

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.NO.1400 OF 2010
AND M.P.NO.1 OF 2010

G.Santhosh Kumar ... Appellant/Petitioner
VS.

- 1.Tamil Nadu Electricity Board
Rep. By Chairman
No.800, Anna Salai,
Chennai - 600 002.
- 2.The State of Tamil Nadu
Rep. By its Secretary to Government
Energy Department
Fort St. George, Chennai - 600 009.
... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.02.2010 passed by this Court in W.P.No.26686 of 2009.

WP.NO.26686/2009:

Petition under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the 1st Respondent to consider the Petitioner for the appointment to the post of Technical Assistants with the 1st Respondent in the 1 100 vacancies notified by the 1st Respondent based on merit seniority and experience and after following the selection process set out in the Service Regulations of the 1st Respondent

For Appellant : Ms.Kavitha Deenadayalan
For Respondent-1: Ms.R.Varalakshmi
For Respondent-2: Mr.M.Vaidyanathan

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the order dated 23.02.2010 passed by this Court in W.P.No.26686 of 2009, the appellant / writ petitioner has come up before this Court.

2. The appellant / writ petitioner was an aspirant for the post of Technical Assistant, for which, direct recruitments were made during the year 2009, in respect of 1100 posts. The appellant / writ petitioner is a Diploma holder in Electrical and Electronics Engineering. Between 2006 and 2007, he had completed apprenticeship training under the first respondent Electricity Board and registered with the Employment Exchange in the year 2007, with the above said qualification. Thereafter, he was waiting for getting absorbed in the respondent Electricity Board as Technical Assistant.

3. The Hon'ble Supreme Court in judgment dated 03.10.1996 in Civil Appeal Nos.5285/1996 and S.L.P.Nos.45556/1996 held that the trainee apprentices have to go through the selection process provided under the regulations and they have no right to be appointed on a preferential basis over other candidates.

4. However, the Hon'ble Supreme Court in UP STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. U.P. PARIVAHAN NIGAM SHISHUKHS BEROZGAR SANGH & OTHERS [1995 (2) SCC 1] has set out the benefits available to the trainee apprentices. As per the said judgment, trainee apprentices should be given preference over direct recruits when the other things being equal and they need not be sponsored by the Employment Exchange. Further, age relaxation was also given and the training institute was also required to maintain the list of trained persons on year wise basis.

5. Following the aforesaid judgment of the Supreme Court, Government of Tamil Nadu has issued orders in G.O.Ms.No.142, Labour and Employment Department, dated 10.11.1998 setting out the guidelines in the matter of appointment of trainee apprentices in the respondent Board, according to which, when other things being equal, a trained apprentice should be given preference over direct recruits.

6. In G.O.Ms.No.65, Labour and Employment Department, dated 30.03.2007, Government of Tamil Nadu have further specified a ratio of 1:1 as per the seniority of registration in the Employment Exchange, with an object of maintaining transparency

in recruitment and to avoid delay. It was clarified therein that the guidelines shall be strictly followed as per the Government Order.

7. Even though there were several other Government Orders directing adherence to the fixation of ratio, while sponsoring the candidates from the Employment Exchanges, to fill up the vacancies for various categories of posts, by G.O.Ms.No.18, Labour and Employment (N2) Department, dated 25.02.2008, the following modification was issued:-

"For filling up of all categories of posts coming under the purview of Government Departments, Local Bodies (Urban and Rural), Cooperative Institutions, Public Sector Undertakings etc., Employment Exchange shall sponsor candidates in the ratio of 1.5".

8. While the matter stood thus, on 12.08.2007, a paper publication was issued by the first respondent Electricity Board notifying 300 - 400 vacancies to the post of Technical Assistant, in the first respondent Board. After publishing the vacancies, the first respondent, by a publication dated 15.09.2007 called for eligible candidates, who have completed apprenticeship training with the first respondent, to register themselves with the certificate of T.N.E.B. Apprenticeship Training. Totalling about 3100 persons including the appellant have registered as early as 2008.

