

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.31497 of 2004

C.Murugan

.. Petitioner

Vs

- 1.The Managing Director
Tamil Nadu Water Supply and Drainage Board,
No.31 KamarajarSalai, Kilpauk, Chennai-5
- 2.The Superintending Engineer
TWAD Board, Maintenance Division
Vellore-6
- 3.The Executive Engineer
TWAD Board, Maintenance Division, Vellore-6 ..Respondents
[R2 and R3 impleaded vide order dated 03.04.2019 made in
WMP.Nos.10693/2019 in WP.31497 of 2004.]

Prayer : Writ Petition filed praying to issue a writ of Certiorarified Mandamus to call for the records connected with the impugned order dated 15.12.1999 issued by the third respondent vide Proc.No.1813/E/A.II/99-1 and letter dated 01/12/2003 issued by the second respondent vide his letter No.9943/F.Electricians/A3/2003 and quash the same and further direct the first respondent to duly upgrade the petitioner as Electrician Grade-I and refix the pay scale for the same from 01/01/1996 and consequently disburse all the arrears to the petitioner accused from it within the time frame as may be fixed by this Honourable Court.

(Prayer amended vide order dated 03.04.2019
made in WMP.Nos.10694/2019)

For Petitioner : Mr.H.Arivuchudar

For Respondents : Mr.S.Eraskine Leo

ORDER

The petitioner was working as Electrician Grade-II (Special Grade) in the Maintenance Division of the respondent Board at Vellore. Subsequently, he was upgraded to the post of

Electrician Grade-I, however, the same was cancelled by cancellation order dated 15.12.1999 based on the objection letter given by the Accounts Officer dated 07.12.1999 for the reason that the individual not passed SSLC as per Board's Circular dated 10.06.1999. According to the petitioner, it is a clear case of non application of mind on the part of the Accounts Officer to hold that the petitioner has not passed SSLC; further the Accounts Officer is not a competent authority to issue such an order to deny his right for the post of Electrician Grade-I.

2. The petitioner states that the Government has issued G.O.Ms.No.1257/Finance (PC-I) Department dated 08.12.1985 and constituted One Man Committee to set right the anomalies in the Fourth Pay Commission Recommendations. The said committee examined the requests of employees in various trade posts for the revision of higher pay scales in departments and found that there was no uniform pattern has been followed in prescribing technical qualification for these posts. The Committee was of the view that I.T.I certificate should be invariably adopted for all trade posts in all departments. But at the same time, the committee examined in detail about the minimum educational qualification prescribed for admission to I.T.I., course for various trades. The minimum educational qualification prescribed for admission to certain trades is SSLC pass and for some others, it is SSLC fail. Based on the finding, the committee recommended the revised pay scales to the posts with reference to qualification for admission to ITI. If an employee pass SSLC with I.T.I certificate, his pay scale was fixed as Rs.610-1075 as Group -I and if an employee is SSLC fail with ITI certificate, his pay scale was fixed as Rs.555-970 as Group-II. The scale of pay of Rs.610-1075 has been revised as Rs.4000-6000 for Grade I Electrician and the scale of pay Rs.555-970 has been revised as Rs.3050-4950 for Grade II after the Official Committee recommendation.

3. The petitioner further submitted that in G.O.Ms.No.745 dated 08.07.1980, the Government ordered that the candidates who have appeared for SSLC Public Examination after 11 years of regular schooling and passed or failed in that examination can be considered to possess the Minimum General Educational Qualification for Junior Assistant Post in the Tamil Nadu Ministerial Service. Subsequently, in letter No.K.L.Dis.E4/82 dated 23.01.1982 forwarded by the Under Secretary, TNPSC addressed to the Director of Education, it was made clear that those who appeared and failed in the SSLC (XI Std) examinations after 11 years of regular schooling can be considered to possess the minimum general educational qualification prescribed for entry into public service irrespective of the marks obtained by them in the public examination. The Minimum General Educational Qualification is SSLC 10 years pass. In the case of the

petitioner, he completed X standard and had regular schooling of XI but failed in it. In the light of the above cited G.O.Ms.No.745 dated 08.07.1980, the petitioner claims that he passed SSLC 10 years and therefore, he is entitled to the post of Electrician Grade-I. The Superintending Engineer in his letter dated 01.12.2003, with reference to request of the petitioner to fix his pay in the scale of pay Rs.4000-100-6000 upgrading the service to Grade-I Electrician, negated the petitioner's claim.

