

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.15346 of 2019
and

W.M.P.Nos.15328, 15332,15333 of 2019

1. G.Palanisami, PR.No.J08524
Sr.Tradesman,
Office of Tamil Nadu State Transport Corporation,
Erode Regional Office,
Erode.
2. R.Kanagaraj, PR.No.J08892 (Old PR.No.J01974)
Sr.Tradesman,
Office of Tamil Nadu State Transport Corporation,
F.C.Unit, Erode Regional Office,
Erode.
3. R.Paul Vincent, PR.No.J02222
Sr.Tradesman,
Office of Tamil Nadu State Transport Corporation,
F.C.Unit, Erode Regional Office,
Erode.
4. M.Selvakumar PR.No.J08593
Sr.Tradesman,
Office of Tamil Nadu State Transport Corporation,
E-1 Branch Unit,
Erode Regional Office,
Erode.
5. S.Charles PR.No.016060
Sr.Tradesman,
Office of Tamil Nadu State Transport Corporation,
Civil Section, Coimbatore Head Office,
Coimbatore.
6. K.Mekalai PR.No.016460
Sr.Tradesman,
Office of Tamil Nadu State Transport Corporation,
Civil Section, Coimbatore Head Office,
Coimbatore.

... Petitioners

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Transport Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Head Office,
Coimbatore.
3. The General Manager,
Tamil Nadu State Transport Corporation,
Coimbatore Region,
Coimbatore.
4. The General Manager,
Tamil Nadu State Transport Corporation,
Erode Region,
Erode.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to promote the petitioners to the post of Junior Engineer in the available vacancies of the respondents' corporation on par with their Juniors w.e.f. 25.04.2017 with all service and monetary benefits within the time limit fixed by this Hon'ble Court.

For Petitioners : Mr. M. Vijaya Kumar
For RR 1 to 4 : Ms. S. Rajeni Ramadoss

सत्यमेव जयते
ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, to direct the respondents to promote the petitioners to the post of Junior Engineer in the available vacancies of the respondents corporation on par with their Juniors with effect from 25.04.2017 with all service and monetary benefits within the stipulated time.

2. According to the petitioners, they are working as Senior Tradesman in the regular establishment of the respondent Transport Corporation. The petitioners are qualified with Diploma in Electrical, Diploma in Mechanical Engineering and Diploma in Civil Engineering after completing ITI Course. While

they were serving in respondent Corporation, the petitioners have pursued Diploma Courses in the above engineering subjects and completed the same successfully during the academic year 2011-2013. The Diploma Courses undertaken by them were affiliated to Indira Gandhi National Open University, which University was founded by the Act of the Parliament. The said University is admittedly one of the recognized Universities by University Grants Commission for the purpose of appointment in public service.

3. According to the petitioners, the next avenue of promotion to them was to the post of Junior Engineer for which, Diploma was one of the essential qualifications. According to the petitioners, some of the juniors to the petitioners have been granted promotion overlooking the petitioners on 25.04.2017 and in the said circumstances, the petitioners have approached the respondents seeking to consider their claim for promotion on par with their juniors. Since the promotion to the petitioners was denied despite the petitioners being qualified, they are before this Court.

4. Mr.M.Vijaya Kumar, learned counsel for the petitioners would submit that the petitioners were not considered for promotion to the post of Junior Engineer for the reason that Diploma qualification obtained by them in Indira Gandhi National Open University is not a recognized diploma and therefore, they were not considered for promotion to the post of Junior Engineers along with their juniors. According to the learned counsel, the Corporation has misconstrued the diploma certificate obtained by the petitioners as if it was studied through distance education mode without realising that the Courses undertaken by these petitioners were on-Campus/ Full time Courses, as it is evident from the certificate issued by the University itself. All these petitioners have clearly mentioned to the respondents that the course studied by them was full time On-Campus programme. According to the learned counsel, some of the petitioners have taken permission from the Corporation in pursuing their diploma courses. These petitioners have attended on campus programs on holidays and have also gone through practical exams and finally were awarded diplomas by the University (IGNOU).

