

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM

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

W.P. No.21410 of 2017

&

W.M.P.Nos.34505 & 22387 of 2017

M.Elangovan

.. Petitioner

Vs

1.The Chairman,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
VIII Floor, NPKRR Maaligai,
144, Anna Salai, Chennai.

2.The Chief Engineer/Personnel,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
VIII Floor, NPKRR Maaligai,
144, Anna Salai, Chennai.

3.The Personnel Officer/Recruitment,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
VIII Floor, NPKRR Maaligai,
144, Anna Salai, Chennai.

4.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Vellore Circle,
Gandhi Nagar, Vellore District.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the second respondent to consider the candidature of the petitioner for the post of Assistant Engineer/Electrical for the internal selection vide notification dated 12.07.2017 in accordance with law.

For Petitioner : Mr.N.R.Elango, Senior Counsel for
Mr.S.Raja Ravi Varma

For Respondents : Mr.M.Fakkir Mohideen

O R D E R

The relief sought for in this writ petition is for a direction to direct the second respondent to consider the candidature of the petitioner for the post of Assistant Engineer/Electrical for the Internal Selection vide notification dated 12.07.2017, in accordance with law.

2. The learned Senior Counsel appearing for the writ petitioner made a submission that the writ petitioner had completed MS Software Engineering in Vellore Institute of Technology, which is a deemed University, during the year 2008, with first class. The petitioner was appointed as Junior Assistant on compassionate grounds on 23.09.2009, in the office of the respondent Board. He was further promoted to the post of Administrative Assistant and thereafter, to the post of Assistant Programmer in Technical Department in Computer Section. According to the learned Senior counsel for the petitioner, the petitioner is fully qualified for promotion to the post of Assistant Engineer/Electrical. The second respondent issued a recruitment notification dated 12.07.2017, for Internal Selection to the post of Assistant Engineer/Electrical. The eligibility conditions stipulated in the said notification are extracted hereunder:

(i) The employees who are working in Regular work establishment and Provincial Cadres who are drawing the regular time scale of pay.

(ii) The employees who have passed B.E (Electrical) (only part time (or) Regular) or equivalent or Section A and B of AMIE Examination as referred to in Regulation 94 Annexure-III.

(iii) The employees who have passed B.E. degree through Distance Education from any Universities are not eligible for Internal Selection.

(iv) As per Regulation 95(b) of TNEB Service Regulations the employees who are approved probationer or probationer are eligible to apply.

(v) The employees who are involved D.P./undergoing punishment on the date of notification are not eligible.

3. Relying Clause II of the aforesaid eligibility conditions, the learned Senior Counsel appearing for the petitioner states that the employees who have passed B.E. (Electrical) or equivalent qualification are eligible for Internal Selection to the post of Assistant Engineer/Electrical. The Post Graduate degree of M.S. Software Engineering obtained by the petitioner from Vellore Institute of Technology is equivalent to the degree of B.E. (Electrical). Thus, the case of

the writ petitioner ought to have considered for the post of Assistant Engineer/Electrical by way of Internal selection, contrarily, the respondents have taken a decision not to consider the case of the writ petitioner for promotion to the post of Assistant Engineer/ Electrical on the ground that the degree of M.S. Software Engineering is not equivalent to the degree of B.E.(Electrical).

4. The learned Senior Counsel appearing for the petitioner has brought to the notice of this Court that the case of the writ petitioner was under consideration and the respondents were in the process of securing information in respect of the equivalence of degrees, however, a decision in this regard is awaited.

5. The aforesaid submission of the learned Senior counsel for the petitioner cannot be taken into consideration for the purpose of deciding this writ petition. The issue raised before this Court in this writ petition is as to whether the writ petitioner is qualified and possessing requisite educational qualification of B.E(Electrical) for the purpose of grant of promotion to the post of Assistant Engineer (Electrical) in the Electricity Board. The learned Senior Counsel referred to the judgment of Hon'ble Supreme Court in the case of Parvaiz Ahmad Parry Vs. State of Jammu & Kashmir and Others (2015) 17 SCC 709. Paragraph Nos.13 to 15 of the said judgment are extracted hereunder:

"13. As would be clear from the undisputed facts mentioned above, the minimum qualification prescribed for applying to the post of J & K Forest Service Range Officers Grade-I was "B.Sc. (Forestry) or equivalent from any University recognized by ICAR". It is not disputed that the appellant was to his credit a qualification of B.Sc. with Forestry as one of the major subjects and Masters in Forestry, i.e. M.Sc.(Forestry), on the date when he applied for the post in question, which satisfied the eligibility criteria so far as the qualification was concerned.

