

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19516 of 2015; 13929 of 2015; 38973 and 40271 of 2016
and

WMP.Nos. 32521 of 2016 and MP.No.2 of 2015; M.P.No1 of 2015;

33405 to 33408 of 2016 and 28927 of 2017; 28928 of 2017 and
34317 & 34318 of 2016

W.P.No.19516 of 2015:

Tamil Nadu Electricity Board,
Accounts and Executive Staff Union,
Rep. By General Secretary
R.Chandrasekaran
S/o.D.Rathinasabapathy,
No.7,M.L.D.C.Building (1st Floor)
TNEB Complex,
144, Anna Salai, Chennai-2. ...Petitioner

Vs.

1.Tamil Nadu Generation and
Distribution Corporation Ltd,
Rep. By its Secretary,
144, Anna Salai, (TNEB Complex),
Chennai-2.

2.The Chief Engineer/Personnel,
TNEB (TANGEDCO),
144, Anna Salai, (TNEB Complex),
Chennai-2.

3.P.Maria Michael Yuvaraj

4.N.Devi

5.July Daniel

6.K.Anandhi

7.T.Poornima

8.A.Aswini

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9.P.Barani Devi

10.M.Ramadevi.

.. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent dated 24.05.2014 made in Secretariat Branch (Per) FB TANGEDCO Proceedings No.25 and the consequential communication of the 2nd respondent letter dated 22.05.2015 made in Letter No.045392/189/G56/G561/2015-1, and letter dated 28.05.2015 made in letter No.044580/182/G56/G561/2015, and quash the same and direct the respondents to consider the employees with Minimum General Educational Qualification for appointment to the post of Junior Assistant/Administration and Junior Assistant/Accounts through internal selection.

W.P.No.13929 of 2015:

P.Suguna

Vs.

...Petitioner

1.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Rep. by its Chairman cum Managing Director,
Chennai-600 002.

2.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Rep. by its Chief Engineer Personnel,
No.144, Anna Salai,
Chennai-600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Second Respondent pertaining to the Board proceedings dated 24.05.2014 bearing Ref.No.(PER) FB TANGEDCO Proceedings No.25 in so far as the minimum general education qualification prescribed for the Junior Assistant in the Accounts Cadre in so far as appointment by internal selection for the existing employees as on the date of the impugned proceedings is concerned and quash the same.

W.P.No.38973 of 2016:

1.P.Maria Michael Yuvaraj

2.N.Shyam Prasad

3.N.Devi

4.July Daniel

5.K.Anandhi

6.T.Poornima

7.A.Aswini

8.P.Barani Devi

9.G.Aparna

...Petitioners

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
New No.144, Anna Salai, Chennai-2.

2.Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Rep. by its Secretary,
New No.144, Anna Salai, Chennai-2.

3.Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO),
No.144, Anna Salai, Chennai-600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in (Per)FB TANGEDCO proceedings No.25 dated 24.05.2014 and the proceedings of the 3rd respondent in (Per.) (FB) TANGEDCO Proceedings No.10 dated 10.12.2015 and Notification No.02/2016 dated 29.02.2016 and quash the same and consequently direct the 3rd respondent to re-designate the petitioners as Junior Assistant (Administration/Accounts) with effect from 27.07.2015 as per B.P.No.4 dated 27.07.2015 of the 2nd respondent.

W.P.No.40271 of 2016:

Central Organization of Tamil Nadu
Electricity Employees (COTEE),
Rep. by its General Secretary,
No.27, Mosque Street,
Chepauk, Chennai-600 005.

...Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO),
New No.144, Anna Salai, Chennai-2.

2.Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO)
Rep. by its Secretary,
New No.144, Anna Salai, Chennai-2.

3.Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
Corporation Limited, (TANGEDCO),
No.144, Anna Salai, Chennai-600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in (Per)FB TANGEDCO proceedings No.25 dated 24.05.2014 and the proceedings of the 3rd respondent in (Per.) (FB) TANGEDCO Proceedings No.10 dated 10.12.2015 and Notification No.02/2016 dated 29.02.2016 and quash the same and consequently direct the 3rd respondent to fix SSLC as minimum qualification to the post of Junior Assistant.