5. The learned counsel for the petitioners would submit that in identical circumstances, this Court has allowed the similar claim of 17 petitioners in WP.No.11609 of 2017 dated 14.03.2019 in the case of (A.C.Selvamani and 16 Others Vs. The Chief Engineer/Personnel, Tamil Nadu Electricity Board/TANGEDCO and another). The learned counsel drew the attention of this Court to para Nos.3 to 12 of the aforesaid judgment, which are extracted here under:

"3. The case of all petitioners is that applications were filed seeking appointment to the post of Technical Assistant (Electrical) TANGEDCO. The petitioners are presently employed in various stations under the respondent Corporation and were permitted, while in service, to pursue a Diploma in Electrical and Electronics Engineering at Indira Gandhi National Open University (IGNOU), at its Regional Centre during the Academic Years 2012-13 and 2013-14. The petitioners have completed the course. IGNOU has certified that the petitioners have completed the Diploma in Electrical Engineering (on Campus/ Full time programme). Thus, there is no dispute in regard to the position that the petitioners have the requisite qualification as far as the post is concerned.

4. The counter filed by the respondents does not dispute the above facts. The only objection raised by the respondents is that the course duration in the certificate issued by the IGNOU specifies the period of study as 2/3/4 years and in the light of such variation, the course cannot be taken as a regular course.

5. Learned counsel appearing for the petitioners draws attention to proceedings dated 09.01.2015 issued by the TANGEDCO to the effect that in cases of appointments, such as in the present case, the following regulations would be held to be satisfactory.

'Note 1: In cases where the Regulations prescribe a diploma or a degree or a post-graduate degree as a qualification for appointment, then,

(a) a diploma obtained, after completion of S.S.L.C or Higher Secondary; (10+3 (3 years Diploma) or (10+2+2 (Lateral Entry)];

(b) a degree obtained, after completion of S.S.L.C. and Higher Secondary (10+2+3 or more);

(c) a post-graduate degree obtained, after completion of S.S.L.C., Higher Secondary and a degree (10+2+3+2 or 3)

from any university or institution,

recognized by the University Grants Commission or any of the Universities recognized by the Government of Tamil Nadu, shall be recognized as the qualification'.

6. In the present case, it is an admitted fact that the petitioners have completed 10+2+2/DEEE. Thus, the qualification of the petitioners is not in question.

7. The next objection raised by TANGEDCO is that the petitioners have obtained their DEEE through Distance Education and is hence not acceptable as the candidate is required to have studied in the regular stream to be considered eligible. Learned counsel for the respondents relies on a communication issued by the University Grants Commission to The Vice Chancellor, Indira Gandhi National Open University (IGNOU) in October 2015.

8. The sum and substance of this communication is that the UGC directs IGNOU to scrupulously abide by various terms and conditions while offering programmes through distance learning mode. The terms are set out therein. I fail to see the relevance of this communication to the present case insofar as it addresses only programmes conducted over correspondence. In the present case, the certificate issued by IGNOU confirms unequivocally that the petitioners have studied on campus, in a full time programme. This objection is thus rejected.

9. Moreover, IGNOU has clarified on 09.04.2018 that the 'Diploma in Electrical Engineering (DEEE)' offered through Vertically Integrated Engineering Programme (VEIP) is not a distance education/correspondence programme. The communication is extracted hereunder:

' To

Chairman cum Managing Director,
TANGEDCO (TNEB),
Chennai.

Subject: Recognition of Diploma in Electrical Engineering through Vertically integrated Engineering Programme (VIEP) awarded by IGNOU for considering appointment/promotion in Government Service.

