

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.29461 of 2010 and
M.P.Nos.1 and 2 of 2010

1.A.Suresh
2.Appinivenkateswaralu
3.V.Balasubramani
4.J.Murugan
5.N.Hariharan
6.M.Beer Mohamed Shaa
7.Z.A.Riyaz Ahamed Petitioners

Vs.

- 1.Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
Rep.by its Chairman,
No.144, Anna Salai,
Chennai 600 002.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
No.144, Anna Salai, Chennai 600 002.
- 3.The Chief Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
North Chennai Thermal Power Station,
Chennai 600 120.
- 4.The chief Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
Mettur Thermal Power Station,
Mettur Dam,
Salem District.

5.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
Villupuram Electrcity Distribution Circle,
Villupuram.

6.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
Thirunelveli Electricity Distribution Circle,
Thirunelveli.

Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in (Permanent) B.P.(Ch) No.50 (Adm.Branch) dated 07.06.2010 and also the order of amendment in Memo.No.118461/G.15/G.151/2009-2, dated 12.11.2010, issued by the second respondent, quash the same in so far as abolishing the redesignated and existing posts in the cadre of Junior Engineer (Civil) Grade-II and consequently direct the respondents to retain those posts and appoint/upgrade and promote the petitioners as Junior Engineer (Civil) Grade-II, award costs.

For Petitioners : Mr.V.Ajoy Khose for
M/s.R.Krishnaswamy
For Respondents : Mrs.Varalakshmi

O R D E R

Heard Mr.V.Ajoy Khose, learned counsel appearing for the petitioners and Mrs.Varalakshmi, learned counsel appearing for the respondents.

2.The petitioners have approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in (Permanent) B.P.(Ch) No.50 (Adm.Branch) dated 07.06.2010 and also the order of amendment in Memo.No.118461/G.15/G.151/2009-2, dated 12.11.2010, issued by the second respondent, quash the same in so far as abolishing the redesignated and existing posts in the cadre of Junior Engineer (Civil) Grade-II and consequently direct the respondents to retain those posts and appoint/upgrade and promote the petitioners as Junior Engineer (Civil) Grade-II, award costs."

3. The case of the petitioners is as follows:

The petitioners have joined as contract labourers except the fourth petitioner who was appointed on compassionate ground. They were originally appointed in the year 1992, 1993 and 1995 on various dates. The first respondent had issued a Board Proceeding Nos. 16 and 17 on 28.04.1999, for abolishing the contract labour system and for absorption of the contract labourers as regular employees. In view of the above Board proceedings, all the petitioners came to be absorbed in the year 1999.

4. It is the case of the petitioners that though they were appointed as helpers, the work has been extracted from the petitioners on the basis of their technical qualification. According to the petitioners, they were all diploma holders in Civil Engineering and they were assigned the work of Technical Assistant and directed to work as Surveyor, Preparation of Plans and Estimates, etc., and they were paid poor salary not on par with regular Technical Assistants.

5. According to the petitioners, some of the contract labourers who were appointed along with them who were holding Degree in Engineering Courses, on their absorption, they were appointed as Assistant Engineer (Technical), Assistant Engineer (Mechanical) and Assistant Engineer (Civil) and similarly for the Diploma Holders, some of them were appointed as Junior Engineer (Electrical) Grade-II and Junior Engineer (Mechanical) Grade-II. Similarly, the Diploma Holders in Civil Engineering were offered appointment through internal selection to the next higher post of Surveyor in the year 2001 and 2007 and some of them even posted as Junior Engineer (Civil) Grade-II. However, the claim of the petitioners for appointment of Surveyor/Junior Engineer (Civil) Grade-II, were not considered although they were qualified for such appointment, for want of vacancies.

6. While matter stood thus, the Board Proceeding No. 50 (Administrative Branch) dated 07.06.2010, decided to redesignate the post of Surveyor (qualified) as Junior Engineer/Civil Grade-II and in future, the post of Surveyor will stand abolished as and when the serving incumbents in the post of Surveyor and Junior Engineer (Civil) Grade-II were promoted to the post of Junior Engineer (Civil) Grade-I. Further Board Proceeding was issued on 12.11.2010, seeking to abolish the post of Junior Engineer (Civil) Grade-II even in respect of existing post of Junior Engineer (Civil) Grade-II, apart from the redesignated post of Surveyor as Junior Engineer (Civil) Grade-II.

