

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of reserving Judgment : 01.09.2016 :	Date of Pronouncing Judgement 09.01.2017
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Coram

The Hon'ble Mr.Justice B.Rajendran

Writ Petition No.17742 of 2015

J.Jalin Jaya Vagar

...Petitioner

Vs.

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

2. The Chief Engineer (Personal)
Tamil Nadu Generation and Distribution
Corporation Limited.
144, Anna Salai (8th Floor)
Chennai - 600 002.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records of the proceeding in Letter No.027982/129/G57/G57/2015-1, dated 08.05.2015, issued by the second respondent and to quash the same and consequently, to direct the respondents to appoint the petitioner in the post of Technical Assistant under the Ex-serviceman Dependents quota, as the petitioner is fully qualified with the required seniority, within the time that may be stipulated by this Court.

For Petitioner : M/s.Sathia Chandran

For Respondents : Mrs.R.Varalakshmi
Standing Counsel

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O R D E R

The challenge in this Writ Petition is to the order passed by the second respondent, in and by which, the petitioner's request to appoint him to the post of Technical Assistant has been rejected. The reason assigned in the impugned order is that the petitioner has not secured the required mark, prescribed for selection/appointment to the aforesaid post.

2. The case of the petitioner is as follows:

i) The petitioner completed Diploma in Electrical and Electronics Engineering in the year 1998 and registered his name in the Employment Exchange on 08.02.1999. The petitioner also underwent apprenticeship training at the Public Works Department, in the year 2001 and obtained a certificate for having completed the same successfully. The petitioner is a dependent of ex-serviceman and can avail the benefit of the quota meant for dependant of ex-serviceman. The petitioner states that his name was sponsored by the Employment Exchange for interview to fill up 1000 number of vacancies available to the post of Technical Assistants in the Electricity Board. The petitioner attended the interview on 09.12.2013 and he has been hopefully waiting for an appointment to the said post. Since he has not been favoured with any reply pursuant to the interview he attended for appointment to the said post, he filed a Writ Petition before this Court in W.P.No.20267 of 2014, praying for issuance of a Mandamus to direct the first respondent therein, viz., Chief Engineer, Tamil Nadu Electricity Generation and Distribution Corporation Ltd. (TANGEDCO), to appoint him to the aforesaid post under the ex-serviceman dependent quota. The said Writ Petition was disposed of by this Court, by order, dated 05.03.2015, granting liberty to the petitioner to submit a representation setting out his case and directed the first respondent to dispose of the same on merits. Pursuant to the aforesaid order, dated 05.03.2015, the second respondent has passed an order, whereby, the petitioner's prayer has been rejected. Impugning the same, the present Writ Petition is filed.

ii) According to the petitioner, he stands at the 3rd place in District Seniority and 28th place in the State seniority. Further, appointment to the said post has to be made based on the seniority in the Employment Exchange, and ignoring the same, the candidates, who got registered their names subsequent to the petitioner, have been selected and appointed to the said post. The petitioner further states that he also obtained information by way of Right to Information Act (RTI Act), under which, he came to know inter alia, that 3% of vacancies were reserved for the candidates falling under the ex-serviceman dependent quota, and they were selected in accordance with seniority in the Employment Exchange. Therefore, the petitioner states that even under the ex-service priority quota, he has not been selected, hence, the impugned order has been passed in gross violation of the Rules prescribed for appointment to the said post.

3. The learned counsel for the petitioner also submitted that the impugned order is ex facie illegal on several grounds and the primary ground being that though the petitioner has been fully qualified with due seniority and undergone apprentices training under the same Management, he has not been considered

for appointment to the said post, whereas, the candidates, who are juniors, (having registered their names subsequent to the petitioner in Employment Exchange) have got appointed. The learned counsel, in support of his contention that trained apprentices are entitled for preference, placed reliance on the decision of 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 S.C.C. 1. The learned counsel further contended that though the petitioner comes under the dependent ex-serviceman quota and even as per the information furnished to the petitioner by the first respondent under RTI Act candidates under the ex-serviceman quota have been selected in accordance with seniority in the Employment Exchange, but the petitioner has not been selected under the said quota.