Sir,

As desired the case of 'Recognition of Diploma in Electrical Engineering awarded by IGNOU for considering appointment/promotion in Government Service" was discussed in detail in the School of Engineering & Technology IGNOU New Delhi by the committee constituted by the competent authority of IGNOU (Clarification/minutes of the meeting is enclosed). It is to inform you that Diploma in Electrical Engineering under VIEP was designed and was conducted in face-to-face mode through different programme study centres all over India. The programme is full time programme conducted in flexible timing mode at programme study centres. The programme Diploma in Electrical Engineering of IGNOU offered through Vertically Integrated Engineering Programme (VIEP) is not a distance education/correspondence programme.

IGNOU is a CENTRAL UNIVERSITY established by Act of Parliament in 1985 (Act No.50 of 1985). IGNOU Degrees/Diplomas/Certificates are recognized by all the members of the Association of the Indian Universities (AIU) and are at par with Degrees/Diplomas/Certificates of all the Indian Universities/Deemed Universities/Institutions vide UGC Circular No.F.I-8/92 (CPP) dated February, 1992, AIU Circular N.EV/B (449)/94/176915 dated 5th January, 1994 & UGC Circular No.F1-52/2000 (CPP-II) dated May, 2004.

In the light of the above fact, Diploma in Electrical Engineering through Integrated Engineering Programme (VIEP) awarded by IGNOU may please be accepted for the purpose of recruitment/promotion in your esteemed organization.

Thanking you'

10. In the light of the above clarification, the objection raised fails.

11. This Court while admitting this writ petition on 05.05.2017 has accepted the request of the petitioner to keep one post vacant in the promotinal post of Technical Assistant (Electrical) in the office of the respondents, in respect of each petitioner. In the light of the same, the petitioners shall be accommodated in the post kept vacant as per the order of this Court above. The respondents are directed to pass necessary orders within a period of one(1) week

from the date of receipt of a copy of this order. The appointment shall be made with effect from 22.09.2016 with all consequential benefits.

12. The Writ Pettition is allowed in the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No order as to costs''.

6. The learned counsel for the petitioner would emphasize the fact that the entire counter affidavit which is filed on behalf of the Corporation is on the basis of misconstruing the courses undertaken by these petitioners as if the Diploma awarded to these petitioners was on the basis of distance education mode.

7. On the other hand, the fact remains is that these petitioners have obtained diploma courses by attending on campus full time programme conducted by Indira Gandhi National Open University and such diplomas are recognized for appointment in public service. When identically placed persons have been granted relief by this Court, it is not open to the Corporation to come up with the same objections, which objections were discountenanced by this Court in the aforementioned Writ Petitions.

8. The learned counsel for the petitioners would draw the attention of this Court to various documents in support of his claim that it was full time diploma courses studied by these petitioners and the distance education mode is completely different mode of education and unfortunately, the Corporation has construed the diploma earned by the petitioners as one through the mode of distance education. In view of the misunderstanding of the Diploma earned by the petitioners, the Corporation has denied them the benefit of promotion to the next higher post.

9. At this, the learned counsel appearing for the respondent Corporation would object to the grant of relief to the petitioners for the reason that the college in which the petitioners have undertaken diploma courses had issued a bona fide certificate describing the Courses attended by them as part time courses. Therefore, she would vehemently oppose the Writ Petition for the reason that these petitioners have attended their duties with respondent Corporation during the period of their study in the year 2011-2013 and therefore, they cannot say that they had undergone the Courses on campus / full time. According to the learned counsel for the respondents, the petitioners have not come with supportive

material in order to establish the fact that the petitioners have gone through their Diploma Courses on campus / full time. Therefore, she would submit that the petitioners herein are not entitled to the relief since the Diploma obtained by them is not recognised as per Government Orders and instructions.

10. By way of reply, Mr.M.Vijaya Kumar, learned counsel for the petitioners would submit that G.O.Ms.No.39 dated 30.04.2014 issued by the Personnel and Administrative Reforms(S) Department mentions that IGNOU is one of the recognized institutions by the University Grants Commission. He would also referred the GO.Ms.No.65 dated 02.07.2014 issued by the same department in which, it is clearly mentioned about the validity of the diploma obtained after completion of S.S.L.C or Higher Secondary [10+3(3 years Diploma) or (10+2+2 (Lateral Entry)]. According to the learned counsel, all these petitioners have completed their higher secondary level and thereafter have gone through Diploma Courses and completed the same after two years study. Therefore in all force, they are qualified to be promoted as Junior Assistants.

