

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20-11-2020
JUDGMENT DELIVERED ON : 10-12-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.A. NO. 1758 OF 2019
AND
C.M.P. NO. 11922 OF 2019

1. The Chairman
TANGEDCO
Nandanam, Chennai
 2. The Chief Engineer/Personnel
Recruitment, TANGEDCO
Chennai
- ...Appellants

Versus

Priyadarshini

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 01.03.2018 passed by the learned Single Judge in W.P.No.8781 of 2017 on the file of this Court.

W.P.No.8781 of 2017 Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus, directing the respondents to appoint the petitioner in the post of Assistant Engineer (EEE) on priority basis for the posts earmarked within the reserved category (Scheduled Caste) based on the Notification in Notification No.1 of 2015 dated 28.12.2015 on the file of the 2nd respondent.

For Appellants : Mr.G.Anand Gopalan
for M/s. T.S. Gopalan & Co

For Respondent : Mr. R. Singaravelan, Senior Advocate
for Mr. R. Jayaprakash

JUDGMENT

R. SUBBIAH, J

Challenging the order passed by the learned Single Judge in W.P. No. 8781 of 2017, disposing of the writ petition filed by the respondent herein, inter alia, directing the appellants/TANGEDCO to consider the claim of the respondent/writ petitioner for appointment to the post of Assistant Engineer in the priority category in the post earmarked for Scheduled Caste, the present writ appeal is filed.

2. It is the case of the respondent/writ petitioner that she belongs to Schedule Caste. She has completed Bachelor of Engineering in Electrical and Electronics Engineering in the year 2008 and also acquired M.E., (Applied Electronics) from Anna University in the year 2010. During the year 2015, the second appellant herein issued a notification No.1 of 2015 on 28.12.2015 calling for applications to fill up 273 posts of Assistant Engineers, out of which, 48 vacancies were earmarked for Schedule Caste candidates. Out of such 48 seats, 9 were reserved for Schedule Caste (Arundhathiyars) and remaining 39 for the Schedule Caste -- General Candidates. The respondent/writ petitioner applied for the said post and attended the written examination as well as interview conducted by the appellants/TANGEDCO and obtained 29.283 marks in total. It is stated that the cut off marks for the candidates under the priority category - women is 26.294 and she has secured more marks than the cut off marks. According to the respondent/writ petitioner, during the interview, she produced a Certificate received from the Honourable President of India for being an outstanding scout and claimed preference in appointment. While so, the selection list was issued by the appellants/TANGEDCO on 01.04.2017, in which, the name of the respondent/writ petitioner was not included. However, a candidate in priority category under Serial Nos. 13, 43, 79, 113, 143, 179, 213 and 243 in Cycle numbers 4 and 5 and Serial No.9 in wait list for A.E. (EEE) have got marks much less than the respondent, were included in the selection list. Their marks are 29.252, 28.296, 27.049, 26.294, 26.135, 25.660, 25.493, 24.984 and 24.634 respectively. Since the respondent/writ petitioner was not selected, she has given a representation dated 03.04.2017 to the second appellant but, it was not considered, and hence, she has filed the Writ Petition before the learned Single Judge for a Mandamus directing the appellants to appoint her to the post of Assistant Engineer (EEE) on priority basis for the posts earmarked within the reserved category (Scheduled caste) based on the notification No.1 of 2015 dated 28.12.2015.

3. Before the learned Single Judge, it was contended on behalf of the respondent/writ petitioner that she is an outstanding scout, for which, she received a Certificate from the Honourable President of India on 04.05.2016. Further, the cut off mark fixed for the candidates under the priority category--women is 26.294, whereas, the respondent/writ petitioner had secured 29.283. In spite of the same, the respondent/writ petitioner has not been selected for the post. As per Rule 55 of The General Rules under the Tamil Nadu State and Subordinate Service Rules, notwithstanding anything contained in Special Rules for various State and Subordinate Services, for appointment to any post by direct recruitment, when other things are equal, preference shall be given to outstanding scout. In this case, respondent/writ petitioner had received a Certificate for being an outstanding Scout from the Honourable President of India. But without considering the same as well as 29.283 marks scored by her, the other 9 candidates were considered only on the ground they fall under the priority category namely intercaste marriage, dependent of Ex-servicemen, persons whose lands were acquired by the Government, etc. Therefore, on behalf of the respondent, it was contended that the non-consideration of the claim of the respondent/writ petitioner, warrants issuance of a Mandamus.