14. We do not agree with the reasoning of the High Court that in order to be an eligible candidate, the appellant should have done B.Sc. in Forestry and since he had not done so, he was not considered as an eligible candidate. This reasoning, in our view, does not stand to any logic and is, therefore, not acceptable insofar as the facts of this case are concerned.

15. In our considered view, firstly, if there was any ambiguity or vagueness noticed in prescribing the qualification in the advertisement, then it should have been clarified by the authority concerned in the advertisement itself. Secondly, if it was not clarified, then benefit should have been given to the candidate rather than to the respondents. Thirdly, even assuming that there was no ambiguity or/and any vagueness yet we find that the appellant was admittedly having B.Sc. degree with Forestry as one of the major subjects in his graduation and further he was also having Masters degree in Forestry, i.e., M.Sc.(Forestry). In the light of these facts, we are of the view that the appellant was possessed of the prescribed qualification to apply for the post in question and his application could not have been rejected treating him to be an ineligible candidate for not possessing prescribed qualification.'

6. In the case of B.Krishnakumar Vs. The Tamilnadu Electricity Board and Others in W.A Nos.123 & 124 of 2010 dated 15.07.2010, the Hon'ble Division Bench of this Court in paragraph Nos.13 & 14, has held as follows:

Para.13. Without going into all the issues raised by the both sides we have taken note of some features in this case which we will deal with in the following paragraphs:

(a) Both the petitioners have obtained a Master's degree from Deemed Universities by attending regular course 'part time' and not through distance education or correspondence course. This is admitted by the learned counsel for the respondent. The learned Single Judge proceeded on the basis that their degrees were obtained through correspondence course.

(b) The Electricity Board has its own service Regulations which come into force in 1967. The relevant paragraph has already been extracted.

(c) The Anna University has certified that M.E. Degree (Computer Science and Engineering) is higher qualification than BE/B.Tech/M.Sc. Computer Science and Engineering).

(d) In 2007, the Superintending Engineering, (Chennai Development Circle) has recommended the case of the petitioner in W.A.No.123 of 2010 for promotion as Assistant Engineer (Electrical). The qualifications obtained by the petitioner were before the Superintending Engineer and yet he recommended him.

(e) It is only in 2008 that the impugned order is passed.

(f) It is only in 2009 that the communication dated 01.07.2009 was issued. This is a letter issued by CE/Personnel.

(g) It is evident that even the Electricity Board Superintending Engineers were under the impression that the qualification obtained by petitioners is a 'higher qualification'. We have referred to the recommendation letter dated 06.07.2007. Again on 15.06.2010 a recommendation letter is given. It may be that they have now taken a decision that without the basic qualification of B.E. Degree, a Master's degree will not be taken as a higher qualification for purpose of Note 2.

(h) But then that should be made clear in the Regulations. Note 2 of Regulation 94 as it stands gives room for the construction that the petitioners want to place upon it.

(i) Both of them have acquired the Master's degree, and in JYOTI K.K. & ORS V. KERALA PUBLIC SERVICE COMMISSION & ORS (JT 2002 (Suppl.1) SC 85, the Supreme Court held that possession of a higher qualification presupposes the possession of the lower qualification.

Para.14. In view of the above factual aspects in this case we set aside the order of the learned Single Judge and allow the Writ Appeals directing the respondents to consider the applications of the petitioners in the light of the observations given above and appoint them to the post of Assistant Engineer (Electrical) if they are otherwise eligible."

7. In the present case, the case of the petitioner has already been addressed to the authorities concerned of the University for the purpose of ascertaining equivalence of the degrees of M.S. Software Engineering and B.E. (Electrical). However, the decisions are awaited and therefore, the case of the writ petitioner shall be considered for promotion.

8. The learned counsel appearing on behalf of the respondents opposed the contention of the writ petitioner by stating that the provisions in the Tamilnadu Electricity Board Service Regulations and amendment issued in (Per) B.P.No.(FB) No.7 (Sec.Br) dated 08.02.2006, stipulates as follows:

Annexure-II referred to in Regulation 92:

Class II-Division II-Category-3 Assistant Engineer/Electrical by Internal Selection and Direct Recruitment in the ratio of 1:1.

For the purpose of appointment by Internal Selection it shall be made, on the basis of service rendered after

acquiring the B.E. Degree or equivalent qualification.

Note-2:

Every batch of recruits to the category of Assistant Engineer/Electrical shall consist of persons possessing the prescribed qualification with the discipline and in the percentage as specified below:

Electrical & Electronics Engineering
: 91 %

Electronics & Communication Engineering
: 5%

Instrumentation Engineering
: 2%

Computer Science/Information Technology
Engineering
:2%

Annexure- III referred to in Regulation 94-
Qualification

'A Degree in Electrical and Electronics Engineering or Electronics Engineering or Computer science / Information Technology - Engineering or equivalent thereto of any University recognised by the University Grants Commission.