For Petitioners : Mr.R.Krishnamoorthy (W.P.No.19516/2015)
Senior Counsel for Mr.S.Elamurugan.

Ms.C.S.Monica (W.P.No.13929/2015)

Mr.V.Stalin (W.P.Nos.38973 & 40271/2016)

For Respondents : Mr.Vijayanarayanan
(in all W.Ps) Advocate General
Assisted by Mrs.R.Varalakshmi for
TNEB
(for RR1 & 2 in W.P.19516/2016)

(in W.P.No.19516/2016) : Mr.A.Thiyagarajan (for RR3 to 10)
Senior Counsel
for Mr.S.Ramesh Kumar.

COMMON ORDER

The amendment to the educational qualification effected by the 1st respondent Board in proceedings dated 24.05.2014 is under challenge in this writ petition. Of course, communications issued by the 2nd respondent in letters dated 22.05.2015 and on 28.05.2015 are also questioned in this writ petition. However, direction is sought for to direct the respondents to consider the employees with minimum general educational qualification for appointment to the post of Junior Assistant/Administration and Junior Assistant/Accounts through internal selection.

2.The writ petitioner is Tamil Nadu Electricity Board Accounts and Executive Staff Union, and members of the writ petitioner's Union are employed in the category of Group-IV services of the Board. The grievances set out in this writ petition is that by virtue of the impugned amendment issued in respect of proceedings dated 24.05.2014, the prospects of the members of the writ petitioner's Union for further promotion in the post of Junior Assistant is barred. In other words, the members of the writ petitioner's Union are qualified for promotion to the post of Junior Assistant and their future prospectus are restricted on account of the transition of Higher qualification for appointment to the post of Junior Assistant through amendment issued by the respondent on 24.05.2014.

3.The learned Senior Counsel Shri.R.Krishnamoorthy appearing on behalf of the writ petitioner's Union raised a point that the members of the writ petitioner's Union are the existing employees working in Group-IV services and they are continuing in the same post for fairly a long time and therefore the only avenue for promotion left is to the post of Junior Assistant and thus their chances in this regard cannot be barred and the same will create frustration in the minds of the employees.

4.It is contended that promotion of atleast, from current level to one level above must be assured by the employers and more so the employer being a Board having large number of employees shall provide one avenue for promotion. Thus, the promotional avenue already in existence to the members of the petitioner's association is sought to be tampered with by the respondent by introducing new amendment by way of enhancing the educational qualification for appointment to the post of Junior Assistant.

5.The learned Senior Counsel is of the opinion that there is an assurance provided under the Electricity Act 2003. More specifically under Section 133, which states that

"(1)The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under Section 131.

(2)Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

PROVIDED that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme."

6.Relying on the above provision, the learned Senior Counsel urged this Court by stating that the qualifications prior to the amendment to be followed in respect of the members of petitioner's Union. The change or amended qualification cannot be effected in respect of the existing employees, who are already in service. This apart, the existing employees have got a vested right for promotion based on the rules, which was prevailing at the time of their appointment and the amendment was issued, when they are in service affecting their avenue for promotion to the higher post of promotion. More so, the method of appointment prescribed in respect of existing employees are by way of internal selection, the qualifications amended cannot have any effect so far as the internal candidates are concerned.

7.The learned Senior Counsel further states that the vacancies now lying in the cadre of Junior Assistant were vacant for long time and the respondents have delayed the appointments and such delay would not cause any prejudice to the existing employees for getting their promotion based on their old educational qualification prescribed in the rules. At the outset, the petitioners state that their service rights ought to be protected in respect of promotion to the post of Junior Assistant by way of internal selection. It is further stated that the transition period in respect of TANGEDCO has not been ended and it is in progress. During the transfer period from Tamil Nadu Electricity Board to TANGEDCO in respect of the constitution of three separate corporation from the parent corporation is in progress. The learned Counsel informed this Court that during the pendency of the transition, the service conditions in respect of existing employees cannot be altered. Further, it is contended that no notice as per Section 9(A) of the Industrial Disputes Act has been furnished to the employees pursuant to tripartite agreement entered between the management

and the workmen.