4. The writ petition of the respondent was opposed by the appellants, by filing counter affidavit before the learned Single Judge. According to the appellants/TANGEDCO, even though the respondent/writ petitioner had secured 29.283 marks, she did not come within the zone of consideration, for the reason that the second appellant had given cut off marks for SC (General) as 37.373 and SC (Women) as 34.142. Moreover, the last candidate appointed under the SC (Women) category scored 34.142 marks and those candidates have come within the zone of consideration. Therefore, those candidates were considered by the appellants for being selected to the post. Further, 9 candidates, who were cited by the respondent and who have got lesser marks, were selected under the priority quota meant for inter-caste marriage, dependent of Ex-servicemen, persons whose lands were acquired by the Government, etc. So far as the outstanding scout is concerned, it will not come in the priority quota and only preference will be given for them in the selection as per Letter No.25285/S/2010 dated 07.12.2020 issued by the Secretary to the Government, Personnel Administrative Department, Secretariat, which says that preference to the outstanding scouts, can be pressed into service, only if the respondent/writ petitioner comes under the zone of consideration and if more than one or two candidates secure the same marks, the appellants have to give preference to the respondent for having secured the same marks, coupled with the outstanding scout award received from the Honourable President of India. Therefore, it was contended

that the respondent/writ petitioner is not entitled for selection to the post and prayed for dismissal of the writ petition.

5. The learned Single Judge rejected the contentions of the appellants and directed them to appoint the respondent on priority quota. When the appellants have selected various persons under various categories such as inter caste marriage category etc., the respondent, a recipient of outstanding scout certificate from the Honourable President of India, also has to be considered as one under the priority categories.

6. The learned counsel appearing for the appellants/TANGEDCO submitted that, pursuant to the notification dated 28.12.2015, the respondent has applied for the post of Assistant Engineer. However, the respondent has not applied against any priority quota. Since she has not submitted the application for the post by indicating the priority quota, under which, now she is seeking appointment, the question of considering her appointment under the priority category, does not arise. Moreover, as per the notification No. 1 of 2015 dated 28.12.2015, only disabled persons, dependants of Ex-serviceman/skilled/disabled in action, persons who contracted inter-caste marriage, repatriates, members of family whose lands have been acquired by Government, dependants of freedom fighter and persons retrenched from any of the employment of the Government for want of vacancy alone will fall within the purview of priority quota. Moreover, the recruitment Rules of the appellants/TANGEDCO will not consider the persons who have obtained certificate for being an outstanding Scout from the Honourable President of India for the purpose of recruitment under priority category. But the learned Single Judge, without considering this aspect, by placing reliance on G.O.Ms.No.549, Personnel and Administrative Reforms (PER-S) Department, dated 04.10.1989, has come to the conclusion that the respondent has to be appointed under the preferential category for having obtained Outstanding scout certificate from the President of India. सत्यमेव जयते

7. The learned counsel for the appellants further contended that pursuant to the said G.O.Ms.No.549, dated 04.10.1989, Rule 55 was added in the General Rules under the Tamil Nadu State and Subordinate Service Rule (Part II). Rule 55 does not speak about priority, but only about preference. If two persons secure same marks, then preference will be given to the one who possess an outstanding scout. Though TANGEDCO is a Government of Tamil Nadu undertaking, it was constituted under the Electricity Supply Act, 1948. In terms of Section 79 of the Act, TANGEDCO has framed Regulations in the year 1967. The said G.O. becomes applicable to Appellants/TANGEDCO only if the same is adopted by the Board of the appellant. In the instant case, G.O.Ms.No.549,

dated 04.10.1989 was not adopted by the Board. If it is not adopted, the question of relying G.O. Ms. No.549 does not arise. Therefore, the order passed by the learned single Judge, based on G.O.Ms.No.549, dated 04.10.1989, has to be set aside.