7. According to the petitioners, there were 29 redesignated Junior Engineer (Civil) Grade-II (29 post of Junior Engineer (Civil) Grade-II) and 11 Junior Engineer (Civil) Grade-II as on

2009. According to them, the decision taken by the Board would result in abolition of 40 odd posts of Junior Engineer(Civil) Grade-II, in which event, the petitioners would not have any chance of promotion or any upward movement in the service career and would be allowed to stagnate and languish in the same position till their retirement.

8. The case of the petitioners is that the decision taken by the Board for abolishing the post of Junior Engineer (Civil) Grade-II was unilateral and no consultation process was initiated with the Union or the workmen concerned. In fact according to the petitioners, the higher officials of the Board have also given their opinion, by abolishing the post of Junior Engineer (Civil) Grade-II, the effective Civil work will also be affected in the Board's activity. Such unilateral action on the part of the Board in altering the existing service conditions of the employees would directly be in contravention of the provisions of Industrial Disputes Act, particularly, Section 9 (A) of the said Act. As per the said Section, the workmen are entitled to notice before the service conditions are altered or curtailed by the Management. In this case, no such notice has been issued as mandated by the provisions of the Industrial Disputes Act.

9. Upon notice, the learned counsel for the respondents entered appearance and filed a detailed counter affidavit. According to the counter affidavit, it is a policy decision taken on the basis of study undertaken and therefore, this Court cannot interfere with the policy decision of the Board.

10. The learned counsel for the petitioners at the outset, would submit that although larger relief has been claimed in the writ petition but he would limit his arguments only with regard to the non adherence by the Board to Section 9(A) of the Industrial Disputes Act, wherein, it is mandated that the workmen are entitled to notice before their service conditions are changed or altered. In the absence of such notice, the impugned action by the Board cannot be sustained in law and the same is being violating of mandatory provisions of the Industrial Dispute Act.

11. This Court has considered the pleadings of the learned counsel appearing for the petitioners. This Court is of the view that the contention put forth by the learned counsel for the petitioners has considerable force that the workmen viz., the petitioners herein are entitled to proper notice under Section 9 (A) of the Industrial Disputes Act, before any decision is taken by the Board towards changing or altering the conditions of service. There cannot be any quarrel about the preposition of law that Section 9(A) is a mandatory provision and the same has to be complied with by any management while effecting any change

or altering the conditions of service of the workmen concerned.

12. When the matter was taken up for hearing, it is also brought to the notice of the Board that the Board itself has considered the resolution of the grievances of the petitioners by holding talks with them with regard to the change or altering the conditions of service in respect of the employees employed on the Civil side. Be that as it may, as observed above that non adherence to mandatory provisions of the Industrial Disputes Act has to be viewed very strictly. Particularly, when the substantive right of the workmen vis-a-vis their service benefits is sought to be changed or curtailed by unilateral action on the part of the Management.

13. In such view of the matter, this Court is of the considered view that the writ petition is liable to be allowed. In such circumstances, the impugned Board Proceedings dated 07.06.2010 is set aside and the matter is remanded back to the first respondent to enable the Board to give proper notice under Section 9(A) of the Industrial Disputes Act, to the Union and all the workmen concerned including the petitioners herein and after taking note of the objections by the petitioners/workmen concerned, the Board shall take a considered view in the matter and the same shall be communicated to the petitioners/workmen concerned.

14. With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

सत्यमेव जयते

Sub Assistant Registrar

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To

1. Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Previously known as Tamil Nadu
Electricity Board),
Rep. by its Chairman,
No.144, Anna Salai,
Chennai 600 002.

WEB COPY

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Tamil Nadu Generation and
Distribution Corporation Ltd.,
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- 5.The Superintending Engineer,
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- 6.The Superintending Engineer,
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Electricity Board),
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Thirunelveli.

+1 C.C. to M/S.V.Ajoy Khose Advocate SR.NO. 63488
+1 C.C. to M/S.Varalakshmi Advocate SR.NO. 64215

W.P.No.29461 of 2010

SK(CO)
T.R (11/10/2017)