



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal (MD) No.1393 of 2014 and MP(MD)No.1/2014

The Commissioner,
Corporation of Madurai,
Madurai.

.. Appellant/2nd Respondent

Vs.

1.A.Raja
2.G.Balasubramanian
3.I.Niamath Basha
4.K.Murugesan
5.T.Ramesh Babu
6.P.N.Kumar Babu
7.L.Murugesan
8.C.D.Rajaganesh
9.D.Irulappan
10.M.Noordeen Shajule
11.M.Syed Mohammed Shajule
12.V.Kannan
13.The State of Tamil Nadu
rep.by its Secretary
Municipal Administration and
Water Supply Department,
Fort St.George
Chennai - 600 009.

.. Respondents/Writ Petitioners

... Respondent/13th Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.08.2014 passed in WP(MD)No.1821 of 2009 by this Court.

Prayer in WP(MD)No.1821/2009:- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus calling for the records relating to impugned order passed by the 1st respondent in his proceedings letter (2pa)No.153 dated 10/09/2007 and the consequential impugned order passed by the 2nd respondent in his proceedings Ma.Ne.2/47282/95 dated 21/11/2007 and quash the same in respect of fixation of educational qualification and appointment of the petitioners as unskilled labourers in the 2nd respondent corporation and consequently directing the respondents to appoint / regularize the service of the petitioners in the post of Wireman/ Helper in the 2nd respondent corporation with effect from their original date of appointment and to ensure equal pay to the petitioners in the scale of pay of Wireman/Helper with seniority and other attendant benefits.

(Prayer amended, as per order dated 22/01/2013)



For Appellant
For RR - 1 to 12

: Mr.R.Murali
: Mr.B.Saravanan

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This writ appeal is directed against the order of the learned single Judge passed in W.P(MD)No.1821 of 2009 dated 22.08.2014.

2.The respondents 1 to 12 are working for more than a decade in the appellant Corporation seeking entitlement to a regular post and persuade the matter from the year 2002.

3.When more than 20 individuals approached this Court by filing W.P.No.10337 of 1997, to absorb them on regular basis, the learned Single Judge passed an order dated 29.11.2002. The relevant portion of the said order reads as follows:-

"4.In the facts and circumstances of the case, particularly, keeping in view the facts that the petitioners were being employed since 1992, initially under the corporation and subsequently under the Electricity Board and particularly, keeping in view the resolution of the Corporation, the writ petition is disposed of with an observation that the State Government shall consider the resolution as expeditiously as possible, preferably, within a period of four months from today. Till the matter is finalised by the State Government and the first respondent, the petitioners can be engaged by the first respondent on daily wage basis if there is necessity".

4.For non compliance of the said order, they have filed Contempt Petition and the same was disposed of on 21.04.2006. In the contempt order, this Court while observing that the petitioners at that time were working as Wiremen and Helpers and there was sufficient vacancy, directed the Commissioner, Madurai Corporation to send a fresh proposal to the Government which dithered due to ban of employment. Paragraphs 3 to 5 of the order passed in the Contempt Petition are extracted hereunder:-

"3.During the pendency of the contempt petition, an order was passed by the third respondent rejecting the representation mainly on the ground that band order was in operation and also on the assumption that there were no vacancies in the NMR post. However, from the recommendation made by the commissioner, it is apparent that vacancies are available in the posts of Wireman and Helper and the writ petitioners were working as such.

4.In course of hearing, the learned counsel



appearing for the second respondent submitted that at present no proposal is pending and if a fresh proposal is made by the corporation, the same shall be considered, particularly, in view of the fact that the ban has been lifted.

5. Having regard to the facts and circumstances of the case, the contempt petition is disposed of with the observation that a fresh proposal may be sent by the commissioner, Madurai Corporation within a period of eight weeks from today and thereafter such proposal shall be considered by the Secretary, Municipal Administration and Water Supply Department, keeping in view the observation of this Court in paragraph - 4 of the order dated 29.11.2002 as clarified by the order dated 24.04.2003 within a further period of eight weeks from the date of receipt of such proposal from the Madurai Municipal Corporation."