4. The petitioner submitted that he is entitled to upgraded to the post of Electrician Grade-I as he is having experience of working as Electrician Grade-II for a period not less than 3 years in the pumping station. It is stated that the respondent Board Proceedings of amended service regulation in B.P.No.141 dated 04.03.1986 is very clear and the post he held falls under "VIII Tamil Nadu Water Supply and Drainage Board General Subordinate Services" and he is having qualification of XI SSLC regular schooling failed with I.T.I. certificate and an experience of working as Electrician Grade-II in Pumping Station. This criteria satisfies the stipulated requirement for promotion to Electrician Grade-I from Electrician Grade-II. It is submitted that the petitioner made a representation dated 09.10.2000 and 07.05.2003, but that was rejected by the respondents on 01.12.2003 and therefore, the present writ petition is filed.

5. The learned counsel for the petitioner would submit that though the petitioner studied in Old Pattern SSLC +1 System, he passed 10th standard and failed in the 11th Standard and as per G.O.Ms.No.745 dated 08.07.1980, the Government ordered that the candidate should appear for SSLC Public Examination after 11 years of regular schooling and whether passed or failed in the examination, can be considered to possess minimum general educational qualification for the post. Therefore, in the light of the G.O.M.No.745 dated 08.07.1980, the petitioner who was working as Grade-II Electrician for more than 3 years, is eligible for upgradation to the post of Electrician Grade-I. The petitioner was also granted Electrician Grade-I upgradation by proceedings dated 28.09.1999 and pay was refixed with effect from 01.01.1996 in the time scale of pay Rs.4000-100-6000 for ordinary grade Rs.5000-150-8000 for Selection Grade and Rs.5,500-175-9000 for Special Grade, but subsequently, it was cancelled by the proceedings dated 15.12.1999 based on the objection letter dated 07.12.1999 issued by the Accounts Officer. The said pay fixation statement was received by the Accounts Officer (Audit-II), TWAD Board, Vellore. The Accounts Officer, by letter No.2915/SVI/NRI AW/99 dated 07.12.1999, returned the said pay fixation stating that the individuals are

eligible for the post of Electrician Grade II in the time scale of Rs.3050-4950 since their qualification is SSLC failed + ITI certificate and therefore, their pay fixation may suitably be revised; the orders already issued redesignated as Electrician Grade I may also be cancelled, since the individual not passed SSLC as per Board's Circular. The petitioner therefore, aggrieved by the cancellation of upgradation, preferred representation dated 09.10.2000 and referred various G.Os and submitted that he possessed minimum general educational qualification though he failed SSLC + 1 pattern as per G.O.Ms.No.745 A and A reforms (Personnel-P) department dated 18.07.1980 Tamil Nadu Public Service Commission Lr.No.K.L.Dis.E4/82 dated 23.01.1982, the candidate who have appeared SSLC Public Examination for 11 years of Schooling and passed or failed in the examination can be considered to possess the minimum general qualification (i.e.) SSLC. The above said order was confirmed in G.O.Ms.No.843 Finance (Pay Cell) department dated 31.07.1990 in which the scale of pay for Fitter Grade I was revised considering the qualification from below SSLC (11 years) to pass in 10th Standard (SSLC). The petitioner further admits that he failed SSLC (11 years) after schooling of 11 years, but having the minimum general qualification SSLC 10 years pass. The petitioner submits that the Accounts Officer should have submitted the proposal to the Managing Director, seeking clarifications, if necessary, as requested by the Executive Engineer, TWAD Board, Maintenance Division, Vellore, by letter dated 30.11.1999. But the Accounts Officer, who is not the competent Authority, issued clarification on the qualification which is not at all correct. Therefore, the Superintending Engineer - R2, based on the reference pointed out that the petitioner is not eligible for upgrading the post of Electrician Grade -II and he is not in possession of the minimum general educational qualification SSLC in the 10 years (or) 11 years pattern as per Regulation 16 of TWAD Board Regulation 1972 as per T.N.G1 Service Rules ordered in B.P.Ms.No.183/dated 17.07.1987 and thus returned the application. The learned counsel for the petitioner submits that the said order passed is liable to be set aside and the petitioner's pay scale has to be refixed in the Grade-I Electrician post.

