

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2018

Delivered on : 26 .07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.20608 of 2012 and
M.P.No.1 of 2012

P.Chinnadurai

... Petitioner

Vs

The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation Limited,
(Formerly known as Tamil Nadu
Electricity Board),
No.144, Anna Salai,
Chennai 600 002.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the respondent to consider the petitioner's representations dated 29.12.2011 and 11.07.2012 and to give him absorption and appointment forthwith as Helper by giving preference based on the apprenticeship training which he has joined in the respondent Board prior to 13.09.1988 and also in terms of the earlier order dated 20.02.1995 in W.P.No.20983 of 1994 and as given to other similarly placed persons like the petitioner.

For Petitioner : Mr.V.Ajoy Khose for
Mr.R.Krishnaswamy

For Respondent : Mr.P.R.Dhilip Kumar

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O R D E R

Heard Mr.V.Ajoy Khose, learned counsel for the petitioner and Mr.P.R.Dhilip Kumar, learned counsel appearing for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a writ of Mandamus, to direct the respondent to consider the petitioner's representations dated 29.12.2011 and 11.07.2012

and to give him absorption and appointment forthwith as Helper by giving preference based on the apprenticeship training which he has joined in the respondent Board prior to 13.09.1988 and also in terms of the earlier order dated 20.02.1995 in W.P.No.20983 of 1994 and as given to other similarly placed persons like the petitioner."

3. The case of the petitioner is as follows:-

The petitioner was an ITI Certificate Holder in Wireman Trade. He has undergone National Apprenticeship Training in Wireman Trade in the respondent Board from 04.11.1985 to 03.11.1986. According to the instructions which was in vogue at the time when the petitioner was admitted in the apprenticeship training was that preference was given to the apprentice trained under the respondent Board in the matter of appointment as Helper. Subsequently, the Board has issued Board proceedings No.69 dated 13.09.1988, withdrawing the concession granted to the apprentices.

4. Aggrieved by the withdrawal of the concession vide B.P.No.69 of 1988, several writ petitions were filed. The writ petitions were allowed and it was reported in 1989 (1) LLN 105. This Court by allowing the writ petitions, had held that the Board proceedings can be applied only to the persons who joined apprenticeship training after the issuance of the said proceedings. Insofar as the candidates either who joined or completed the apprenticeship training with the Board, earlier to the Board proceedings, should be given preference in absorption.

5. According to the petitioner, he along with few others had filed a writ petition in W.P.No.20983 of 1994 and the said writ petition was allowed in terms of the judgment, reported in 1989 (1) LLN 105. The order passed by the learned Judge of this Court in W.P.No.20983 of 1994, dated 20.02.1995 is extracted below:-

"Though the petition was disposed of finally by order dated 10.01.1995, in view of the nature of amendment sought for by the petitioners in the order already made, in the interests of justice, I deem it proper to amend the order made on 10.01.1995 and substitute it "Field Helpers/Fitting Grade-III (Wireman)" in the place of "Technical Assistant Grade-II (Wireman)" in that order. The petitioner has now sworn to an affidavit. It is also submitted at the bar that the petitioners are eligible only for the post of

"Field Helpers/Fitting Grade-III (Wireman)", and not "Technical Assistant Grade-II (Wireman)". The order dated 10.01.1995 should be amended accordingly."

6. In spite of the orders passed by this Court, granting relief to the petitioner, there was no action by the respondent Board in granting absorption to the petitioner. According to the petitioner, several others who also claimed similar benefits like him were granted absorption. While matter stood thus, even subsequent to his writ petition, several other writ petitions came to be filed and those writ petitions were also allowed and against which, a Writ Appeal in W.A.Nos.1596 and 1597 of 2010 were filed. The learned Division Bench of this Court by order dated 16.11.2010, reported in 2011 (4) LLN 354 (DB) (Mad.), dismissed the appeals filed by the Board and confirmed the order passed by the learned Single Judge. For better appreciation of the issue on hand, paragraph Nos.8 to 13 of the judgment of the learned Division Bench, are extracted below:-

"8.The claim of the respondents is that in terms of BP 242 dated 26.6.1984, the trained apprentices enjoy a preference in the matter of employment with the appellant Board under whom they underwent the apprenticeship training and such training was given to them under the provisions of the Apprenticeship Act 1956.

