

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.17229 of 2019
& WMP.Nos.16767, 16768 & 16771 of 2019

1.K.Velusamy
2.C.Sivakumar

.. Petitioners

Vs.

1. The Chief Engineer/Personnel,
Tamil Nadu Electricity Board/TANGEDCO,
8th Floor, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002

2. The Chairman,
Tamil Nadu Electricity Board/TANGEDCO,
8th Floor, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002

... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in his proceedings in Memo No.010489/63/G3/G3(1)/2015-33 dated 25.06.2018 quash the same in respect of the petitioners and consequentially direct the respondents to promote the petitioners to the post of Junior Engineer/(Electrical) Grade II based on G.O.Ms.39 dated 30.04.2014 and G.O.Ms.65 dated 02.07.2014 issued by Personnel and Administrative Reforms Department for internal selection under available vacancies of the respondent Corporation on par with their Juniors with effect from 19.12.2018 with all service and monetary benefits.

For Petitioner .. Mr.R.Mohana Raja

For Respondents .. Mr.P.K.Dilip Kumar

ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in his proceedings in Memo

No.010489/63/G3/G3(1)/2015-33 dated 25.06.2018 quash the same and consequentially direct the respondents to promote the petitioners to the post of Junior Engineer/(Electrical) Grade II based on G.O.Ms.39 dated 30.04.2014 and G.O.Ms.65 dated 02.07.2014 issued by Personnel and Administrative Reforms Department for internal selection under available vacancies of the respondent Corporation on par with their Juniors with effect from 19.12.2018 with all service and monetary benefits.

2. The case of the petitioners is that the petitioners are working as Commercial Inspectors in the respondent Board in respective Distribution Generation Circles. They have been working in a regular establishment and drawing regular time scale of pay. While the petitioners were in service, they sought permission of the respondents for pursuing Diploma Course in Electrical Engineering. After due consideration, the respondent Board issued permission letters for pursuing Diploma Course On Campus/Full time programme through Vertically Integrated Engineering Programme(VIEP) at Indira Gandhi National Open University(IGNOU). The petitioners have successfully completed their two year Diploma Courses in Electrical Engineering during the academic years 2010-2011, 2011-2012 and 2011-2012, 2012-2013 respectively. Next avenue for promotion to the petitioners is to the post of Junior Engineer (Electrical) Grade II. The petitioners having obtained Diploma in Electrical Engineering as per the relevant Rules they came within the zone of consideration for promotion to the post of Junior Engineer(Electrical) Grade II. According to the petitioners, the Government has issued G.O.Ms.242, Higher Education(P1) Department dated 18.12.2012, clarifying that the candidates who have completed two year ITI after SSLC or equivalent to SSLC+2, are recognized for giving appointment / promotion in public service. Whiles, the respondent Board has issued communication dated 22.04.2017 for filling up the vacancies to the post of Junior Engineer(Electrical) Grade II by internal selection by calling for applications from the qualified employees. The petitioners' name were also included in the eligible candidates list by a letter dated 22.04.2017. The petitioners applied for consideration for promotion to the said post in prescribed format before the scheduled date i.e., on 10.05.2017. The petitioners' applications have been duly forwarded through proper channel. As the petitioners were waiting for the promotion order, they found that many of their juniors were promoted on 19.12.2018 overlooking the claim of the petitioners herein. In the said circumstances, the petitioners submitted representations seeking promotion as Junior Engineer (Electrical) Grade II on the basis of their qualification. According to the petitioners, that the respondents have promoted similarly qualified persons for the year 2013-2015 in pursuance of the direction passed by this Court in WP.Nos.12017 & 12127 of

2014 dated 10.10.2014. Subsequently, a batch of qualified candidates with the similar qualification as that of the petitioners herein have approached this Court in WP.No.11609 of 2017 and after hearing the parties, this Court has allowed the claim of those petitioners by order dated 14.03.2019 and the said order passed by this Court is squarely covered the present claim of these petitioners as well.

3. While matter stood thus, by impugned communication dated 25.06.2018, the claim of the petitioners came to the rejected on the sole ground that the Diploma obtained by them through Indira Gandhi National Open University (IGNOU), is not a valid Diploma since the same has been obtained through Distance Education mode. According to the petitioners, the rejection on the stated ground suffers from non application of mind, since the petitioners obtained Diploma by On Campus/Full time face to face programme which cannot be compared to distance education mode at all. Therefore, for all purposes, such Diploma is recognized and in fact, the University Grants Commission and the University in which the petitioners studied have recognized the Diploma for securing employment in public service including promotion.