6. The learned Additional Government Pleader would submit that the petitioner has not passed SSLC minimum general educational qualification, though by mistake, he was upgraded from Grade-II to Grade-I, subsequently, the said pay fixation statement was sent for approval to the Accounts Officer and the Accounts Officer recommended that redesignation to be cancelled and that pay scale has to be revised. Based on the said Audit Objection letter dated 07.12.1999, the Superintending Engineer also forwarded letter to Executive Engineer-R3 also stating that the petitioner is not eligible for upgrading the post of

Electrician Grade-II to Grade-I as he is not possessing minimum general educational qualification SSLC in the 10 years (or) 11 years pattern as per Regulation 16 of TWAD Board Regulation 1972. The learned Additional Government Pleader therefore, submits that the order passed by the respondent board is perfectly in order and the petitioner is not entitled to the relief sought for by him in this writ petition and the writ petition is to be dismissed.

7. Heard and perused the records.

8. Admittedly, the petitioner was working as Electrician Grade-II in Selection Grade and he was upgraded to the post of Electrician Grade-I by proceedings dated 28.09.1999, but subsequently, the said upgradation was cancelled and he was reverted to the post of Grade-II Electrician. The main contention of the learned counsel for the petitioner is that based on the Accounts Officer's Audit Objection, the respondents cancelled the upgradation on the ground that the petitioner has not passed SSLC and he is not possessing minimum general educational qualification, but the petitioner's contention is that as per G.O.Ms.No.745 A and A reforms (Personnel-P) department dated 18.07.1980 Tamil Nadu Public Service Commissioner Lr.No.K.L.Dis.E4/82 dated 23.1.1982, the candidate who have appeared SSLC Public Examination for 11 years of Schooling and passed or failed in that examination can be considered to possess the minimum general educational qualification SSLC.

9. The learned counsel for the petitioner produced Additional Typed Set of papers containing Service Conditions of Electrician in the "VIII TWAD Board General in B.P.Ms.No.141 Subordinate Service" dated 04.03.1986 whereby the Managing Director, Tamil Nadu Water Supply and Drainage Board, Secretariat, issued G.O.No.136, M.A. & W.S. Department dated 28.01.1986 making certain amendment to the TWAD Board Service Regulations 1972. The Notification was issued in exercise of the powers conferred by sub-section (1) and (2) of Section 73 of the Tamil Nadu Water Supply and Drainage Board Act, 1970 (Tamil Nadu Act 4 of 1971) the Tamil Nadu Water Supply and Drainage Board, wherein, certain amendments brought to the Tamil Nadu Water Supply and Drainage Board Service Regulations 1972. The Amendments to the TWAD Regulations are as under:-

"AMENDMENTS

In the said Regulation:-

1) In regulation :- a) In clause a)

1) for Sub-clause IV, the following sub-clause shall be substituted namely:-

"IV) Tamil Nadu Water Supply and Drainage Board Ministerial Service:-

"ii) after clause VII, the following clause shall be added, namely:-

"VIII) Tamil Nadu Water Supply and Drainage Board General Subordinate Services.

"IX) Tamil Nadu Water Supply and Drainage Board Mechanical Subordinate Services" 09.08.1974.

b) Under the heading "III TamilNadu Water Supply and Drainage Board Engineering Subordinate Service".

i) Items 6 to 12 shall be omitted:

(ii) after item 5, the following items shall be added namely,

6) Water Works Superintendent including Electricial

7) Work Assistant including Technical Assistant"

(c) (i) For the heading "IV Tamil Nadu Water Supply and Drainage Board Subordinate Service" the heading "IV Tamil Nadu Water Supply and Drainage Board Ministerial Service" shall be substituted.

