

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.12396 of 2012, W.P.No.10259 of 2012,
W.P.No.14391 of 2012 and W.P.No.12362 of 2012

Writ Petition No.12396 of 2012:

B.Indira

.. Petitioner

vs.

1. The Secretary to Government
Labour and Employment Department
Fort St. George, Chennai
2. The Chairman
Tamil Nadu Pollution Control Board
No.76, Anna Salai, Guindy, Chennai
3. The Member Secretary
Tamil Nadu Pollution Control Board
No.76, Anna Salai, Guindy, Chennai
4. The Professional and Executive Employment Office
Santhome High Road, Santhome, Chennai-4 .. Respondents

W.P.No.10259 of 2012:

1. K.Samivel
2. R.Thamilamudhan .. petitioners

Vs.

1. The Secretary to Government
Environment and Forests (E2) Department
For St. George, Chennai - 600 009

2. The Chairman
Tamil Nadu Pollution Control Board
Guindy, Chennai - 32

3. The Member Secretary
Tamil Nadu Pollution Control Board
Guindy, Chennai - 32

.. Respondents

W.P.No.14391 of 2012:

M.Prema

.. petitioner

Vs.

1. The Secretary to Government
Environment and Forests (E2) Department
For St. George, Chennai - 600 009

2. The Chairman
Tamil Nadu Pollution Control Board
Guindy, Chennai - 32

3. The Member Secretary
Tamil Nadu Pollution Control Board
Guindy, Chennai - 32

.. Respondents

W.P.No.12362 of 2012:

S.Selvam

.. Petitioner

Vs.

1. The Secretary to Government
Environment and Forests (E2) Department
For St. George, Chennai - 600 009

2. The Chairman
Tamil Nadu Pollution Control Board
Guindy, Chennai - 32

3. The Management of Tamil Nadu
Pollution Control Board
rep by its Member Secretary
No.76, Anna Salai
Chennai - 600 032

4. The Assistant Director
Professional Employment Exchange
Kuil Thottam
Mandaveli, Chennai

.. Respondents

W.P.No.12396 of 2012:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents to reinstate the petitioner in the post of Assistant Engineer.

W.P.No.10259 of 2012:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the second respondent to reinstate the petitioners in the post of Assistant Engineer.

W.P.No.14391 of 2012:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents to reinstate the petitioner in the post of Assistant Engineer.

W.P.No.12362 of 2012:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 to 3 to implement the selection process in terms of earlier regulations in relevance to the vacancies available during 2007 in conformity with G.O.Ms.No.54, Environment and Forest Department dated 20.5.1988 for the purpose of recruitment to the post of Assistant Engineer in terms of the respondents undertaking following Hon'ble Apex Court.

For petitioners : Mr.M.Balachandar in W.P.No.12396 of 2012
: Mr.J.Rajmohan in W.P.No.10259 of 2012
: Mr.S.Ilamvaludhi in W.P.No.14391 of 2012
: Mr.H.Nazirudeen in W.P.No.12362 of 2012

For Respondents :

W.P.No.12396 of 2012 : Mr.R.Ravichandran AGP
for R1 and R4
Mrs.Rita Chandrasekaran
for R2 and R3

W.P.No.10259 of 2012: Mr.N.Inbanathan
& Government Advocate for R1
W.P.No.14391 of 2012: Mrs.Rita Chandrasekaran
for R2 and R3

W.P.No.12362 of 2012: Mr.N.Inbanathan
Government Advocate for R1
Mrs.Rita Chandrasekaran
for R2 & R3
Mr.R.Ravichandran
AGP for R4

C O M M O N O R D E R

Since the issues involved in all the writ petitions are similar in nature, they have been taken up together and a common order is being passed.

2. Heard the learned counsels appearing for the parties concerned.

3. The present writ petitions had been filed praying that this Court may be pleased to direct the respondents to reinstate the petitioners in the posts of Assistant Engineers and to pass further orders.