9. The information provided under the Right to Information Act reveals that the Diploma marks will be taken into account for selection process and as per the Apprentices Act, 1961 (Central Act 52) training was conducted to increase the working efficiency and all the registered apprentices will be called for interview.

10. Accordingly, on 18.06.2009, the appellant was called for an interview for recruitment to the newly created 1100 vacancies to the post of Technical Assistant in TNEB. On 07.07.2009, the appellant appeared before the Committee and secured 75.25 marks out of 85% which was allocated for the academic marks and remaining 15% was allocated for the interview. However, when the provisional selection list was published on 21.08.2009, the name of the petitioner was not included in the MBC category to which he belong, whereas, many candidates who have secured very lesser marks were all selected.

11. Aggrieved by the non selection, the appellant has made a representation to the respondents on 07.12.2009 and requested them to include his name in the selection list setting out the

facts that juniors to him in the apprentice training, as well as in the Employment Exchange were included in the selection list. Since the case of the appellant was not considered favourably by the respondents, on 18.12.2009, the appellant / writ petitioner has preferred the writ petition in W.P.No.26686 of 2009, for the relief mentioned above.

12. The respondents filed a counter affidavit in the writ petition stating that the selection was made by a duly constituted Committee and the writ petitioner/appellant did not secure good marks in the interview and therefore, he had fallen short of the cut off marks and in the result, he was not included in the selection list. The writ petitioner was awarded two marks in the interview. Adding this two marks to his qualifying marks, he had secured a total marks of 77.01, whereas the cut off mark for MBC category was 80.34. Hence, the writ petitioner was not selected. There was no violation of Articles 14 and 16 of the Constitution of India and the selection was proper and the writ petitioner's claim for selection is not maintainable.

13. The learned Single Judge, after hearing the parties and relying on various judgments of the Supreme Court, has negatived the claim of the appellant / writ petitioner, against which, the present writ appeal is filed.

14. When the matter was taken up for hearing, learned counsel appearing for the appellant / writ petitioner vociferously contended that the appellant had secured 88.25 marks in Diploma in Electrical and Electronics Engineering and hence, was placed first in the merit list, in so far as the academic marks are concerned. When it is converted into 85%, his academic qualification was 77.07 % and still he stood first in the list. The cut off marks was fixed as 80.34. Had he secured 3 marks, he could have been selected to the post of Technical Assistant. But the persons, who secured very meager academic marks, were all given around 14 marks in the interview. The selection was not based on any norms or scientific rationale uniformly applied by the first respondent Board.

15. In respect of his contention, learned counsel for the appellant has produced the selection list pertaining to MBC category and other categories. The learned counsel has contended that without any standard norms and uniform procedure, the selection was made at the whims and fancies of the respondents and ineligible candidates were selected. Further, he has contended that even though there are orders and guidelines in UP STATE ROAD TRANSPORT CORPORATION VS. UP PARIVAHAN [1995 (2) SCC 1] weightage and preference due to the apprenticeship training was not given. In fact, the petitioner had undergone apprenticeship training with the first respondent Electricity Board. Even though Government Orders have been issued for

bringing objectivity and transparency in selection and to avoid delay in the selection process, preference was given to the trained apprentices of Electricity Board, more so, the ratio was also fixed to select the trained apprentices, the respondents had given go by to all these norms and selected candidates according to their own whims and fancies. Therefore, the selection shall be declared as bad and illegal.

16. Learned counsel appearing for the respondent Board would contend that the selection was proper and the duly constituted Committee had gone through the procedure and selected the candidates. The appellant / writ petitioner had not performed well in the interview and that is why he was given two marks and therefore, he could not find a place in the selection list.

17. When the matter was taken up for hearing on 22.12.2016, this Court has passed the following order:-

"Being aggrieved by the non-selection, to the post of Technical Assistant, appellant has sought for a mandamus directing the 1st respondent therein, to consider his candidature for appointment to the post of Technical Assistant in the 1st respondent, viz. Tamil Nadu Electricity Board in the 1,100 vacancies notified by them, based on merit, seniority and experience and after following the selection process set out in the service regulations of the 1st respondent, contending inter alia that he had secured 88.25% marks in Diploma in Engineering and academic qualification provided for the posting.