4. The learned counsel for the petitioner would straight away draw the attention of this Court to the latest decision, wherein, the claim of the petitioners therein was considered and a detailed order was passed by the learned Judge of this Court in W.P.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). It is relevant and useful to refer the entire decision of the learned Judge since the present issue in this Writ Petition is squarely covered under the said decision. Therefore, the order passed by the learned Single Judge as found in paragraph nos. 3 to 12, which are extracted herein.

"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 Pprogrammes 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 teh 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.

Int helight of the above fact, Diploma in Electrical Engineering through Integrated Engineering Programme (VIEP) awarded by IGNOU may please be accepted for thepurpose 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 resondents, in respect of each petitioner. In th 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''.

5. The learned counsel for the petitioner would also submit that very recently vide order dated 19.08.2019 in respect of Metropolitan Transport Corporation, this Court has allowed the similar claim in identical situation in WP.No.15346 of 2019

dated 19.08.2019 in the case of (G.Palanisamy and Others Vs. The Secretary, Transport Department, Fort St. George, Ch-9 and Others). This Court has relied on the above decision and allowed the claim of the petitioners therein. Therefore, the learned counsel would implore this Court to pass a similar direction by setting aside the impugned order rejecting the claim of the petitioners.

6. On behalf of the respondent Board, a stiff resistance was put up against grant of any relief to the petitioners. According to the respondent Board, Diploma certificate obtained through distance education mode is not recognised by the State Government or the respondent Board and hence, the Diploma obtained by these petitioners cannot make them eligible for appointment to the post of Junior Engineer(Electrical) Grade II. The learned counsel for the respondents would submit that as regards the earlier decisions were concerned, those decisions can be made applicable only to the petitioners therein and not to the petitioners herein.

7. This Court considered the rival submissions of the learned counsels. The issue is whether the Diploma obtained by these petitioners through Indira Gandhi National Open University (IGNOU) through On Campus /Full time face to face programme is valid or not. The issue is no more res Integra, when this Court has consistently held that such Diplomas are recognized by the Indira Gandhi National Open University (IGNOU) and also by the University Grants Commission and such Diplomas cannot be compared with Diploma obtained through distance education mode. Unfortunately, the authorities have misread the situation by comparing the Diploma obtained by these petitioners as to the diploma courses undertaken through the distance education mode. The diploma obtained by these petitioners through face to face Full time/ On Campus programme is akin to regular Diploma and therefore, the same has to be treated as valid for all purpose. More over, very recently on 19.08.2019 in WP.No.15346 of 2019, this issue came for consideration before this Court and finally this Writ Petition was allowed and the petitioners therein were granted the relief. Paragraph nos.11 to 15 of the reasoned order passed in WP.No.15346 of 2019 dated 19.08.2019 are extracted herein.

.....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''.

8. In view of the above, this Court is of the considered view that the petitioners have made out a case for grant of relief.

9. In the said circumstances, this Writ Petition is allowed and the impugned order of the first respondent in his proceedings in Memo No.010489/63/G3/G3(1)/2015-33 dated 25.06.2018 is hereby set aside and consequently, the respondents are directed to grant promotion to the petitioners as Junior Engineer/(Electrical) Grade II with effect from 19.12.2018 with all monetary and attendant benefits. The respondents are directed to pass appropriate orders in this regard within four weeks from the date of receipt of a copy of this order. It is also made clear that while passing orders, the respondents are also directed to take into consideration G.O.Ms.39 dated 30.04.2014 and G.O.Ms.65 dated 02.07.2014 of the Personnel and Administrative Reforms Department. 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 Chief Engineer/Personnel,
Tamil Nadu Electricity Board/TANGEDCO,
8th Floor, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002
2. The Chairman,
Tamil Nadu Electricity Board/TANGEDCO,
8th Floor, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002

+2 cc to Mr.R.Mohana Rara, Advocate, S.R.No.70904

+1 cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No.70554

RGN(CO)
SSM(24/09/2019)

W.P.No.17229 of 2019