



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD).No.10272 of 2014
and
MP(MD)Nos.1 and 2 of 2014

S.Meenakshi

... Petitioner

-Vs-

1.The Chairman

Tamil Nadu Generation and Distribution Corporation
Limited,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer Personnel,

Tamil Nadu Generation and Distribution Corporation
Limited,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer,

Tuticorin Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation
Limited,
Tamil Nadu Electricity Board,
Tuticorin District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the Amendments to Regulation 94 of Tamil Nadu Electricity Board Service Regulations issued by the first respondent in (PER) FB TANGEDCO PROCEEDINGS No.25, Secretariat Branch, dated 24.05.2014 as Ultra Virus to the Constitution of India as it is violative of Articles 14, 16 and Section 9-A of Industrial Disputes Act, 1947 and consequently direct the respondents to promote the petitioner to the post of Junior Assistant (Accounts) on par with her junior with all attendant and



monetary benefits.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.T.Sakthikumaran
Standing Counsel

ORDER

The relief sought for in the present writ petition is to declare that the Amendments to Regulation 94 of Tamil Nadu Electricity Board Service Regulations issued by the first respondent in (PER) FB TANGEDCO PROCEEDINGS No.25, Secretariat Branch, dated 24.05.2014 as Ultra Virus to the Constitution of India as it is violative of Article 14, 16 and Section 9-A of Industrial Disputes Act, 1947 and consequently direct the respondents to promote the petitioner to the post of Junior Assistant (Accounts) on par with her junior with all attendant and monetary benefits.

2.The writ petitioner was appointed as Helper (Training) in Tamil Nadu Electricity Board on 04.06.2010 and completed departmental test on 30.05.2011. The grievances set out in this writ petition is that by virtue of the impugned amendment issued in respect of proceedings dated 24.05.2014, the prospects of the writ petitioner for further promotion in the post of Junior Assistant is barred. In other words, the writ petitioner is qualified for promotion to the post of Junior Assistant and her future prospects are restricted on account of the transition of Higher qualification for appointment to the post of Junior Assistant through amendment issued by the respondent on 24.05.2014.

3.The learned counsel appearing on behalf of the writ petitioner raised a point that the writ petitioner is an existing employee working in Group-IV services and she is continuing in the same post for fairly a long time and therefore, the only avenue for promotion left is to the post of Junior Assistant and thus her chance in this regard cannot be barred and the same will create frustration in the mind of the employee.

4.It is contended that promotion of at least, from current level to one level above must be assured by the employers and more so the employer being a Board having large number of employees shall provide one avenue for promotion. Thus, the promotional avenue already in existence to the writ petitioner is sought to be tampered with by the respondent by introducing new amendment by way of enhancing the educational qualification for appointment to the post of Junior Assistant.



5.The learned counsel is of the opinion that there is an assurance provided under the Electricity Act 2003. More specifically under Section 133, which states that

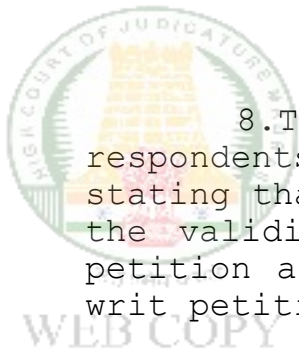
"(1)The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under Section 131.

(2)Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

PROVIDED that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme."

6.Relying on the above provision, the learned counsel urged this Court by stating that the qualifications prior to the amendment to be followed in respect of the writ petitioner. The change or amended qualification cannot be effected in respect of the existing employees, who are already in service. This apart, the existing employee has got a vested right for promotion based on the rules, which was prevailing at the time of her appointment and the amendment was issued, when she is in service affecting her avenue for promotion to the higher post of promotion. More so, the method of appointment prescribed in respect of existing employees are by way of internal selection, the qualifications amended cannot have any effect so far as the internal candidates are concerned.

7.The learned counsel further states that the vacancies now lying in the cadre of Junior Assistant were vacant for long time and the respondents have delayed the appointments and such delay would not cause any prejudice to the existing employee for getting her promotion based on her old educational qualification prescribed in the rules. At the outset, the petitioner states that her service rights ought to be protected in respect of promotion to the post of Junior Assistant by way of internal selection. It is further stated that the transition period in respect of TANGEDCO has not been ended and it is in progress. During the transfer period from Tamil Nadu Electricity Board to TANGEDCO in respect of the constitution of three separate corporation from the parent corporation is in progress. The learned Counsel informed this Court that during the pendency of the transition, the service conditions in respect of existing employees cannot be altered. Further, it is contended that no notice as per Section 9(A) of the Industrial Disputes Act has been furnished to the employees pursuant to tripartite agreement entered between the management and the workmen.



8.The learned Standing Counsel appearing on behalf of the respondents opposed the contentions of the writ petitioner by stating that two issues are to be considered by this Court. Firstly, the validity of the amendment sought to be quashed in this writ petition and secondly, the vested right if any, as advanced by the writ petitioner in this writ petition.

9.As per the learned Standing Counsel in respect of the validity of the amendment, the writ petitioner has no *locus standi* to question the enhancement or modification of educational qualifications prescribed for appointment and such a power is prerogative of an employer. The right of an employer for prescribing any educational qualifications can never be questioned by the employees. Appointment or promotion can never be claimed as a matter of right. However, it is contended that in respect of the legal validity of the amendment, the learned Standing Counsel has emphasized that it is a settled law that the power of an employer for amending or modifying the educational qualifications can never be stalled. It is a policy decision and in a growing organization in a welfare state, it is certainly necessary to change and improve by way of an amendment in respect of the educational qualifications and other criteria to suit the prevailing situations in the society.

