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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.11058 of 2020

W.M.P.(MD) No.9697 of 2020

(Through Video Conferencing)

M.Jaikumar
S/o.Muthu
No.15-2-27c Sassthiri nagar 3rd
street T.Kallipatti post, Periyakulam taluk,
Theni District 625 601 ... Petitioner

Vs.

- 1 The Chairman
Tamil Nadu Generation and Distribution
Corporation ltd. Tamil Nadu Electricity Board
No.144, Annasalai NPKRR Maligai
Chennai 600 002
- 2 The Chief Engineer/Personnel
Tamil Nadu Generation and Distribution
Corporation Ltd. Tamil Nadu Electricity Board
No.144, Anna Salai, Chennai 600 002
- 3 The Superintending Engineer
Theni Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Ltd., Theni.
- 4 The Assistant Executive Engineer(Distribution)
Theni Electricity Distribution Circle
Tamil Nadu Generation
and Distribution Corporation Ltd.
Chinnamanoor, Theni district.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuance to the impugned order passed by the 3rd



respondent in proceedings Ku.No.2893/0349/Me.Po/Theni/
Ni.A/Ni.Pil/U1/Ko.15/2020-3 dated 16.06.2020 and quash the same and
consequently direct the respondents to reinstate the petitioner in
service with all attendant and monetary benefits as Junior Assistant
(Accounts) in Theni Electricity Distribution circle.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.T.Sakthikumaran
standing counsel

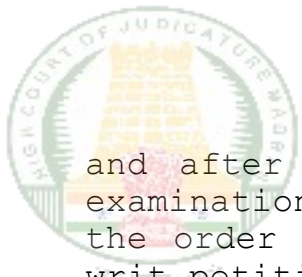
ORDER

Challenging the impugned order passed by the 3rd respondent dated 16.06.2020 and for a consequential direction to the respondents to reinstate the petitioner in service with all attendant and monetary benefits as Junior Assistant (Accounts) in Theni Electricity Distribution circle, the Writ Petition has been filed.

2. The petitioner was appointed as Junior Assistant (Accounts) at the respondent Corporation. Accordingly, he joined in service on 05.03.2018 at the fourth respondent office. At the time of joining service, in the order of appointment itself, it has been specifically mentioned that, as per regulation 91(3)(b) of the regulations of the TANGEDCO governing the service conditions of the petitioner, the petitioner, since has not studied in Tamil language during his school studies, should write the Tamil language exam/test to be conducted by the Tamil Nadu Public Service Commission (in short 'TNPSC') and should successfully complete such examination, for which, two years period has been given from the date of entry into service. Despite the condition, having been imposed, accepting the same, though the petitioner has joined in service, within two years period, the petitioner is not able to clear the Tamil language examination.

3. In this context, it is to be noted that, every year, the TNPSC used to call for Tamil language examination twice. It is admitted by the learned counsel appearing for the petitioner that, for the past more than two years, so far, three times, the TNPSC called for examinations, out of which, the petitioner participated only in the examination conducted in January 2020, ie., on 06.01.2020 and the results also had been published sometime in March 2020, however, the petitioner has been declared fail in the said examination.

4. Therefore, the respondents, especially, the third respondent, after issuing show cause notice and after getting reply
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and after verifying the failure result of the petitioner in the examination, which he attended in January 2020, has chosen to pass the order of discharge dated 16.06.2020, which is impugned in this writ petition.

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5. Mr.M.Saravanakumar, learned counsel for the petitioner, would submit that, the petitioner has so far made an attempt only once for the said Tamil language examination conducted on 06.01.2020 by the TNPSC. Though he failed in the said examination, certainly, if one more chance is given to the petitioner, he would clear the same. Therefore, at least, till next examination is called for by the TNPSC, the petitioner can be given exemption to make an attempt and clear the said examination and without giving any such chance, since the order of discharge has been made by the respondent through the impugned order, the petitioner, challenging the same, has approached this Court.

6. I have heard the learned standing counsel for the respondents, who, on instructions, would submit that, under clause 91(3)(b) of the Tamil Nadu Electricity Board Service Regulations, it has become mandatory that, those who does not possess adequate knowledge in Tamil should complete the Tamil language examination within two years period from the date of joining in service and without completing the same, his probation itself would not be declared successfully and consequently within the said period, if he/she is not able to pass in the Tamil language test, certainly, he would be discharged from services.

7. In this context, the learned standing counsel appearing for the TANGEDCO would further submit that, since the probation of the petitioner has not so far been declared, the usual procedure to be adopted in this regard by conducting an enquiry before removing the petitioner may not arise, nevertheless, the respondent TANGEDCO, having adopted the procedure of giving a show cause notice, after getting a reply and after coming to know the result of the examination, which the petitioner has attended, though has been declared in March itself and he has not come out successfully, has chosen to take a decision discharging him, which is strictly in consonance with the regulation. Therefore, the said order does not require any interference by this Court, he contended.

8. I have considered the said submissions made by the learned counsel for both sides.

9. Since the petitioner claimed to be a Tamilian and his Mother Tongue is Tamil, in normal circumstances, he is expected to be successful in Tamil, if not expert atleast he must be knowing the Tamil in both, not only to speak but also to read and write.