8.Ms.C.S.Monica, the learned counsel appearing on behalf of the writ petitioner in W.P.No.13929 of 2015 contended that the writ petitioner is fully qualified to the post of Junior Assistant and even in earlier amendment issued by the Board in the year 2012, the protection was given. In spite of the protection given earlier in the year 2012, promotion to the petitioner to the post of Junior Assistant is to be granted. The learned counsel is of the opinion that the respondents have not considered the fact that the writ petitioners are existing employees and they are protected from and out of the promotions given by way of amendment in the year 2012. It is further stated that when a protection was extended for the promotion from the post of supervisor to the post of Junior Assistant, the same to be extended for the petitioner also for getting promotion to the post of Junior Assistant from the post of Field Staff.

9.Mr.Vijay Narayan, the learned Advocate General appearing on behalf of the respondents opposed the contentions of the writ petitioners by stating that two issues are to be considered by this Court. Firstly, the validity of the amendment sought to be quashed in this writ petition and secondly, the vested right if any, as advanced by the writ petitioners in this writ petition.

10.As per the learned Advocate General in respect of the validity of the amendment, the writ petitioners have no locus standi to question the enhancement or modification of educational qualifications prescribed for appointment and such a power is prerogative of an employer. The right of an employer for prescribing any educational qualifications can never be questioned by the employees. Appointment or promotion can never be claimed as a matter of right. However, it is contended that in respect of the legal validity of the amendment, the learned Advocate General has emphasized that it is a settled law that the power of an employer for amending or modifying the educational qualifications can never be stalled. It is a policy decision and in a growing organization in a welfare state, it is certainly necessary to change and improve by way of an amendment in respect of the educational qualifications and other criteria to suit the prevailing situations in the society.

11.In respect of the grounds raised in this writ petition that the writ petitioners have a vested right for promotion can never be considered by this Court. No doubt, the consideration is a right. However, promotion cannot be a right. Promotions can be considered only based on the qualifications and other criteria prescribed under the Rules in force. Thus, relying on the rules, the Advocate General has reiterated that the

petitioners have not established any legal right so as to grant the relief of promotion to the post of Junior Assistant based on the old Rules.

12. Considering the arguments advanced by the learned Senior Counsel Mr.R.Krishnamoorthy and the learned Advocate General, Mr.Vijay Narayanan, this Court has to look into the provisions of the Tamil Nadu Electricity Board Service Regulations. The said regulations was formulated in exercise of the powers conferred by Section 79(c) and (k) of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948), the Tamil Nadu Electricity Board has framed the following regulations:

"6.(a):The Board may adopt its own classification of service, re-arrange grades, re-fix responsibilities and prescribe minimum educational, Technical and other qualifications as may be considered suitable for making selections and appointments to posts in each class of service.

(b) Subject to any modifications that the Board may decide from time to time, the services in the Tamil Nadu Electricity Board shall be classified as mentioned in Regulation 88 of Tamil Nadu Electricity Board Service Regulations.

7. All employees joining the service of the Board shall be deemed to be new entrants into the service of the Board and their retention or otherwise in employment will depend on the result of the Board's review of the Staff requirements from time to time, depending on the exigencies of works. The staff of the Electricity Department of the Government of Tamil Nadu, who have opted for service under the Board, will hold on 01.07.57, the status under the Board corresponding to that held by them in the Government on 30.06.57. The Service rendered by them under the Government will count for purposes of seniority, probation, increment, leave, pension etc., as if it were a service rendered to the Board."

13. Now, it is relevant to look into the regulation No.93, which provides appointing authority:

"93. Appointing Authority: The appointing authorities for the categories and posts specified in column(1) of Annexure II shall be the authorities specified in the corresponding entry in column(2) thereof.

Regulation 94(a) is more relevant in respect of the present writ petition.

"94.Qualifications:

(a)No persons shall be eligible for appointment to the post and by the method mentioned in Annexure-III, unless he possesses the qualification specified therein.

Provided that the person concerned shall possess the specified qualification including experience prescribed therefor on the date on which the notification of vacancy has been made.