4. The learned counsels appearing for the petitioners had submitted that the fourth respondent had sponsored the names of the candidates for the posts of Assistant Engineers in the Tamil Nadu Pollution Control Board (hereinafter referred to as 'the Board') following the Government Order, in G.O.Ms.No.6, Labour and Employment (N2) Department, dated 1.12.2002, based on the ratio of 1:20. Totally 501 candidates had been sponsored by the fourth respondent, based on their seniority. Only 255 candidates had written the examinations held by the Board.

5. It had been further stated that, before the answer sheets had been valued, the Government Orders, in G.O.Ms.No.65, Labour and Employment (N2) Department, dated 30.3.2007, and

G.O.Ms.No.86, Labour and Employment (N2) Department, dated 12.5.2007, had been issued by the Government of Tamil Nadu, clarifying that the sponsorship ratio should be 1:1. The Board had abandoned the earlier selection process, midway, and followed the procedures prescribed in the Government Order, in G.O.Ms.No.65, Labour and Employment (N2) Department, dated 30.3.2007 and had obtained a fresh list of the candidates, including the petitioners, from the fourth respondent.

6. It had been further stated that, based on the Government Order in G.O.Ms.No.65, Labour and Employment (N2) Department, dated 30.3.2007, the second and the third respondents had called 25 candidates for the interview and had selected 10 of them to be posted as Assistant Engineers, including the petitioners. The selection process conducted, earlier, had been abandoned, midway, after the coming into effect of G.O.Ms.No.65, Labour and Employment (N2) Department, dated 30.3.2007.

7. It had been submitted that the selection and appointment of 10 candidates had been challenged by some aggrieved persons. The First Bench of this Court had passed an order, dated 19.8.2008, in W.A.Nos.370 and 371 of 2008, etc. setting aside the impugned proceedings of the second respondent therein, dated 12.10.2007 and the appointment of the respondents 3 to 12 in the writ appeals. The second respondent had been directed to proceed with the selection, from the stage from which the process had been discontinued, after the written test had been held, on 11.3.2007. The second respondent had also been directed to complete the said process and finalise the selection, as per the procedures prescribed in Regulation 10 and the other provisions relating to the appointment for the posts of Assistant Engineers and to pass appropriate orders in accordance with law. The Special Leave Petitions had been preferred against the said order, in S.L.P.Nos.21700 to 21702 of 2008, in Civil Appeal Nos.517 to 519 of 2009. The said Special Leave Petitions had been disposed of stating that the Board shall give a relaxation of age to the petitioners in the said Special Leave Petitions and their names should be re-entered in the registers of the employment exchanges concerned. Pursuant to the order passed by the Supreme Court, the petitioners had been terminated from service, by the Board. However, it had not extended the other reliefs granted by the Supreme Court, to the petitioners. While so, the communication, dated 2.4.2012, had been issued by the Board stating that the qualification for being selected for the post of Assistant Engineer is also post graduation in Master of Engineering.

8. It has been further stated that the prescription of the higher qualification for the post of Assistant Engineer is against the spirit of the orders of this Court, as well as of the Supreme Court. The respondents had proceeded to conduct an unjust selection process to fill up 25 vacancies, by way of an interview, on 16.2.2012, contrary to the directions issued by the Apex Court and without considering the representations of the petitioners.

9. It had been learnt that an interview had been conducted, on 16.2.2012 and the Board had filled up only 6 vacancies against the notified 25 vacancies. Thus, it is clear that the filling up of the posts of Assistant Engineers, by the respondent Board, is contrary to the orders passed by this Court, as well as by the Supreme Court and therefore, it is invalid in the eye of law.

10. Per contra, the learned counsel appearing for the respondents 2 and 3 had submitted that the respondent Board had decided to fill up the posts of 25 Assistant Engineers, through the employment exchange, from amongst the holders of Bachelor degree in Civil or Chemical Engineering. The Board had made a request to the employment exchange to sponsor the names of the eligible candidates for making such appointments, as per the communal roster, in the ratio of 1:20. Pursuant to the request made by the Board, the employment exchange had sent a list of 501 candidates. The candidates had been asked to take a written test. Out of 501 candidates, only 256 had attended the written test. As per Regulation 10(2) of the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010, the candidates were to be called for an interview after passing the written test. While so, the State Government had issued an order, in G.O.Ms.No.65, Labour and Employment (N2) Department, dated 30.3.2007, revising the ratio as 1:1, instead of 1:20. Based on the Government Order, the respondents had called for fresh sponsorship from the employment exchange, by the letter, dated 26.4.2007. On the basis of the revised ratio prescribed by the Government Order, the petitioners had been appointed as Assistant Engineers, pursuant to the interview conducted, on 27.7.2007.