4. The learned counsel further contended that advertisement calling for interview to the said post was only with regard to certificate verification, but, viva voce has been conducted and marks have been awarded, which is contrary to the rules prescribed for selection. In support of the said contention learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of (Hemani Malhotra Vs. High Court of Delhi) reported in (2008) 7 S.C.C. 11 wherein it was held that the authority cannot either during the selection process of the candidate or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, the learned counsel contended that the impugned order is therefore arbitrary and liable to be set aside on the aforesaid grounds.

5. On the contrary, the learned Standing Counsel for respondents, while reiterating the averments made in the counter affidavit filed by the respondents, would submit that, as per Regulation 89 (d) (i) of Tamil Nadu Electricity Board (TNEB) Service Regulations and the order passed by the Government of Tamil Nadu, vide G.O.Ms.No.18 of Labor and Employment (N2) Department, dated 25.02.2008, the Special Commissioner, Employment and Training Chennai has been asked to sponsor a list of candidates from the Employment Exchange state wide, as per the seniority to fill up the 950 vacancies to the post of Technical Assistant. Accordingly, around 4443 candidates possessing Diploma in Electrical and Electronics Engineering were sponsored. It is further submitted that only the candidates, who were sponsored by the Employment Exchange and the apprentices, who had registered themselves in the Board were interviewed between 09.12.2013 and 13.12.2013, and the petitioner is one amongst the candidates sponsored by the Employment Exchange under ex-serviceman quota. Out of 9671 candidates, 8444 candidates have attended the interview for the post of Technical Assistant/Electrical and guidelines were

issued to conduct a viva-voce in technical subjects and managerial skills, and to award 15 marks for the candidates performance in the interview. Out of 8444 eligible candidates, 914 candidates have been selected for the said post, as per G.O.Ms.No.65 (P and AR (K) Department, dated 27.05.2009, and the result of selection was also published in the Official Website on 24.02.2014. The candidates have been selected based on their examination marks (100% concerted to 855) interview marks (15%), communal roster, priority quota and rules of reservation in force. Out of 914 selected candidates, 27 candidates were selected in backlog vacancies for SC/ST/MBC. Out of remaining 887 selected candidates, 41 candidates were selected under the reservation of 5% ex-serviceman quota. Since the petitioner belongs to Backward Community (Dependent Ex-service man priority quota) he has to secure 77.17% but he has secured only 52.25%, which is below the cut off fixed.

6. The learned Standing Counsel further submitted that the information furnished to the petitioner, via., RTI Act that 3% of vacancies has been reserved for candidates coming under the ex-serviceman quota is wrong, actually, it is 5%. Therefore, the contention of the learned counsel for the petitioner that the petitioner has not been considered for appointment to the said post neither as per the seniority in the Employment Exchange nor even under the dependent ex-serviceman quota is untenable. The learned Standing Counsel would further submit that mere seniority in the Employment Exchange is not the criteria for selection of candidates to the said post and no preference will be given for the seniors in the rolls of the Employment Exchange Office, but only the marks secured by the candidates during interview is the basis for selection.

7. The learned Standing Counsel further submitted that though the learned counsel for the petitioner, in support of his contention that trained apprentices are entitled for preference, placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of U.P. State Road Transport Corporation's, the Hon'ble Supreme Court has clearly laid down therein that apprentices have no right to be appointed in preference to other applicants. The learned Standing Counsel, therefore, justified the order passed by the second respondent and contended that the same requires no interference. Consequently, the learned standing counsel for the respondents prayed for dismissal of the writ petition.

8. Heard Mr. Sathia Chandran, learned counsel for the petitioner and Mrs.R.Varalakshmi, learned Standing Counsel for the respondents and perused the materials placed on record.

9. I am unable to accept the contentions of the learned counsel for the petitioner for the simple reason that though the

petitioner seeks for appointment on the ground of seniority in the Employment Exchange and under the dependent ex-serviceman quota, seniority is not the main criteria for selection of the candidates and only the marks secured by the candidates in their examination and interview were the basis for selection. Admittedly, the petitioner has not secured the required marks prescribed for selection of candidates under the BC dependent ex-service man quota, therefore, he has not been selected. That apart, candidates were selected based on the communal roster and not on the basis of seniority in the Employment Exchange.