14.Further, it is relevant to look into Annexure-III in the regulation. Annexure-III provides Board Office Administrative Branch, Board Office Technical Branch and Circles, in which the qualification for the post of Junior Assistants, Typists and Steno Typists and Stores Custodian provides as under:

BOARD OFFICE ADMINISTRATIVE BRANCH, BOARD OFFICE TECHNICAL
BRANCH AND CIRCLES

Junior Assistants, Typists and Steno Typists and Stores Custodian	Direct Recruitment or Appointment by Internal Selection	(a) No person shall be eligible for the inclusion of his name in the list prepared by the Board for appointment if he would have attained the age of 30 years on the first day of July of the year in which the selection on the results of which the list is prepared, is held. Provided that a candidate belonging to the Scheduled Castes or the Scheduled Tribes shall be eligible for the inclusion of his name in any such list if he will not complete the age of 27 years on the said date. This concession shall be in operation in respect of all lists prepared on or before the 31 st day of December, 1964.
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		(b)	Must possess the Minimum General Educational Qualification. Provided that on and from 19.08.2010, for appointment as Junior Assistant in Board Office Administrative/Technical Branch, the candidates must hold B.A., B.Sc., B.Com or any Degree obtained from any University established by law in India and recognised by the University Grants Commission for the purpose of its Grant and recognised by the Government of Tamil Nadu for the purpose of appointment. (Inserted vide Proc.No.17 (SB), dt.31.03.2012. Provided also that on and from 24.05.2014, for appointment as Junior Assistant (Administrative cadre) in the offices of Circles, the candidates must hold B.A or B.Sc. Or B.Com or any Degree obtained from any University established by law in India and recognised by the University Grants Commission for the purpose of its Grant and recognised by the Government of Tamil Nadu for the purpose of appointment. Provided further that on and from 24.05.2014, for appointment as Junior Assistant in Accounts cadre, the candidates must hold B.Com Degree obtained from any University established by law in India and recognised by the University Grants Commission for the purpose of its Grant and recognised by the Government of Tamil Nadu for the purpose of appointment.
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15. On a perusal of the above said regulation, originally the qualification prescribed for promotion or appointment to the post of Junior Assistant was SSLC and now the same is amended in Proceedings No.25(SB), dated 24.05.2014. In view of the amendment made, a person to the post of Junior Assistant is to be considered only if he possess a educational qualification of a degree viz., B.A., B.Sc., B.Com., etc. However, the writ petitioner union is of the opinion that such an enhancement in the educational qualification shall not have any effect in respect of the existing employees already serving in the

respondent Board.

16.The learned Senior Counsel for the writ petitioners cited a judgment of Hon'ble Supreme Court of India in the case of Y.V.Rangaiah and Others Vs. J.Sreenivasa Rao and Others reported in (1983) 3 Supreme Court Cases 284, and the relevant portion is extracted hereunder:

"9.....Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

17.The Hon'ble Supreme Court in the above case cited supra, dealt that the panel, which was prepared in that particular case. No doubt, if the panel was already finalized in respect of the qualification prescribed at the time of preparation of the same is to be adhered to.

18.The learned senior counsel for the petitioner further cited a judgment of the Hon'ble Supreme Court rendered in the case of Deepak Agarwal and Another Vs. State of Uttar Pradesh and others reported in (2011) 6 Supreme Court Cases 725. The learned Senior Counsel relied on paragraph 15, which is extracted hereunder:

"Mr.Dinesh Dwivedi, learned Senior Counsel for the State submits that the ratio in Y.V.Rangaiah is not applicable in the facts of this case. There is no requirement under Rule 7 of the applicable Rules in this case to prepare a yearwise panel of the selected candidates. Therefore, no acquired or vested right of the appellants has been taken away. Under Rule 7, the vacancies have only to be identified. The right accrues only at the time of consideration for

promotions. Therefore, the amendment has not been given a retroactive effect. The matter is covered by the judgment in Dr.K.Ramulu as a conscious decision has been taken by the State to exclude the two parts of STO and SSO from the feeder cadre for promotion as DEC."

However, on perusal of the entire judgment, this Court is willing to quote Paragraph 26 of the very same judgment which reads as follows:

"26.It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force"on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V.Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment."