11. It has been further stated that one K.Nehru had filed a writ petition, in W.P.No.27847 of 2008, seeking appointment to the post of Assistant Engineer on the basis of the written test, held on 11.3.2007. By an order, dated 28.11.2007, the said writ petition had been dismissed, along with certain other writ petitions in which similar issues had been raised. The writ appeals had been filed, in W.A.Nos.370 and 371 of 2008. By an order, dated 19.8.2008, a Division Bench of this Court had

directed the second respondent therein to proceed with the selection from the stage where it had been left, midway, after the written test, held on 11.3.2007 and to complete the process and finalise the selection as per the procedures prescribed in Regulation 10 and the other provisions relating to the appointment of the candidates to the posts of Assistant Engineers.

12. Aggrieved by the order, dated 19.8.2008, the respondents 3 to 12 in Writ Appeals Nos.370 and 371 of 2008, and the Tamil Nadu Pollution Control Board had filed Special Leave Petitions before the Supreme Court of India. By an order, dated 5.9.2011, the Supreme Court of India had dismissed the Special Leave Petitions confirming the order passed by the Division Bench of this Court, dated 19.8.2008. While dismissing the Special Leave Petitions, the Supreme Court of India had observed that, while making fresh appointments following the order of the High Court, the Management of the Tamil Nadu Pollution Control Board shall give relaxation of age to the petitioners, in S.L.P. (C) Nos.21700 to 21702 of 2008, to the extent of their period of service and that their names ought to be re-entered in the employment exchanges concerned.

13. It had been further stated that, on the basis of the Judgment of the Division Bench of this Court, dated 19.8.2008, made in W.A.Nos.370 and 371 of 2008, as confirmed by the Supreme Court of India, the services of the petitioners herein and certain other persons had been terminated by the proceedings, dated 30.11.2011 and the employment exchanges concerned were addressed to re-enter their names, vide Board letter, dated 10.12.2011.

14. It has been further submitted that none of the candidates, who were parties before this Court and before the Supreme Court of India, had been selected, as they did not secure the necessary cut off marks prescribed by the Committee. Further, the petitioners do not have the necessary qualifications, as per clause 10 of the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010. As per the Revised Service Regulations, the candidate aspiring to become an Assistant Engineer should possess the Bachelor Engineer degree in Civil or Chemical Engineering and a Masters Degree in Environmental Engineering or Chemical Engineering. The present petitioners had not qualified in the written test, held on 15.4.2012, and they did not possess the required qualifications, as per the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010. Therefore, the petitioners are not entitled to seek the relief, as prayed for in the writ petitions. Thus, it is clear that the present writ petitions, filed by the

petitioners, are devoid of merits.

15. It had been further stated that the candidates aspiring to the posts of Assistant Engineers ought to get the minimum cut off marks, based on the communal categories they belong to, to be called for the interview. The cut off marks fixed in the written test for the Scheduled Castes candidates was 29.75. For the candidates belonging to Most Backward Classes category, it was 43 marks. For the Backward Classes category, it had been fixed at 38.25 marks and for the Other Castes category, the cut off marks had been fixed as 42.5.

16. It had been further stated that the petitioner in W.P.No.12396 of 2012 belongs to the Most Backward Classes category. She had secured 32.86 marks in the written test. Therefore, she was not qualified to be called for the interview. The petitioners, namely, K.Samivel and R.Thamilamudhan, in W.P.No.10259 of 2012, had secured only 25 and 33.57 marks, respectively in the written test. The petitioners in W.P.No.10259 of 2012 belong to the Most Backward Classes category for which the cut off mark is 43. The petitioner in W.P.No.14391 of 2012, belongs to the Scheduled Castes category and had secured only 28.57 marks while the cut off marks fixed in the said category was 29.75.

