

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.01.2017

Date of verdict :20.03.2017

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.411 of 2011

R.Sathiyamoorthy

...Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
T.N.E.B. Campus,
144, Anna Salai,
Chennai - 2.

2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
T.N.E.B. Campus,
144, Anna Salai,
Chennai - 2.

....Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the impugned order passed by the first respondent in vide (PER) B.P. (Ch) No.4 TNEB dated 11.01.2010 and consequently direct the respondents to fix the seniority as per the provisional promotion panel and give the promotion to the petitioner for the post of Assistant Accounts Officer.

For Petitioner : Mr.A.V.Arun

For Respondents: Mr.P.R.Dhilipkumar
Standing Counsel/TANGEDCO

O R D E R

This writ petition has been filed with the prayer of Writ of Certiorarified Mandamus to call for the records and quash the impugned order passed by the first respondent in vide (PER) B.P. (Ch) No.4 TNEB dated 11.01.2010 and consequently

direct the respondents to fix the seniority as per the provisional promotion panel and give the promotion to the petitioner for the post of Assistant Accounts Officer.

2. The brief facts of the case are hereunder :- The writ petitioner has joined the respondent Board as Helper on 01.01.1976 at Madurai and subsequently he was promoted as Junior Assistant on 01.09.1979. Thereafter he was promoted as Assistant in the year 1995 and subsequently he promoted as Account Supervisor in the respondent Board. According to the petitioner the next promotion to the petitioner is Assistant Accounts Officer and the qualification for the above said post is holding the post of Accounts Supervisor and should have passed the department Accountancy Higher Grade Test or degree in B.Com., or M.Com.

3. The petitioner has joined M.Com., course in the open University Scheme in Madurai Kamaraj University at Madurai. The petitioner had completed M.Com degree in the year 1994. In view of obtaining higher qualification, the petitioner has eligible to become Assistant Accounts Officer in Tamil Nadu Electricity Board. The respondent Board has prepared the panel for the promotion vide C.E.P. Chennai Lr.No.100224/G30/G301/2008-2 dated 21.10.2008. The petitioner's name was included in the panel. On the basis of the seniority panel, the respondent has issued the promotion order to the post of Assistant Accounts Officer to the juniors of the petitioner without considering the petitioner for the promotion. Further, it is stated that the petitioner has come to know that the respondent Board had kept in abeyance the petitioner's name as per the G.O.M s.No.107 P&AR(M) dated 18.08.2009 in the provisional promotion panel for the year 2008.

4. According to the petitioner, he had obtained the M.Com. degree before 1990 as per UGC. He had obtained the said degree only for employment and promotion. Hence, he filed the present writ petition before this Court challenging the impugned order of approved panel passed by the first respondent vide (PER) B.P. (Ch) No.4 TNEB dated 11.01.2010.

5. According to the learned counsel for the respondents, the Board has prescribed the following qualification for promotion to the post of Assistant Accounts Officer :-

(1) pass in the Government Technical Examination in Accountancy by Higher Grade;

(3) those who have passed M.Com. degree with Accountancy as an optional subject or advanced accountancy after obtained a degree in any branch or directly through Open University System in any of the Universities

recognised by the UGC or B.Com. degree (with Accountancy as the subject) of any University recognised by the UGC shall be deemed to have been exempted from passing Government Technical Examination in Accountancy by the Higher Grade.

6. Further it is submitted that the communication dated 21.10.2008 sent by the respondent Board is only a communication requesting the Subordinate Officers to give particulars in order to draw Supplementary Panel for 2008-2009. Therefore, it is not a provisional panel as alleged by the petitioner. The process for the preparation of Supplementary panel for the crucial date 25.03.2008 was kept pending due to introduction of Code of Conduct/Lok Sabha Election 2009. Thereafter, some of the seniors made representation to include their names in the proposed panel. On the basis of the representation the second respondent Board is called for, by memo No.100227/G30/G301/ 2009-4 dated 04.08.2009, to furnish the particulars of qualified seniors eligible for the promotion to the post of Assistant Accounts Officer. On the basis of the particulars received by the second respondent Board the panel was prepared in proceedings No.4 (Adm. Branch) dated 11.01.2010. The Government has passed the orders issued in G.O.Ms.No.107, P&AR (M) Department, dated 18.08.2009, wherein it is stated as follows :-

"5. The Government perused carefully the opinion of the Commission for fixing of equivalent education qualification and accepted the opinion to be correct. Accordingly, Government orders only after passing of 10th and plus 2 in Higher Secondary School, the degrees B.Sc., B.A., or M.A., M.Sc., are recognized for the appointment and promotion purposes."

7. In view of the aforesaid Government Order, the Board had decided to adopt the same and accordingly the orders were issued in (Per.) (FB) TANGEDCO Proceedings No.5, dated 08.04.2011. The above said proceedings clearly states that the said order shall be taken into effect from the date of issue of Government Order. Therefore, in the light of the Board proceedings, challenge to the impugned proceedings issued by the second respondent is unsustainable and the writ petition is liable to be dismissed.

8. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

9. According to the petitioner, he had acquired M.Com. decree in the year 1994 under the Open Universities Scheme,

Madurai Kamarajar Universities at Madurai and the petitioner is eligible to become Assistant Accounts Officer in the respondent Board. The petitioner's name was included in the panel, which was prepared on 21.10.2008 and the petitioner's name was found in the said panel. The second respondent Board pursuant to the said panel had promoted the juniors of the petitioner to the post of Assistant Accounts Officer without considering the petitioner's name. The contention of the petitioner is that the reason for non-considering the petitioner for promotion to the aforesaid post by taking into consider the G.O.Ms. No.107, P&AR (M) Department dated 18.08.2009 is not valid. Following the said G.O. the respondent Board has issued a proceedings No.5, dated 08.04.2011 and the name of the petitioner was not considered for the aforesaid post. The said order has come into effect only from the date 18.08.2009. Therefore, the said order is only effected from 18.08.2009. The provisional panel was prepared on 21.10.2008 itself. Therefore, the said Government Order will not apply to the case of this petitioner.

10. The said fact has been disputed by the respondent Board by stating that the process for preparation of supplementary panel for the crucial date 25.03.2008 was kept in abeyance due to introduction of Code of Conduct/Lok Sabha Election-2009. After the Lok Sabha Election, a revision panel was prepared in Board proceedings No.4, (Adm. Branch) dated 11.01.2010. While preparing the said panel, the respondent has taken into consider the G.O.Ms.No.107, P&AR (M) Department, dated 18.08.2009. Subsequent to the said G.O., the respondent Board has issued the proceedings in (Per.) (FB) TANGEDCO Proceedings No.5, dated 08.04.2011 to adopt the Government Order in G.O.Ms.No.107, P&AR (M) Department, dated 18.08.2009. In the said proceedings it is clearly stated that it shall take into effect from the date of issue of Government Order. Thereby it is clear from the counter affidavit that the panel was drawn only on 11.01.2010 and the G.O.Ms. 107 P&AR (M) Department, came into effect on 18.08.2009 and the respondent Board has also adopted the said Government Order in the proceedings from the date of the issue of the said Government Order. Therefore, the contention of the petitioner, the panel prepared by the Board prior to the Government Order is rejected.

11. In pursuant to the decision of the Hon'ble Supreme Court in "Annamalai University Vs. Secretary to Government, Information and Tourism Department and others" the Government had issued a Government Order in G.O.Ms.107 P&AR (M) Department, dated 18.08.2009, wherein it is clearly stated that the candidate who obtained diploma/degree/post graduate through open university without passing PUC/+2 examination will not be considered for promotion. Whereas this Court has held in

W.P.No.1068 of 2014 in "The Chairman, Teachers' Recruitment Boards Vs. Kanimozhi" dated 11.03.2014. Wherein this Court held as follows :-

"12. The Annamalai University's case (Annamalai University Vs. Secretary to Government reported in (2009) 4 SCC 590) has been referred to by the two Division Benches in their respective judgements. That was a case where, a Post Graduate degree obtained directly under the Open University system without doing Under Graduate degree was valid or not came up for consideration. In that case, the Hon'ble Supreme Court has held that before obtaining M.A. degree, as per UGC regulations, a candidate should have completed +2, followed by Under Graduate degree Course. The Post Graduate degree obtained through Open University scheme directly without having obtained a Under Graduate degree cannot be considered for the purpose of appointment as a Principal in a College. In that Judgment, the Hon'ble Supreme Court had no occasion to consider as to whether if a candidate completes a Under Graduate degree course after having obtained his Post Graduate degree under the Open University system will be eligible. This question was virtually examined by the Division Bench in J.Joseph Irudayaraj's case (cited supra). As a matter of fact, the Division Bench in J.Joseph Irudayaraj's case (cited supra) has extensively considered the judgment of the Hon'ble Supreme Court in Annamalai University's case (cited supra)."

12. The petitioner therein has not challenged the said Government order or the Proceedings No.5, dated 08.04.2011. The respondent Board is the competent authority to fix the qualification for the promotion post. Therefore, this Court cannot interpret the order passed in the aforesaid Government order, in the said writ petition which is not permissible in law and which is not the subject matter of this writ petition and the prayer in the present writ petition deserves to be rejected.

13. The petitioner who has obtained the degree under the Open Universities Scheme is not entitled for promotion to the post of Assistant Accounts Officer, pursuant to the G.O.Ms.No.107, P&AR (M) Department dated 18.08.2009 and the

Proceedings No.5, dated 08.04.2011.

14. Further the writ petitioner has challenged the impugned order, which is a panel of provisional selection for the post of Assistant Accounts Officer, without impleading the necessary parties in the writ petition. Therefore, the writ petition is not maintainable for non-joining of necessary parties. Hence on this ground also writ petition deserves to be dismissed.

15. Therefore, in view of facts and circumstances of case, in the light of the decision cited supra, writ petition fails and accordingly the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Chairman,
Tamil Nadu Electricity Board,
T.N.E.B. Campus,
144, Anna Salai,
Chennai - 2.

2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
T.N.E.B. Campus,
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Chennai - 2.

+1cc to Mr.Dilip kumar, Advocate, S.R.No.17480

+1cc to Mr.Arun, Advocate, S.R.No.17703

W.P.No.411 of 2011

KJI (CO)
RS (21/04/2017)