

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6689 of 2020
and WMP Nos.7933, 7936 and 7937 of 2020

A. Mubarak
Petitioner

...

-vs-

1. Tamil Nadu Generation and Distribution Corporation Limited,
represented by its Chairman,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.
2. The Secretary,
Tamil Nadu Generation and Distribution Corporation Limited,
Secretariat Branch,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer/Personnel
Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to call for the impugned proceedings No.(PER) FB TANGEDCO Proceedings No.2, Secretariat Branch dated 15.02.2020 issued by the second respondent and quash the same as Ultra-vires, beyond jurisdiction and consequently direct the third respondent to make arrangement to accept the petitioner application online or physical application under Notification No.04/2020 dated 15.02.2020 issued by the third respondent by relaxing the upper age limit.

For Petitioner

: Mr.R. Subramanian

For Respondents

: Mr.Karthick Rajan

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard learned counsel for the petitioner.

2. This writ petition comes up challenging the amendment in the Regulations framed by the respondent Corporation bringing about a change in Regulations 91(2)(d), whereby, the relaxation of the upper age limit was made inapplicable for appointment to the post of Assessor, Assistant Engineer/Electrical, Civil and Mechanical.

3. The contention raised is that there was no such limitation prescribed earlier and even the vacancies are backlog vacancies and therefore, the prescription of the upper age limit cannot be applied retrospectively.

4. It is further submitted that the Notification was issued earlier on the basis of Board Resolution dated 07.01.2020 being Proceedings No.2 that was challenged before the learned Single Judge in W.P.No.3251 of 2020, but, after notices were issued, the Corporation has suddenly come up with this amendment in the Regulations. The argument to our mind appears to be that the respondent Corporation has attempted to circumvent the judicial proceedings that had challenged the action of issuance of Notification without amending the Regulations.

5. Learned counsel for the appellant has invited the attention of this Court to the existing Regulations prior to the amendment and on a comparison of the same with the impugned amended provision, he contends that there is no rational basis for bringing about the amendment nor any reason disclosed and even otherwise, there is no justification of creating two classes of upper age limit in respect of appointment by the respondent Corporation. This action of bringing an amendment is therefore violative of Article 14 of the Constitution of India and consequently, the same should be struck down as ultra vires. Learned counsel, to substantiate his submission, further submits that the action is not only discriminatory but also arbitrary and for that reason also, the relief prayed for should be granted.

6. From a perusal of the affidavit filed by the petitioner, in support of the writ petition, the age of the petitioner is 34 years and since he belongs to backward category, he would not be now able to apply as the maximum age

for the said category provided under the amendment is 32 years. He therefore, submits that at the time when the vacancy arose and the earlier Notification had been issued, the petitioner had a right to be considered, which right of consideration is being taken away by virtue of the impugned amendment. The contention of the learned counsel is that there was a vested right of consideration which now stands depleted with the coming of the amendment and denudes the petitioner of his rightful claim and being an act of arbitrariness, the amendment should be scrapped.

7. We have also heard the learned Standing Counsel for the respondent corporation who submits that this entire argument has no foundation inasmuch as firstly the employer has a right to alter the upper age limit and unless it can be shown that it is manifestly arbitrary, no exception can be taken as it squarely follows within the realm of the policy decision of the employer to fix the upper age limit. To substantiate this, learned counsel has invited the attention of this Court to the Proceedings No.2 of the Board dated 07.01.2020, to urge that all relevant factors were taken into consideration and on the rationality of the reasonings referred to therein, it was resolved to alter the upper age limit which has now taken the shape of amendment in the Regulations.

8. Learned counsel also contends that since the earlier Notification had been issued without amending the Regulations, then, after a challenge had been raised before this Court, the same stood rectified and accordingly, now the amendment is in place and hence, no exception can be taken to this. It is further submitted by the learned counsel for the respondent Corporation that there is no vested right in the petitioner inasmuch as the right of consideration will follow only after the post is notified and not prior to that. Merely because there is a change in the upper age limit by altering the Notification itself which was not in accordance with the then existing Notifications, does not confer a vested right on the petitioner so as to contend that any of his rights or even legitimate expectation is being affected.