17. It had been further stated that the petitioner, in W.P.No.12362 of 2012, namely, S.Selvam, did not attend the written test, on 11.3.2007. In such circumstances, it had been further stated that it is an accepted practice for the selection process to be held in two stages. Only the candidates, who get qualified in the written test, based on the minimum cut off marks prescribed for the various categories, had been called for the interview. Such a practice has been held to be valid in law. The letter written by the Member Secretary of the Tamil Nadu Pollution Control Board, Chennai, dated 12.10.2007, stating that the selection of the candidates would be based on the total marks obtained both in the written test and the interview is not correct. Further, he is not the authority to prescribe the selection process. There is nothing stated in the order of the Division Bench of this Court, dated 19.8.2008, made in W.A.Nos.370 and 371 of 2008, that there should be an one stage selection. Hence, the contentions raised on behalf of the petitioners, in the above writ petitions, are not acceptable.

18. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, it is noted that the respondents had followed the process of selection, for the posts of Assistant Engineers, by conducting a written test and an interview. The minimum cut

off marks had been prescribed in the written test for the various categories to be called for the interview. The candidates, who had obtained the minimum cut off marks prescribed in the written test, had been called for the interview and some of them had also been selected and appointed as Assistant Engineers in the Board. The process followed for the selection of the candidates is based on the order passed by this Court, dated 19.8.2008, made in W.A.Nos.370 and 371 of 2008 and confirmed by the Supreme Court.

19. From the records available before this Court, it is noted that the petitioners in W.P.Nos.12396, 10259 and 14391 of 2012 had not obtained the cut off marks prescribed for the categories to which they belong. Therefore, they had not been called for the interview, for being selected for the posts of Assistant Engineers. It is also noted that the writ petitioner in W.P.Nos.12362 of 2012 namely, S.Selvam, did not attend the written test, on 11.3.2007. The petitioners had not been in a position to show that the two stage selection process followed by the respondents, for the selection of the candidates for the posts of Assistant Engineers is contrary to law. Further, the petitioners had not obtained the necessary educational qualifications prescribed under the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010, which had come into effect from 3.11.2010. In such circumstances, this Court is of the considered view that the contentions raised by the petitioners cannot be countenanced. In such view of the matter, this Court is not inclined to grant the reliefs, as prayed for by the petitioners, in the present writ petition. As the present writ petitions are devoid of merits, they are liable to be dismissed. Hence, the writ petitions stand dismissed. No costs. Connected M.P.Nos.1 and 1 of 2012, M.P.Nos.1 & 2 of 2012, M.P.Nos.1 and 2 of 2012 and M.P.Nos.1 and 2 of 2012 are closed.

sd/

सत्यमेव जयते
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

WEB COPY

lan

To:

1. The Secretary to Government
Labour and Employment Department
Fort St. George, Chennai

2. The Chairman
Tamil Nadu Pollution Control Board
No.76, Anna Salai, Guindy, Chennai
3. The Member Secretary
Tamil Nadu Pollution Control Board
No.76, Anna Salai, Guindy, Chennai
4. The Professional and Executive Employment Office
Santhome High Road, Santhome, Chennai-4
5. The Secretary to Government
Environment and Forests (E2) Department
For St. George, Chennai - 600 009
6. The Assistant Director
Professional Employment Exchange
Kuil Thottam
Mandaveli, Chennai

+1 CC to MR.H.Nazirudeen Advocate. SR.NO. 58985
+1 CC to MR.J.Rajmohan Advocate. SR.NO. 58290
+2 CC to Mrs.Rita Chandrasekaran Advocate. SR.NO. 58460 &
58461
+1 CC to Govt.Pleader. SR.NO.58799
+1 CC to Special Govt.Pleader. SR.NO.58591

W.P.No.12396 of 2012, W.P.No.10259 of 2012,
W.P.No.14391 of 2012 and W.P.No.12362 of 2012

CO-NM
JD 19/11/2015

WEB COPY