9.Since the Appellant Board acted in contravention to the terms of the Board proceedings, several such similarly placed persons as that of the respondent approached this Court by filing Writ Petitions challenging BPMs (FB) No.60 dated 13.9.1988 in and by which the appellant Board decided to discontinue the procedure of giving preference to candidates who have completed the Apprenticeship Training in the Board. This Court allowed the Writ Petition in W.P.No.11807 of 1988, by an order dated 15.11.1988 reported in 1989 (1) L.L.N. Page 105 [P.DHARMARAJA Vs. TAMIL NADU ELECTRICITY BOARD & ANOTHER].

10. It appears that the Judgment rendered in that Writ Petition by a learned Single Judge of this Court attained a finality. Thereafter, the Board has also implemented the directions given and persons who were similarly placed as that of the respondents were absorbed. Subsequently several other

cases were also disposed of on the same line, which has been dealt with by the learned single Judge while disposing of the Writ Petition. For better appreciation, paragraph Nos.6, 7 & 8 are extracted hereunder:

"6.In fact, the assurance given in B.P.Ms.(Ch) No.242 was later withdrawn in B.P.(FB)No.69, Secretariat Branch, dated 13.09.1988. Therefore, the apprentices, who were trained after 13.09.1988, are not entitled to preference in employment in the respondent-Board. Therefore, the crucial date was 13.09.1988 and the apprentices, who were trained by the respondent-Board before the crucial date, are entitled to preference in employment, as per B.P.Ms.(Ch) No.242 referred to above.

7.When the Board refused to give preference in employment to apprentices trained before 13.09.1988, as per the promise made in B.P.Ms.(Ch) No.242, the apprentices, who were similarly situated as petitioners, filed series of writ petitions in various batches claiming employment. One such writ petition was disposed as early as on 01.09.1992 in W.P.No.590 of 1992 (M.VASU AND OTHERS VS. THE TAMIL NADU ELECTRICITY BOARD REP. BY ITS CHAIRMAN, ANNA SALAI, MADRAS 2 AND ANOTHER) and this Court directed the respondent-Board to give preference in employment to the apprentices, who were trained before 13.09.1988. Based on the order of this Court, those persons were given employment by the respondent-Board. The petitioner and 8 others filed writ petition in W.P.No.19743 of 1994 and this Court directed the respondents to give preference in employment following the earlier order dated 01.09.1992 in W.P.No.590 of 1992. In fact, this Court considered the B.P.Ms.

(Ch) No.242 and Section 22 of the Apprentices Act on 15.11.1988 in W.P.No.11807 of 1998 reported in 1989 (1) LLN 105 (DHARMARAJA AND OTHERS VS. TAMIL NADU ELECTRICITY BOARD (BY ITS CHAIRMAN) AND ANOTHER) in a well considered judgment and directed the respondent-Board to give preference in employment to apprentices trained before 13.09.1988 as per B.P.Ms.(Ch) No.242.

8.The apprentices who were similarly situated like the petitioner, filed writ petition in W.P.No.11158 of 1994 claiming appointment as per B.P.Ms.(Ch) No.242. This Court, following the earlier decision dated 01.09.1992 in W.P.No.590 of 1992 referred to above, passed an order dated 21.07.1994 in W.P.No.11158 of 1994, directing the respondent-Board to give preference in employment, as those persons completed apprenticeship training before the crucial date i.e. 13.09.1988".

11. Further, it is seen that the respondents completed their apprenticeship training trained apprentice before the crucial date i.e. 13.9.1998 and there is no reasonable explanation offered by the appellant Board as to why they were not given employment despite several thousands of workmen have been appointed after the cut off date and that too appointments have also been periodically made apart from absorption of 18,000 contract workers pursuant to recommendations by Honble Justice Khalid Commission. Therefore, we are of the firm view that at this stage of the matter, the appellant Board can not adopt a different yardstick to the case of the respondents who have completed the apprenticeship prior to 13.9.1988, which is the crucial date.

12. In the light of the above factual position, we are of the view that the appellant Board has not made out any good grounds to interfere with the order passed in the Writ Petitions.