9. We have considered the submissions raised and we find that the impugned amendment dated 15.02.2020 is in respect of the posts of Assessor, Assistant Engineer/Electrical, Civil and Mechanical. The Corporation, in its Meeting held on 07.01.2020, took the following decisions:-

...."3) The Assistant Engineer recruited in TANGEDCO have to Execute/Supervise/Carry out Distribution & Maintenance works such as the repairing or calibration of Instruments, protection, inserting requirements report of power transformers and distributors transformers, manufacturer of specific type of structural works like pillar boxes, dams,

panels etc., attending break down, overloading and maintaining of station equipments maintaining power supply and equipment and should differentiate the terminate (A.B. Switches, breakers, clamps, panels etc.,) and if they are posted to Substations, Generation Units etc., they have to work in any of the Unit/Offices of Thermal, Hydro Generation Stations of TANGEDCO (Situating in Hill and reference areas) and in certain cases to discharge their duties during emergencies such as Cyclone, Flood etc., and when need arises to climb transformer structure etc., The Assistant Engineers have to act swift in case of emergencies in the Power House and must be physically fit to perform such duties.

4) TANGEDCO after considering the work, nature, Medical condition and Age factor and taking into account that the persons in the age group upto 35 years would work more effectively than that of the persons above the age of 35 in the Hill regions, Thermal Stations and during emergencies such as Cyclone, Flood etc., and also that person belonging to age group below 35 would have learned about the latest technologies, equipments and they would be upto date, have decided to limit the upper age criterion to the vacancies to be recruited vide proceedings No.13, dated 29.11.2019.

5) Based on the approval of the Full Board of TANGEDCO, the upper age limit in the above Direct Recruitment for the post of Assistant Engineer has been fixed as detailed below:

A. AGE (as on 01.07.2019)

Sl. No.	Category of Candidates	Minimum Age (Should have completed)	Maximum Age (Should not have completed)
1.	SC, SC(A), ST, Destitute Widow	18 years	35 years
2.	MBC/DC, BCO, BCM	18 years	32 years
3.	'Others' (i.e. Candidates not belonging to SC, SC(A), ST, MBC/DC, BCO and BCMS)	18 years	30 years

(i) For Differently Abled Persons:

Differently Abled Persons are eligible for age concession upto 10 years over and above the maximum age limit prescribed above.

(ii) In respect of Apprenticeship candidates, age relaxation will be allowed to the extent of the actual period of apprentice training.

(iii) For ex-servicemen:

a. The maximum age limit is 53 years for the Applicants who belong to SC, SC(A), ST

b. The maximum age limit is 48 years for "others"

(i.e) Applicants not belonging to any of the above said categories.

(BY ORDER TO THE BOARD OF TANGEDCO) "

10. A perusal of the said decision would clearly indicate the rationality and reasoning which stands reflected in the consideration made by the Board to take such a decision. We have not been able to gather any arbitrariness or irrationality in the decision of the Board in arriving at a conclusion on the basis of whatever has been deliberated upon. In the absence of any perversity in the said reasonings, we cannot sit in appeal over the decision taken that has resolved not to relax the upper age limit prescription against the said two posts.

11. We, therefore, find that the same is neither arbitrary nor manifestly arbitrary or even otherwise, unreasonable so as to strike it down on the ground of impinging Article 14 of Constitution of India.

12. The question of vested right, as raised by the learned counsel for the petitioner, does not appeal to reason inasmuch as, we have not been able to locate any vested right with the petitioner that may have accrued otherwise also so as to raise a challenge to the impugned amendment.

13. Consequently, for all the aforesaid reasons, we do not find any reason to entertain the writ petition on the ground so raised. The petition lacks merits and the accordingly, the same is dismissed. No costs.

sr

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

To

1. Tamil Nadu Generation and Distribution Corporation Limited,
represented by its Chairman,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.

2. The Secretary,
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+2cc to Mr.Karthik Rajan, Advocate SR.No.22953

(CO)
mst(28/05/2020)

W.P.No.6689 of 2020

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16.03.2020