19.However, in the present writ petition, there is no such incident took place and now they are challenging the amendment issued in respect of the educational qualification. Therefore, the judgment cited supra by the learned Senior Counsel for the petitioner cannot have any avail to the petitioners. The legal principles settled in this regard are to be considered rather than the points argued by the learned senior counsel for the petitioners that the writ petitioners have got vested right in respect of educational qualification, which were prevailing prior to the issuance of the amendment. The contentions raised by the writ petitioners in this regard deserves no merit consideration in view of the settled principle of law that prescription or amendment of educational qualification or the service conditions are the prerogative administrative powers vested with the employer. Such a power cannot be taken away at the instance of the employees as sought for in this writ petition. Amendment of service condition or educational qualification remains as a part of service condition and it is a condition imposed at the time of issuing the order of appointment itself. When it becomes a part of the service

conditions flows along with the order of appointment, the employees cannot question any amendments issued.

20. This Court is of the opinion that promotion or appointment can never be claimed as a matter of right. However, consideration for promotion is a fundamental right. Whenever, the process of preparation of a panel or a provisional list is sought to be prepared, then only the right of the qualified employees will accrue. An amendment issued by the employer in respect of the educational qualifications will not construe any legal right for the employees so as to challenge the same on the ground that they should be given promotion or appointment based on the old educational qualifications prescribed in pre amendment rules. If such an argument is accepted, then the same will have a disastrous consequences of proceeding backward, in respect of the development of the State or State owned organizations. This Court is not inclined to consider such an arguments advanced on behalf of the writ petitioners. In a developing nation, change in educational qualifications and other criteria or enhancing the qualifications is certainly imminent to provide constant progress in respect of the development of our great nation. Advancement of educational qualifications, verification of antecedents, transparency and equal opportunity are the essential characters for the purpose of undertaking the process of appointment or promotions. The improvements in the service conditions are certainly required not only for the development of the organization, but also to provide effective public administration by the State as well as by the Union. This Court is of an undoubted opinion that consistent and constant review of all these factors are certainly required and a periodical review will be of more effect in respect of the development of our great nation. It is desirable that an expert committee in this regard, by the State or State owned organizations is to be constituted for the purpose of developing and improving not only the service conditions, but also the other rules in this regard.

21. This Court is of the opinion that the State/Union and the organizations have to look forward in respect of the advancements and the developments of our country. In this regard, it is certainly imminent that the State has to periodically amend the rules for improving the qualifications and other criteria for public appointments and promotions. The Courts have to approve and appreciate such actions of the State for the purpose of taking our nation forward. Progress in prescribing the higher qualifications will be certainly advantage to the organization and it cannot be held that the same will amount to disadvantage to the existing employees.

22. The existing employees and their service rights are certainly protected in the cadre they work. The protection is to

be given in respect of the post they hold, i.e., to say that the salary, emoluments and other perquisites attached to the particular posts alone is to be protected and the protection cannot be extended in respect of further appointments or promotion to any other higher posts. The interpretation of the learned senior counsel for the petitioner cannot be accepted since the protection of service conditions are to be extended only in respect of the posts in which the employees are working and the same will not cover any further appointment or promotion to the higher post. Such being the concept to be adopted, this Court finds no irregularity or illegality in amending the qualifications for the post of Junior Assistant. The qualification of Secondary School Leaving Certificate [hereinafter referred to as "SSLC"] for the post of Junior Assistant was existing for many decades, unchanged. Even, this Court is of the opinion that there is a long delay in enhancing the qualifications for the post of Junior Assistant. "SSLC" is the minimum educational qualification prescribed long ago and considering the current day educational growth amongst the citizen, certainly enhancement of educational qualifications in all the departments are required. After the Parliament enacting the Right to Education Act and even prior to that an awareness to provide education to the children had undergone a consistent progress and the literacy level in our country is constantly improving. Under these circumstances, when large number of youth possessing the qualification of degree and they are better qualified for performing the duties and responsibilities of the clerical post, an opportunity is certainly required and this apart, this Court is of the view that prescription of higher qualification will also encourage the students to pursue higher studies.