2. Examination process consists of written test and interview. 85% is earmarked for written examination. 15% is earmarked for interview. He has secured 75.01 in the written examination, but he has secured only 2% in the interview, out of 15%. Thus he has secured a total of 77.01%. Appellant belongs to MBC.

3. Contending inter alia that Government have issued instructions/guidelines to the effect that employment exchange seniority and Apprenticeship training, should be considered, while making inter se assessment of candidates, in the matter of selection and when the petitioner/appellant has secured higher mark in written examination, awarding just two marks alone in the interview, was only to find favour

with the rest of the other MBC candidates, who have secured, lesser marks, writ petition has been filed for a mandamus, as stated supra.

4. Though, a counter affidavit has been filed, setting out the procedure in the matter of selection, wherein it has been stated that though notification was issued, inviting candidates, who have acquired Diploma in Engineering and completed apprenticeship, in Tamil Nadu Electricity Board, on this day, when the matter came up for hearing, it is the submission of Ms.R.Varalakshmi, learned counsel for the Tamil Nadu Electricity Board that some of them, who have not underwent apprenticeship in Electricity Board, were also considered for recruitment and selected. Submission is placed on record. According to the learned counsel for the Electricity Board, there is no irregularity in the selection.

5. Writ court, vide order dated 23.02.2010 did not advert to the rival contentions as to whether a candidate, who was meritorious both academically and in the written examination, have been awarded lesser mark in the interview to non suit his candidature over others who have secured lesser marks in the written examination. Writ court, has not considered the other contentions as to how weightage ought to have been given to Employment Exchange seniority/ Apprenticeship, but choose to dismiss the same on the sole ground that an unsuccessful candidate having participated in the selection, cannot, thereafter, as a matter of right seek for employment under the said selection.

6. After hearing the learned counsel for the parties and in the absence of any specific counter affidavit, to the manner in which, the selection has been done, while assessing, the inter se merit, in the interview, for awarding marks, we direct the respondents to produce the entire files pertaining to selection of Technical Assistants, on the aspect as to how interview marks were awarded. It is made clear that what we intend by production of files is the manner and the method, followed by the Electricity Board in awarding marks, in the interview.

Post the matter on 05.01.2017.

Learned counsel for the Electricity Board, shall communicate the orders of the court to the Chairman, Electricity Board and such other competent authority for compliance, without waiting for the copy of the order of this court."

18. Though the learned counsel for the respondent Board has persisted in her stand that the selection was done following the norms and the interview was conducted by a duly constituted Committee, she could not produce any norms adopted in the selection and the method of selection is not clear.

19. When the matter was taken up for hearing on 14.02.2017, the learned counsel appearing for the respondent Board produced a Memo No.008439/19/G.57/G.571/2007-22 dated 29.06.2009 in respect of recruitment, which reads as follows:

"TAMIL NADU ELECTRICITY BOARD
ADMINISTRATIVE BRANCH

144, Anna Salai,
Chennai - 600 002.

Memo No.008439/19/G.57/G.571/2007-22,
dated 29.06.2009

Sub: RECRUITMENT - TNEB - Direct Recruitment to the post of Technical Assistant / Electrical - Conduct of interview - Appointment of Members of Selection Committee and guidelines for awarding marks in the interview - Orders issued.

In connection with Direct Recruitment to the post of Technical Assistant / Electrical, the following Officers of the Board are appointed as Members of the Selection Committee for interview of candidates including the candidates those who were completed apprenticeship training in TNEB in respect of SE / Kancheepuram EDC / Kancheepuram Centre

from 06.07.2009 to 07.07.2009, at the rate of 200 candidates per day. The interview will commence at 9.00 A.M in the F.N. Session and at 2.00 P.M. in the A.N. Session.