10. The next contention of the petitioner that advertisement calling for interview for appointment to the said post was only with regard to certificate verification, but, later viva voce was conducted and marks were awarded which is contrary to the rules prescribed for selection, is also not sustainable for the reason that guidelines were issued to conduct a viva-voce in technical subjects and managerial skills and 15 marks were earmarked for being awarded to the candidates based on their performance in the interview. Therefore, the judgment relied on by the petitioner, in the case of (Hemani Malhotra Vs. High Court of Delhi) reported in (2008) 7 S.C.C. 11 for the proposition that the authority cannot either, during the selection process of the candidate or after the selection process, add an additional requirement/qualification that the candidate should also secure minimum marks in the interview, is of no assistance. Though petitioner contended that he is a trained apprentice and he should be given preference by relying upon the decision of the Hon'ble Supreme Court in U.P. State Road Transport Corporation's case, the learned Standing Counsel distinguished the said judgment by rightly pointing out that the Hon'ble Supreme Court had held that apprentices have no right to be appointed in preference to other applicants. Therefore, I am not inclined to interfere with the order passed by the second respondent, which is impugned in this writ petition. Accordingly, the Writ Petition is dismissed as being devoid of merits. No costs.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

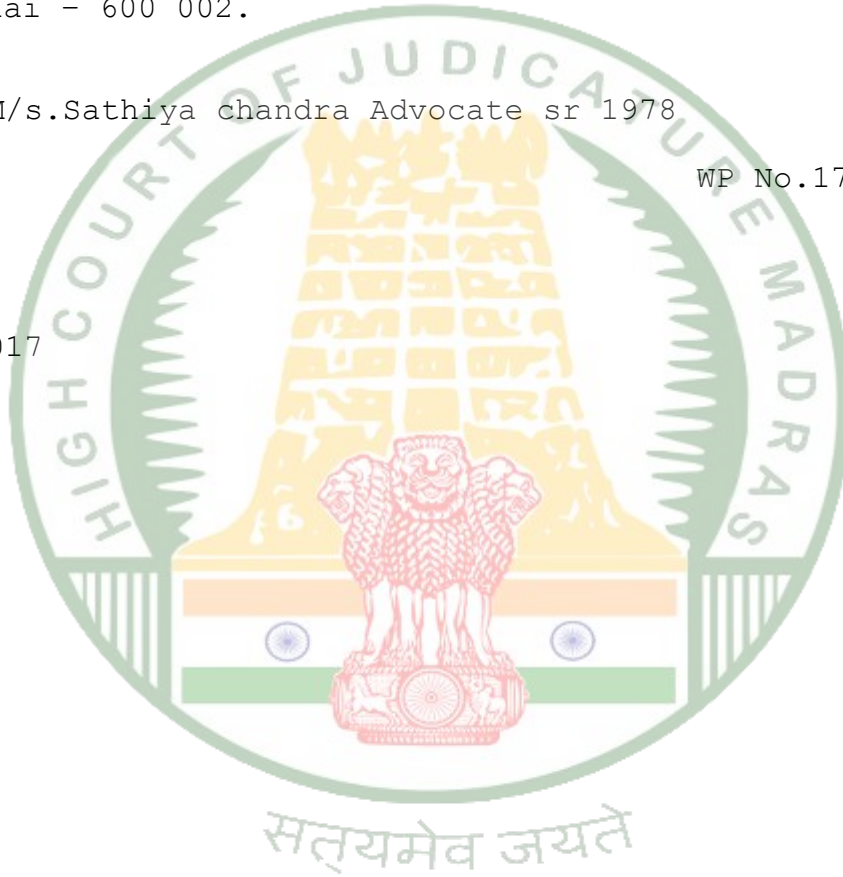
To

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+1 cc to M/s.Sathiya chandra Advocate sr 1978

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