8. Countering the above submissions of the learned counsel for the appellants/TANGEDCO, the learned Senior counsel appearing for the respondent/writ petitioner has submitted that the non-inclusion of an outstanding scout, who received award from the Honourable President of India in the list of priority quota, is not a fault attributable towards the respondent/writ petitioner. It is the statutory duty of the appellant to include it in the priority quota in accordance with G.O.Ms.No.549, P & AR (Per.P) Department, dated 04.10.1989 and G.O.Ms.No.188, P & AR (Per.S) Department, dated 28.12.1976. The approval of the Board by a resolution to adopt the orders of the Government, is only a formal procedure. The Standing Orders of TANGEDCO are applicable only to their employees and internal management functions and the same cannot stand in the way of implementation of the orders of the Government issued from time to time. Therefore, the appellants/TANGEDCO cannot contend that there is no priority quota or reservations to outstanding scout in their Service Regulations. The reservation/concession relating to priority and non-priority categories are still in the form of Government Orders and Government Letters and there is no rule in force in the relevant Service Rules of Public Sector Undertakings of the Government, including the appellants-Board. The appellants/TANEDCO is implementing various orders of the Government and they cannot take a contra view in implementing the order in the said G.O.Ms.No.549, P & AR Department, dated 04.10.1989 and Government letter No. 25995/S/2010-3 dated 07.12.2020 read with Rule 55 of Tamil Nadu State and Subordinate Service Rules. Therefore G.O.Ms.No.549 which is not adopted by the TANGEDCO, cannot be a ground to deny the claim of the respondent. Since the application has to be submitted on-line, the respondent was not in a position to submit the outstanding scout certificate. In any event, at the time of interview, the certificate was produced. In such circumstances, the learned Single Judge is right in allowing the writ petition and he prayed for dismissal of the writ appeal.

9. Heard the learned counsel for both sides and perused the materials placed on record. Admittedly, the respondent was a recipient of an award for outstanding scout from the President of India. According to the learned counsel for the appellants, such outstanding certificate will not fall within the purview of priority quota, whereas, in the said G.O.Ms.No.549, Personnel and Administrative Reforms (Per.S) Department, dated 04.10.1989, it is stated as follows:-

"Notification

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Government of Tamil Nadu hereby makes the following amendment to the General Rules for the Tamil Nadu State and Subordinate Services (Part II in Volume I of the Tamil Nadu Services Manual, 1977).

2. The amendment hereby made shall be deemed to have come into force on the 4th October 1989.

Amendment

In the said Rules, after rule 54, the following Rule shall be added, namely

"55. Employment concession following for outstanding rule scouts;-

Notwithstanding anything contained in these rules or in the Special Rules for the various State and Subordinate Service, other things being equal, preference shall be given to the Outstanding scouts for appointment to any post by direct recruitment.

Explanation:- For the purpose of this rule, "outstanding scout" means a person who has received the award from the President of India."

10. From a reading of the said G.O.Ms.No.549, it is evident that outstanding scout, is one of the criteria to be considered in the matter of public appointment. The appellants/TANGEDCO is a Government of Tamil Nadu undertaking and it has to adopt the same. Merely because appellants/TANGEDCO have not adopted the said G.O., it does not mean that they can reject the candidature of the respondent/writ petitioner, who has produced the award of the Honourable President of India at the time of her interview. In fact, the learned Single Judge, by comparing the marks secured by other candidates, concluded that preference has to be given to the respondent. The learned Single Judge has also taken note of Rule 55 of the Tamil Nadu State and Subordinate Service Rules for various State and Subordinates Services, wherein it was clearly stated that "notwithstanding anything contained in the Special Rules for various State and Subordinate Rules, for appointment to any post by direct recruitment, when other things are equal, preference shall be given to outstanding scout". On considering the claim of the respondent in the light of Rule 55 of the Tamil Nadu State and Subordinate Service Rules and the over all marks secured by the respondent, the learned single Judge directed the appellants to consider her for selection to

the post for which she applied. We do not find any reason to interfere with such an order passed by the learned single Judge.

11. In the result, we confirm the order dated 01.03.2018 passed in W.P.No.8781 of 2017 by the learned Single Judge. The Writ Appeal is dismissed. No costs. Consequently, connected C.M.P.No.11922 of 2019 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The Chairman
TANGEDCO
Nandanam, Chennai

2. The Chief Engineer/Personnel
Recruitment, TANGEDCO,
Chennai

+1cc to M/s.T.S.Gopalan, Advocate, S.R.No.40214

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.40153

Pre-delivery Judgment in
W.A. No. 1758 of 2019

SS (CO)
KKV/28/12/2020

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