1. Superintending Engineer / Vellore EDC / Vellore.
2. Executive Engineer / MRT / Vellore.

2) The Members of the Selection Committee are informed that a viva - voce interview in Technical subjects and Managerial skills may be conducted and upto a maximum of 15 marks may be awarded according to his / her performance in the interview. The guidelines may be adopted uniformly and the marks awarded be kept secret.

3) They are requested to conduct the interview and send their report after done with.

4) The receipt of this Memorandum may be acknowledged.

D. PAUL KARUNAKARAN
CHIEF ENGINEER / PERSONNEL

To
1. Superintending Engineer / Vellore EDC / Vellore.
2. Executive Engineer / MRT / Vellore.

FORWARDED

Sd/-
(S. SORIMUTHU)
PERSONNEL OFFICER / RECRUITMENT"

20. We have given consideration to the Government Orders issued in this regard and perused the selection list of candidates for the post of Technical Assistant under the first respondent.

21. On perusal of records, it is very clear that the appellant / writ petitioner had secured highest marks in the academics and was allotted only two marks in the interview. When a comparison was made on the basis of the marks secured by the selected candidates, we are able to see persons, who had secured very lesser marks in the academics, were given 14 marks in the interview. There are instances that persons who have not at all undergone training under the first respondent were also selected. The specific issue, as to what are all the norms prescribed for allocating marks in the interview, have not been

made clear by the respondents. From the method of selection adopted by the respondent Board, it could be easily inferred that it is purely based on will and pleasure of the Selection Committee. From the materials produced by the appellant / writ petitioner and by his experience in seniority in training, we are of the view that the appellant / writ petitioner ought to have been selected on merit.

22. In any selection, where there are specific instructions and guidelines given, to give preference to the candidates, the selecting authority shall follow the norms framed for the said purpose. In the instant case, guidelines state that preference will be given to persons who passed the apprenticeship training conducted by the respondent Electricity Board. So also, merit, ranking, weightage to practical experience, seniority, age, previous employment in the relevant field should have been given preference and appropriate weightage marks should have been allotted in the respective fields. In the present case on hand, even though the appellant / writ petitioner has secured first mark in academics; passed apprenticeship training under the respondent Electricity Board; having registered in the year 2008 itself; maintaining seniority in the employment exchange and also gained work experience, his name has not been included in the selection list. Even assuming that a minimum of one mark is given to above heads, the appellant / writ petitioner would have secured more than four marks for the same and for his participation in the interview, could have secured some more marks. Whereas, we are surprised to note that despite the guidelines to give preferential treatment to be given for those who have completed apprenticeship training, the appellant / writ petitioner was allotted only 2 marks. It is also pertinent to note that fresh entrants have secured 14 marks in the interview and thus, the appellant / writ petitioner was not considered for selection. In our considered view, the materials produced by the appellant / writ petitioner establishes that he is qualified to get selected.

23. On the other hand, material produced by the respondent in Memo No.008439/19/G.57/G.571/2007-22 dated 29.06.2009 issuing guidelines for awarding marks, does not disclose any norms provided for selecting the candidates. It simply says that 15 marks is allotted for viva voce interview in technical subjects and managerial skills. If the respondents had followed some norms and guidelines, such as awarding marks for experience and apprentice training, the appellant / writ petitioner could have been selected for the post. Therefore, the non selection of the appellant / writ petitioner is bad.

24. In fine, the order dated 23.02.2010 passed by this Court in W.P.No.26686 of 2009 is set aside and the writ appeal is

allowed. The first respondent is directed to consider the case of the appellant / writ petitioner and appoint him to the post of Technical Assistant in the Tamil Nadu Electricity Board within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

TK

To

1.The Chairman
Tamil Nadu Electricity Board
No.800, Anna Salai,
Chennai - 600 002.

2.The Secretary to Government
Government of Tamil Nadu
Energy Department
Fort St. George,
Chennai - 600 009.

+ 1 cc to Ms.Kavitha Deenadayalan Advocate,SR.65304

+ 1 cc to Ms.R.Varalakshmi Advocate,SR.65821

W.A.NO.1400 OF 2010

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