11. Considered the submissions made by Mr.M.Vijaya Kumar, learned counsel appearing for the petitioners and M/s.S. Rajeni Ramadoss, learned counsel appearing for the respondent Corporation.

12. The only point of issue to be considered by this Court is as to whether these petitioners, who obtained diplomas in Indira Gandhi National Open University can be granted promotion in the respondent Corporation. These petitioners have gone through the Diploma Courses in the programme conducted by IGNOU for the purpose of being considered for promotion in the Transport Corporation. As rightly contended by the learned counsel for the petitioners, the University in which the Courses were undertaken by the petitioners had given a certificate to the effect that these petitioners have gone through the Courses on campus / full time programme. Such certificate issued by the University clinches the issue in favour of these petitioners, since the University cannot issue such certificates to these petitioners without they are undertaking the Courses on campus/full time. Although, contrary arguments were advanced by the learned counsel for the respondent Corporation about the bona fide certificates issued by the college in which the Courses were studied by these petitioners, the same need not be given undue credence for the simple reason that the certificates were issued only by the University to petitioners after the petitioners have gone through the Courses and the competent

authority to characterize the mode of study undertaken by the petitioners in the University.

13. In any event, in an identical situation, this Court has allowed the writ petition in WP.No.11609 of 2017 dated 14.03.2019 in the case of (A.C.Selvamani and 16 Others Vs. The Chief Engineer/Personnel, Tamil Nadu Electricity Board/TANGEDCO and another). Those writ petitioners were admittedly holding the same certificates issued by the same University and when such certificates were found to be valid and clear findings were rendered by the learned Judge of this Court and the writ petition was ordered in their favour, this Court cannot take a different view in the matter since the certificates obtained by these petitioners are one and the same as that of petitioners in the said writ petition. When another public sector like TANGEDCO grants promotion to the petitioners therein on the basis of such certificates, this Court does not see any impediment to consider the claim of these petitioners and grant promotion.

14. This Court, in the above facts and circumstances of the case, is of the considered view that the course undertaken by all these petitioners has to be construed as full time /on campus since the petitioners were required to attend on campus training / programmers, and they are also required to study number of hours as fixed by the University and therefore, the Courses undertaken by them cannot be construed as the Courses undertaken through distance education mode. Therefore, the stand taken by the respondent Corporation suffers from non application of mind and does not meet the factual position namely that the certificate obtained by these petitioners are indeed recognised by the University Grants Commission and therefore, the certificates are valid enough to make the petitioners eligible for promotion to the post of Junior Engineer. The only objection raised on behalf of the Corporation is the nature of certificates/diploma obtained by these petitioners and this Court, after perusing the materials placed on record is of the opinion that the certificates/diploma obtained by the petitioners are valid for the purpose of considering the eligibility of these petitioners for promotion to the next higher post of Junior Engineer in the respondent Corporation.

15. In the said circumstances, this writ petition is allowed. The respondents are directed to promote the petitioners as Junior Engineers with effect from 25.04.2017 on par with their juniors if they are otherwise eligible for promotion and

pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order with all monetary and other attendant benefits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Government of Tamil Nadu,
Transport Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Head Office,
Coimbatore.
3. The General Manager,
Tamil Nadu State Transport Corporation,
Coimbatore Region,
Coimbatore.
4. The General Manager,
Tamil Nadu State Transport Corporation,
Erode Region,
Erode.

+1cc to Government Pleader sr.71147
+1cc to Ms.S.Rajeni Ramadoss, Advocate sr.71455
+6cc to Mr.M.Vijaya Kumar, Advocate sr.70191, 70903

W.P.No.15346 of 2019

kji(co)
nr 28/08/2019