For instance, a student stopping the school education at "SSLC" level, certainly will be kindled to pursue his/her higher studies. Improvement in a consistent manner will also encourage the students to pursue the higher studies and as of now, large number of graduates are unemployed in our country and therefore, enhancement of qualification in this regard will certainly improve the public administration, and also will provide better opportunities to the unemployed youth of this great Nation.

23. The concept of service protection is to be granted to the existing employees are certainly limited to the post in which they are working. Protection cannot be granted so as to prevent the employer from prescribing or modifying the educational qualifications in the rules for the higher posts. The service protection has got a limited purpose and there cannot be any life time protection so as to include all further promotion to the higher posts. Such an argument will create an anomalous situation and the same cannot be considered as an actual purpose for granting such service protection. The service conditions

including salary, allowances, perquisites in the posts in which the employees are working alone, deserves to be protected and certainly not the higher posts. An employee aspiring for appointment or protection to the higher posts should acquire the higher qualification prescribed or amended in the rules. Only on acquiring such an amended qualifications, those existing employees would be considered. Contrarily, the employees cannot plead that they should be given promotion or appointment based on the old rules prevailing prior to the issuance of the amendment in respect of the educational qualifications.

24. The learned Advocate General cited the judgment of Hon'ble Supreme Court of India in the case of K. Jagadeesan Vs. Union of India and others reported in (1990) 2 Supreme Court Cases 228, the relevant portion of the order are extracted here under:

"4. The main argument of learned counsel for the appellant is that the Tribunal was in error in holding that the rule affected merely a chance of promotion which the appellant had. It was submitted by him that although the appellant could not claim any right to be promoted, he certainly had the right to be considered for promotion and the amendment to the rule carried out by the said notification depriving of that right was bad in law.

5. Strong reliance was placed by the learned counsel for the appellant on the decision of this Court in T.R. Kapur V. State of Haryana where it was held that right to be considered for promotion is a condition of service. This decision is, however, of no assistance to the learned counsel in support of his argument because the bench which rendered the said decision has stated as follows: (SCCp.595, para 16)

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect... It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be."

It was further held that: (SCCp.595, para 16)

"an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed

retrospectively."

It was, however, clarified that:(SCCp.595, para 16)

"unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled."

6.It is only in this sense, that is, as set out in the immediately preceding paragraph that the view has been taken that the Rules cannot be retrospective. The ratio of this decision is not applicable to the case before us as there is no question of reverting the appellant. Again, it has been held by a bench comprising three learned Judges of this Court, in State of Maharashtra V.Chandrakani Anant Kulkarni (at paragraph 16, Page 142 of the said report), that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not."

25.Yet another judgment in the case of Hardev Singh Vs. Union of India and Another reported in (2011) 10 Supreme Court Cases 121, the Hon'ble Supreme Court held in paragraph 17, 25 and 26 which is extracted as hereunder:

"17.It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant-General but he had a right to be considered for promotion to the rank of Lieutenant-General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant-General.

25.In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in Virender S.Hooda Vs. State of Haryana where this Court had held in para 4 of the judgment that:(SCC p.699)

"4....when a policy has been declared by the State as to the manner of filling up the

post and that policy is declared in terms of rules and instructions issued to the Public Service Commissioner from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

26. Similarly, in *Balco Employees' Union Vs. Union of India*, it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. ..."

26. The legal principles in this regard are unambiguously clarified by the Hon'ble Supreme Court of India in the above two cases by stating that the promotion can never be claimed as a matter of right. However, consideration alone can be claimed as right.

