear that the written examination and viva-voce can never be dispensed with. With this observation, the respondents shall consider the case of the petitioners and pass appropriate orders within a period of four (4) weeks from the date of receipt of a copy of this order.

11. In view of the above directions and observations, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).No.2632 of 2016

To

WEB COPY

- 1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation,
144, Anna Salai,
Chennai-600 002.

- 2.The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation,
144, Anna Salai,
Chennai-600 002.



WEB COPY



W.P.(MD).No.2632 of 2016

S.SRIMATHY, J.

Nsr

W.P.(MD).No.2632 of 2016

25.04.2023