5. Thereafter, the Government issued Letter No.2(D)/153, Municipal Administration and Water Supply Department dated 10.09.2007 whereby the respondents 1 to 12/writ petitioners were appointed as unskilled labourers on temporary basis. They have approached the learned Single Judge seeking to quash the said proceedings which according to them, the benefits of regular employment as Wiremen and Helpers despite having the requisite qualification and experienced as such, Wiremen and Helpers were denied.

6. The learned Single Judge taking note of the nature of employment that the respondents 1 to 12 were performing either under Corporation or under the TNEB for a brief moment and the subsequent period as Wiremen and Helpers and also taking note of provisions under the Tamil Nadu Electricity Board Service Regulations inclined to set aside that portion of the order denying the respondents 1 to 12, the benefit of regular service as Wireman and Helper.

7. We perused the order of the learned Single Judge. It is an admitted fact that there is no specific service rules or regulation in respect of Madurai Corporation relating to street light division. The respondents 1 to 12 in this case are in employment from 1992 in the appellant Corporation and they sought regularisation in respect of available vacancies in the post of Wiremen and Helper which was recorded by the learned Single Judge.

8. In the light of the observations made earlier and taking note of the Tamil Nadu Electricity Board Service Regulations, more particularly Annexure III of the Regulations of the Board, the learned Single Judge has observed in paragraph - 8 of the order as follows:-



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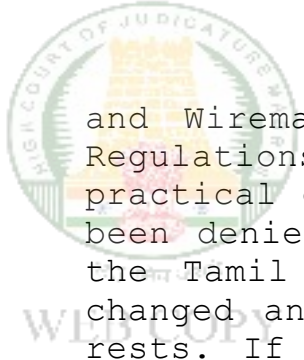
Wireman/ Wireman Meter Reader	Certificate in Electrical wiring issued by the Polytechnics or equivalent qualification as approved by the Chief Engineer (Personnel); or Pass in IV Standard with practical experience in Electrical Operation and Maintenance for a period of not less than two years; or Craftsmanship Certificate in the trade of Lineman and Wireman issued by the Ministry of Labour and Employment, Government of India for appointment as Wireman; or The Industrial School Certificate of 3 to 5 years duration awarded by the Industries and Commerce Department.
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Qualifications for appointment as Helper, (at page 204), are as follows:

Helper	Must possess National Trade Certificate/National Apprenticeship Certificate awarded by the National Council for Training and Vocational Trade in any one of the following Trades: 1. Fitter 2. Turner 3. Machinist 4. Welder 5. Wireman 6. Building Constructor 7. Blacksmith 8. Carpenter 9. Plumber 10. Electrician 11. Instrument Mechanic 12. Draughtsman (Civil) 13. Surveyor. Provided that the Chairman shall have the power to order the selection from any of the Trades referred to above and to such numbers as may be decided by him.
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9. Now the question is whether the appellant Corporation can deny invocation of the Rules and Regulations of Tamil Nadu Electricity Board Service Regulations insofar as the present respondents 1 to 12 are concerned.

10. It has been clearly pointed out by Mr. B. Saravanan, learned counsel appearing for the respondents 1 to 12 that in four employees as NMRs have been appointed on regular basis as Helpers



and Wireman based on the Tamil Nadu Electricity Board Service Regulations. Even though they have passed 4th standard with practical experience of more than two years, the said benefit has been denied to them. There is no dispute that the regulations of the Tamil Nadu Electricity Board Service Regulations cannot be changed and applied selectively to four persons and to deny the rests. If it is so applied, Article 14 of the Constitution of India comes into play.

11.We find that the respondents 1 to 12 have requisite qualification as per the regulations in Annexure - III of the Tamil Nadu Electricity Board Service Regulations as set out in paragraph -8 of the order of the learned Single Judge. Therefore, the order passed by the authority has rightly been interfered with by the learned Single Judge.

12.We gave an opportunity to Mr.R.Murali, learned counsel appearing for the appellant Corporation to produce relevant Regulation and despite best efforts, he is not able to furnish any such Regulation. Therefore, we find no reason to interfere with the order of the learned Single Judge.

13.The writ appeal is dismissed accordingly. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Commissioner,
Corporation of Madurai,
Madurai.

2.The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George
Chennai - 600 009.

+One cc to Mr.R.Murali, Advocate, SR.No.56990

+3ccs to Mr.B.Saravanan, Advocate, SR.No.57235

+One cc to The Special Government Pleader, SR.No.53607

mj

RL/8c - 3/11/2015