27. Considering the facts and circumstances of the case, this Court is of the view that the amendment effected in respect of the educational qualification for promotion to the post of Junior Assistant is in consonance with the powers vested on the respondent under the Tamil Nadu Electricity Board Regulations. The Regulations provides ample powers for the respondent to alter or amend the educational qualification and other criteria for appointments and promotions. On a careful reading of the regulations, the powers of the Board cannot be disputed. Therefore, this Court has to consider whether any violation of any legal right in respect of writ petitioners in the post they are presently holding. As far as the averments of the writ petitioners are concerned, they have not raised any dispute in respect of the service conditions of the post, in which they are presently working. The members of the petitioner's association are employed as permanent employees in the said post and they are availing the benefits including salary, perquisites etc., as per the rules and regulations which is in force and there is no grievance in respect of the existing cadre, in which the members of the petitioner's association are working. The grievances of the member association is that their future prospectus to the promotional post of Junior Assistant alone is in stake. Since, this Court is of the opinion that, the promotion can never be claimed as a matter of right. This Court is of the opinion that enhancement of qualifications for the higher post cannot have any grievances in respect of the petitioners. The petitioners cannot have any locus standi to challenge the amendment in view of the fact that the qualification prescribed in the post of Junior Assistant cannot have any applicability in respect of the post in which the writ petitioners are presently working. Thus, the writ petitioners have not established any legal right in

respect of the enhancement of educational qualification for appointments or promotions to the post of Junior Assistant and this Court is of an undoubted opinion that the writ petitioner has failed to establish any legal right, so as to consider their claim that relates to the relief sought for in this writ petition.

28. The learned Senior Counsel appearing on behalf of the writ petitioner states that as per the settlement, it is required that 9(A) notice is to be issued to the petitioner's Association. However, no such notice was issued and therefore they have violated the settlement arrived at between the workmen and the Management of the Tamil Nadu Electricity Board. Further, it is stated that Section 9(A) has not been complied with and therefore the amendment is to be quashed.

29. Rebutting the contentions of the petitioner, the learned Advocate General has stated that Section 9(A) of the Industrial Disputes Act, has no relevance in respect of the facts and circumstances of the present case. In this regard, Schedule-IV of Section 9(A), Clause 8 of the Industrial Disputes Act stipulates, "withdrawal of any customary concession or privilege or change in usage". The reference made in this regard cannot be applied in the present writ petition. Prescription of educational qualifications in the special rules cannot be construed as a customary concession or privilege or change in usage. Prescription of educational qualifications and other criteria in the service rules are entirely different and unconnected with the phrases used in the above provision of the Industrial Disputes Act. The rules are framed under Article 309 of the Constitution of India and the amendments and the modifications in the qualifications and other classes are made by the competent authority and therefore, reference made by the learned senior counsel for the petitioner cannot be accepted in respect of impugned amendment in this writ petition.

30. This Court is of the opinion that, the respondent Board has got every powers to enhance or modify the educational qualifications for the higher posts and even as per the settlement, the protection for service conditions are provided only for the post in which the employees are working and not in respect of any amendment or modification in respect of educational qualifications for the higher posts.

The provision of Industrial Disputes Act cannot have any relevance in respect of the facts and circumstances of the case on hand. When the post of Junior Assistant is governed by the special rules, the same alone will prevail. The General Act will not have any implications when the special rules provides a specific qualifications for a particular post or cadre. It is an established legal principle that the special rules will prevail

over the general law. This being the principle, this Court is not inclined to consider the arguments as advanced by the learned senior counsel for the petitioner that the provisions of the Industrial Disputes Act to be complied with before issuing any amendment to the service rules in respect of the post of Junior Assistant.

31. Accordingly, these writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Deputy Registrar

//True copy//

Sub Assistant Registrar

rm

Copy to:

1. The Secretary,
Tamil Nadu Generation and
Distribution Corporation Ltd,
144, Anna Salai, (TNEB Complex),
Chennai-2.
2. The Chief Engineer/Personnel,
TNEB (TANGEDCO),
144, Anna Salai, (TNEB Complex),
Chennai-2.
3. Chairman cum Managing Director,
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Chennai-600 002.

+1cc to Mr.S.Elamurugan, Advocate SR.No.83593

+3cc to Mr.R.Varalakshmi, Advocate SR.No.83543

W.P.Nos.19516 of 2015; 13929 of 2015; 38973
and 40271 of 2016
and

WMP.Nos. 32521 of 2016 and MP.No.2 of 2015;
M.P.No1 of 2015; 33405 to 33408 of 2016 and
28927 of 2017; 28928 of 2017 and 34317 & 34318 of 2016

GN(14/12/2017)