9. Pursuant to the recruitment notification for Internal Selection, the applications from the qualified employees of TANGEDCO/ TANTRANSCO had been invited by issuing a circular to all the Superintending Engineers to fill up 272 vacant posts of Assistant engineer/Electrical as per the ratio of 1:1. The said notification was issued on 12.07.2017. The learned counsel for the respondents, relying on the conditions stipulated in the recruitment notification, has stated that the employees who have passed B.E. degree through Distance Education from any Universities are not eligible for Internal Selection. Further, it is contended that as per G.O.Ms.No.116, P & AR (M) Department dated 18.08.2010, the candidates who possess a Diploma, Degree or Post Graduate Degree after a pass in SSLC (10th std), Hsc(+2) and basic Degree, as the case may be, shall only be considered for appointment / promotion in the services of the TANGEDCO.

10. In paragraph No.10 of the counter affidavit filed by the respondents, it is categorically stated that the degree obtained by the writ petitioner namely M.S. Software Engineering is not the requisite qualification for promotion to the post of Assistant Engineer/Electrical by Internal Selection in TANGEDCO, as the same cannot be considered equivalent with that of B.E. Degree in Electrical. The petitioner has not acquired a basic qualification of B.E. or equivalent qualification as per TNEB Service Regulations dated 08.02.2006. Hence, the case of the petitioner cannot be considered for promotion to the post of Assistant Engineer (Electrical).

11. Considering the arguments as advanced by the learned Senior Counsel appearing on behalf of the writ petitioner as well as the learned counsel for the respondents, this Court is of the considered opinion that in respect of grant of equivalence of educational qualifications, the procedures are prescribed. The Tamilnadu Electricity Board/respondents are following the Government rules in this regard and also, the service conditions of the employees. As per the rules, as far as the Government employees are concerned, the committee headed by the Chairman, Tamil Nadu Public Service Commission is empowered to submit a recommendation under Rule 19 of the Tamil Nadu State and Subordinate Service Rules for the purpose of grant of equivalence of various degrees granted by different Universities across the country. On receipt of any such recommendation, the State Government is empowered to pass orders, granting equivalence. Once, the equivalence is granted by the Government through its order, then alone, the employees or candidates are entitled to claim equivalence. In the absence of any such Government order or the order of the respondent Board, the writ petitioner cannot claim equivalence of degrees based on certain factual details produced by the writ petitioner. The candidates/employees cannot compare the subjects prescribed in various degrees or by comparing the duration of the course and subjects cannot claim equivalence for the purpose of assessing the requisite qualifications under the rules/notifications. Equivalence of degrees can be granted only by the experts and the Government also constituted a committee for scrutinizing the claim of equivalence and submit report for the purpose of issuance of orders by the Government. Thus, this Court cannot consider the statements in respect of comparison of subjects or otherwise by the writ petitioner. Court is not an expert body in respect of assessing the subjects or the equivalence of such degrees granted by various Universities across the country. These assessments are necessarily to be made only by the experts or by a committee constituted for the purpose of grant of equivalence.

12. In respect of the present writ petition on hand, the respondent Board had not granted any such equivalence in favour of the writ petitioner. Contrarily, the respondent Board has taken a stand that M.S. Software Engineering degree is not equivalent to B.E.(Electrical). Neither the Government nor the respondent Board have granted any equivalence as far as the degree obtained by the writ petitioner from the Vellore Institute of Technology. So, the writ petitioner, in the absence of any such Government order or any order from the Board, cannot claim that M.S. Software Engineering is equivalent to B.E.(Electrical) Degree.

13. Thus, this Court cannot consider the arguments as advanced by the learned Senior Counsel appearing for the

petitioner that M.S. Software Engineering is a Post Graduate degree and therefore, the degree should be treated as equivalent to B.E.(Electrical). Appointment or promotion can never be claimed as a matter of right. However, consideration for appointment/promotion/application is a right. Whenever an application is submitted by the candidates in accordance with the procedures contemplated, then the competent authorities are bound to consider the same in accordance with the rules. The case of the writ petitioner has already been considered by the respondent Board and the educational qualification possessed by the writ petitioner is disputed in view of the fact that the writ petitioner has not established the equivalence of the degrees by producing necessary orders either from the Board or from the Government.

14. In this view of the matter, the writ petitioner has not made out any valid legal ground for considering the relief as such sought for in this writ petition. The judgment cited on behalf of the writ petitioner has no relevance in respect of the facts and circumstances of the present case on hand.

15. Thus, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

dn/kak

To

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Gandhi Nagar, Vellore District.

+1cc to Mr.Fakkir Mohideen, Advocate, sr.no.27630

W.P. No.21410 of 2017

KAN (CO)

RRK (24/05/18)



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