(ii) Under the heading "IV Tamil Nadu Water Supply and Drainage Board Ministerial Service" as to substituted:

(i) items 11 to 13 shall be committed;

(ii) after item 10, the following items shall be added, namely:

11. Works Clerk and

12. Record Assistant.

(d) Under the heading "V. Tamil Nadu Water Supply and Drainage Board Basic Service, for item 3, the following item shall be substituted, namely:-

3) Basic Workers including Watchman, Dascars Gardeners and Sweepers":

[e] after the heading "VII. Tamil Nadu Water Supply and Drainage Board A counts Subordinate Services and the entries relating there under the following headings are entries shall be added namely:-

"VIII. Tamil Nadu Water Supply and Drainage Board General Subordinate Service:

(1) Maintenance and Operative Branch

1)Electrician Grade I and II

- (2) Fitters, Grades I and II (including Crane Operator and Mixer machine Operator)
- (3) Plumber.

I. Maintenance and Operation Branch

- (1) Electrician By Promotion Grade I -Experience as Electrical as Grade II for period of not less than three years.

By direct recruitment or (i) Must have passed SSLC or its Recruitment by transfer Equivalent.

(ii) Must possess ITI Certificate and

(iii) practical experience for a period of not less than two years.

- (2) Electrician / By direct recruitment (i) Must have passed Grade II or recruitment by transfer VIII Standard in a recognised school;

(ii) Must possess ITI Certificate in the Trade of Electrician with two years of experience in the type of work.

The above Service Condition of Electrician VIII TWAD Board General in B.P.Ms.No.41 Subordinate Service as per B.P.No.141 dated 04.03.1986, would apparently show that for the post of Electrician Grade I by promotion by direct recruitment or recruitment by transfer, the individual who worked as Grade II and having experience of not less than three years, must have passed SSLC or its equivalent; must possess ITI certificate and practical experience for a period of not less than two years.

10. In this case, the petitioner has not passed SSLC. Admittedly, the petitioner has not passed SSLC or its equivalent i.e., old SSLC 11 years. Even in the G.O., in the clarification, it is not stated that the individual who studied 10th standard can be treated as SSLC passed. Even as per earlier G.O., the petitioner does not possess minimum general educational

qualification SSLC in the 10 years (or) 11 years pattern.

11. In the case on hand, the entire documents placed before this court would go to show that for the promotion / upgradation from Grade-II Electrician to Grade - I Electrician, qualification is clearly fixed and that the person must possess minimum general educational qualification of 10th Standard pass/SSLC pass. There is no doubt that the petitioner was having ITI certificate, however, he has not passed SSLC. Therefore, the Accounts Officer vide his Audit Objection letter dated 07.12.1999, cancelled the redesignation of upgradation to the post of Electrician Grade I. Accordingly, the Superintending Engineer, by his letter dated 01.12.2003 clearly stated that according to Board Proceedings, No.183 dated 17.07.1987 the rule specify that the minimum general educational qualification as per Schedule -I (ii) , is SSLC pass. But the petitioner has not passed SSLC. Therefore, he is not eligible for upgradation to the post of Electrician Grade I from the post of Electrician Grade I. Further, the G.O.Ms.No.745 referred to supra is not made applicable to the petitioner.

12. Under the circumstances, the rejection order dated 01.12.2003 holding that the petitioner is not eligible for upgraded post Electrician Grade I from Electrician Grade-II does not require any interference and there is no merit in the writ petition and the writ petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Managing Director
Tamil Nadu Water Supply and Drainage Board,
No.31 KamarajarSalai, Kilpauk, Chennai-5
 - 2.The Superintending Engineer
TWAD Board, Maintenance Division
Vellore-6
 - 3.The Executive Engineer
TWAD Board, Maintenance Division, Vellore-6
- +1cc to M/s.S.Sivakumar, Advocate, sr no.39016

W.P.No.31497 of 2004

KJ(CO)

RMP(15/12/2020)