13. In the result, the Writ Appeals fails and the same are dismissed. No costs."

7. Following the writ appeal order, the learned Judge of this Court allowed two writ petitions in W.P.Nos.3605 and 5757 of 2000 on 07.12.2010, wherein, the Association and 32 others had joined in the writ petition. The operative portion of the order passed by the learned Single Judge in the above matter in paragraph No.4 is extracted below:-

"4. In view of the above, the writ petitions are disposed of declaring that the directions issued by the Division Bench of this Court by judgment dated 16.11.2010 in W.A.No.1596 of 2010 shall be applicable to the member of the petitioner Sangam in W.P.No.3605 of 2000 and also to the petitioners in W.P.No.5757 of 2000 and the same shall be carried out. No costs."

8. On the basis of the above directions issued by this Court, the petitioner had submitted his representations on 29.12.2011 and 11.07.2012, to grant him the benefit of absorption. But, however, there was no action forthcoming, the petitioner is before this Court, seeking issue of Writ of Mandamus.

9. Upon notice, learned counsel appearing for the respondent, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is submitted in paragraph Nos.5 to 8, as follows:-

"5. I respectfully submit that the Board has issued B.P.Ms.(Ch) No.242, dated 26.06.1984 for giving preference to the candidates who had completed one year apprenticeship training in TANGEDCO with ITI qualification and they were directly appointed to the post of ITI Helper in TANGEDCO while considering Direct Recruitment through Employment Exchange.

6. I further submit that the Board has issued B.P.Ms.(Ch) No.69, dated 13.09.1988, discontinuing the procedures of giving preference to the candidates who have completed the apprenticeship training in the Board. Accordingly, the order issued in the B.P.Ms.(Ch) No.242 (SB), dated 26.06.1984 was cancelled vide B.P.Ms.(Ch) No.69, dated 13.09.1988 with immediate effect.

7. I respectfully submit that the said Board Proceedings dated 13.09.1988, was

challenged and it reached the Hon'ble Supreme Court and in the order dated 03.10.1996 by the Hon'ble Supreme Court of India in CA Nos.5285 to 5328 of 1996 (TNEB Vs P.Arul & others), the following guidelines are given by the Hon'ble Supreme Court of India.

(i) Other things being equal, a training apprentice should be given preference over direct recruits.

(ii) For this a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India Vs. N.Hargopal would permit this.

(iii) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(iv) The training institute concerned would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.

8. I respectfully submit that as per the guidelines given by the Hon'ble Supreme Court of India regarding apprentices, only preference would be given apprentice candidates was that other things being equal a trained apprentice should be given preference over direct recruit and that may attend the interview for the post of ITI Helper while conducting interview by Direct Recruitment, though the candidate name was not sponsored by the Employment Exchange and that the age would be relaxed to the extent of apprenticeship training period."

10. The learned counsel for the petitioner would submit that since the petitioner has already obtained a direction in his favour as early as in 1995 and in spite

of several orders passed thereafter granted the benefit of preferential right to the apprentice trained under the respondent Board, the respondent has not initiated any action for absorbing the petitioner. Therefore, he submitted that the petitioner is entitled to the relief as prayed for.

11. Having considered the rival submissions of the learned counsel on both sides and having perused the materials and pleadings placed on record, this Court is of the view that the issue is directly covered by the aforesaid decisions of this Court. In fact, it is an admitted case that the petitioner has approached this Court earlier and obtained order in his favour. Such being the case, this Court does not see any justification for denying the benefit of preferential right to the petitioner for absorption in the respondent Board.

12. For the above said reasons, this Court has no hesitation in allowing the writ petition. There shall be a direction to the respondent to accord preferential right to the petitioner as a trained apprentice and absorb him in the service of the Board, in terms of the judgment of this Court as cited supra and also in terms of the order of the Hon'ble Supreme Court of India in C.A.Nos.5285 to 5328 of 1996 (TNEB Vs.P.Arul & others). The respondent should comply with the above direction, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

gsk

To

The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation Limited,
(Formerly known as Tamil Nadu
Electricity Board),
No.144, Anna Salai, Chennai 600 002.

+1cc to Mr.P.R.Dhilip Kumar , Advocate SR.No.40653

Pre-delivery order in
W.P.No.20608 of 2012

ASK(07/09/2018)

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