10. In the State of Tamil Nadu, the official language is Tamil and all communications are being transmitted in the State Government only in Tamil Language and the TANGEDCO, admittedly, has also adopted Tamil as the language of their administration and every communication and documentation are necessarily to be in Tamil, hence, it cannot be said that, insisting upon the employee to be knowing the Tamil language, is an unwarranted requirement.

11. In this context, even though the petitioner's Mother Tongue is Tamil, he has not passed out the examination of Tamil language conducted by the TNPSC. Though three times examination have already been announced during the last two years, where he is in service, he has not chosen to make attempt after attempt by appearing in every such chance given to him, but he had chosen to appear in only one examination at January 2020, where he failed. This attitude on the part of the petitioner shows his lethargicness and also his disinterest to become qualified in Tamil language, which is a qualification for continuation of his job, after getting appointment in TANGEDCO.

12. In the course of employment, whether a particular person is to be an expert in a particular language or he need not be in a position to converse both speaking and writing in the particular language, would always depend upon the official language being adopted and used by such employer or organization.

13. In the given case, the TANGEDCO, admittedly, has adopted the Tamil as the language of their administration and every communications and documentation necessarily to be prepared in the language of Tamil, every employee of the organization must know Tamil and without which it may be difficult for those employees to cope up with the administrative exigencies that will ultimately hamper the administrative skill in the organization.

14. Therefore, in the very regulation itself, as has been rightly pointed out by the learned standing counsel appearing for the respondents, the said condition is imposed and having accepted the said condition only, since the petitioner has joined in the service, he cannot escape from the clutches and therefore, he should have been very vigilant and should have taken all earnest efforts in passing out the examination in Tamil language, whenever it is possible for the last two years by appearing in the examination conducted by the TNPSC every year and accordingly, he should have cleared the examination by the time. Failure on the part of the petitioner in clearing the examination, certainly, would be viewed seriously and therefore, this Court feels that, after two years period and after giving long rope for the petitioner to clear the Tamil language examination, since the petitioner having failed in



the said attempt, the respondent has chosen to take a drastic action of discharging him from service.

15. Since the probation of the petitioner has not been declared so far, the regular procedure to be adopted for removing the petitioner, need not to have to be adopted. Therefore, in this regard, this Court do not want to find fault with the respondents in adopting the present method for passing the impugned order of discharge. But at the same time, except the reason that, the petitioner has not qualified in the Tamil language examination, no other reason has been given for discharging the petitioner.

16. No doubt, the petitioner should have been vigilant and should have taken all earnest efforts to complete the examination within the time stipulated. However, he has missed almost two attempts without having appeared and in one attempt even though he has appeared, he failed in that attempt. In that circumstances, this Court feels that, at this juncture, if the petitioner's services are terminated abruptly, it will have an impact on his career. Therefore, in order to balance the convenience of both sides, at the same time, without compromising the qualification of getting passed in the Tamil language examination, which is an essential condition for continuing in the job in the respondent TANGEDCO, for the petitioner, this Court is of the view that, he may be given one more chance that shall be the next attempt of language examination, whenever it is called for by the TNPSC, and in that attempt also, if the petitioner failed to clear the language examination, action may be taken for terminating his services on that ground itself.

17. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

(i) The petitioner shall give a representation along with this order, apart from his earlier representation dated 21.05.2020, to the respondents, making a request to the respondents to give extension of time for completing the language examination in Tamil, till the next such examination is called for by the TNPSC and result is published thereon.

(ii) Once such representation is made along with the copy of this order, the respondents are hereby directed to consider the same and pass necessary orders giving such extension to the petitioner till such time, the next examination is called for by the TNPSC for the Tamil language examination.

(iii) Such extension to be given to the petitioner should be strictly restricted only till the examination is called for by the TNPSC and the date of publication of the result therefor.



(iv) It is made clear that, once such extension is given, the petitioner shall take all earnest efforts to participate in the examination and after full-fledged preparation, he should clear the same, otherwise, if he still fails in his attempt to clear the examination, it is open to the respondents to take action against the petitioner including the action of removal from service and in that case, the petitioner cannot seek any sympathy, at that time, if such a drastic action is taken by the respondents.

(v) In view of the aforesaid directions, the respondents are hereby directed to pass necessary orders on such representation of the petitioner within a period of two weeks from the date of such representation along with the copy of this order. Accordingly, the impugned order can also be reviewed and revoked by the respondents.

(vi) It is further made clear that, this extension of time giving permission to the petitioner to have one more attempt to complete the Tamil language examination shall not be treated as a precedent or as a routine way, since the concerned regulation of the TANGEDCO has made it mandatory to complete the examination within a period of two years from the date of entry into service.

18. With these directions and observations, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1 The Chairman
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Chinnamanoor Theni district.

+1 CC to M/s.M. SARAVANAKUMAR, Advocate (SR-16174[F] dated
08/09/2020)

+1 CC to M/s.T. SAKTHIKUMARAN, Advocate (SR-16268[F] dated
08/09/2020)

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