10.In respect of the grounds raised in this writ petition that the writ petitioner has a vested right for promotion can never be considered by this Court. No doubt, the consideration is a right. However, promotion cannot be a right. Promotions can be considered only based on the qualifications and other criteria prescribed under the Rules in force. Thus, relying on the rules, the learned Standing Counsel has reiterated that the petitioner has not established any legal right so as to grant the relief of promotion to the post of Junior Assistant based on the old Rules.

11.Considering the arguments advanced by the learned counsel and the learned Standing Counsel, this Court has to look into the provisions of the Tamil Nadu Electricity Board Service Regulations. The said regulations was formulated in exercise of the powers conferred by Section 79(c) and (k) of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948), the Tamil Nadu Electricity Board has framed the following regulations:

"6. (a) :*The Board may adopt its own classification of service, re-arrange grades, re-fix responsibilities and prescribe minimum educational, Technical and other qualifications as may be considered suitable for making selections and appointments to posts in each class of service.*

(b)*Subject to any modifications that the Board may decide from time to time, the services in the Tamil*



Nadu Electricity Board shall be classified as mentioned in Regulation 88 of Tamil Nadu Electricity Board Service Regulations.

7.All employees joining the service of the Board shall be deemed to be new entrants into the service of the Board and their retention or otherwise in employment will depend on the result of the Board's review of the Staff requirements from time to time, depending on the exigencies of works. The staff of the Electricity Department of the Government of Tamil Nadu, who have opted for service under the Board, will hold on 01.07.57, the status under the Board corresponding to that held by them in the Government on 30.06.57. The Service rendered by them under the Government will count for purposes of seniority, probation, increment, leave, pension etc., as if it were a service rendered to the Board."

12.Now, it is relevant to look into the regulation No.3, which provides appointing authority:

"93.Appointing Authority: The appointing authorities for the categories and posts specified in column(1) of Annexure II shall be the authorities specified in the corresponding entry in column(2) thereof.

Regulation 94(a) is more relevant in respect of the present writ petition.

"94.Qualifications:

(a)No persons shall be eligible for appointment to the post and by the method mentioned in Annexure-III, unless he possesses the qualification specified therein.

Provided that the person concerned shall possess the specified qualification including experience prescribed therefor on the date on which the notification of vacancy has been made.

13.Further, it is relevant to look into Annexure-III in the regulation.

Annexure-III provides Board Office Administrative Branch, Board Office Technical Branch and Circles, in which the qualification for the post of Junior Assistants, Typists and Steno Typists and Stores Custodian provides as under:



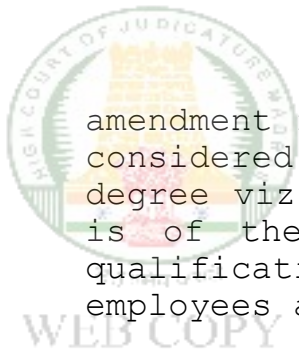
**BOARD OFFICE ADMINISTRATIVE BRANCH, BOARD OFFICE TECHNICAL BRANCH
AND CIRCLES**

Junior Assistant s, Typists and Steno Typists and Stores Custodian	Direct Recruitment or Appointment by Internal Selection	(a) No person shall be eligible for the inclusion of his name in the list prepared by the Board for appointment if he would have attained the age of 30 years on the first day of July of the year in which the selection on the results of which the list is prepared, is held. Provided that a candidate belonging to the Scheduled Castes or the Scheduled Tribes shall be eligible for the inclusion of his name in any such list if he will not complete the age of 27 years on the said date. This concession shall be in operation in respect of all lists prepared on or before the 31st day of December, 1964.
		(b) Must possess the Minimum General Educational Qualification. Provided that on and from 19.08.2010, for appointment as Junior Assistant in Board Office Administrative/Technical Branch, the candidates must hold B.A., B.Sc., B.Com or any Degree obtained from any University established by law in India and recognised by the University Grants Commission for the purpose of its Grant and recognised by the Government of Tamil Nadu for the purpose of appointment. (Inserted vide Proc.No.17(SB), dt.31.03.2012. Provided also that on and from 24.05.2014, for appointment as Junior Assistant (Administrative cadre) in the offices of Circles, the candidates must hold B.A or B.Sc. Or B.Com



Junior Assistant s, Typists and Steno Typists and Stores Custodian	Direct Recruitment or Appointment by Internal Selection	(a) No person shall be eligible for the inclusion of his name in the list prepared by the Board for appointment if he would have attained the age of 30 years on the first day of July of the year in which the selection on the results of which the list is prepared, is held. Provided that a candidate belonging to the Scheduled Castes or the Scheduled Tribes shall be eligible for the inclusion of his name in any such list if he will not complete the age of 27 years on the said date. This concession shall be in operation in respect of all lists prepared on or before the 31st day of December, 1964.
		or any Degree obtained from any University established by law in India and recognised by the University Grants Commission for the purpose of its Grant and recognised by the Government of Tamil Nadu for the purpose of appointment. Provided further that on and from 24.05.2014, for appointment as Junior Assistant in Accounts cadre, the candidates must hold B.Com Degree obtained from any University established by law in India and recognised by the University Grants Commission for the purpose of its Grant and recognised by the Government of Tamil Nadu for the purpose of appointment.

14. On a perusal of the above said regulation, originally the qualification prescribed for promotion or appointment to the post of Junior Assistant was SSLC and now the same is amended in Proceedings No. 25, Secretariat Branch, dated 24.05.2014. In view of the



amendment made, a person to the post of Junior Assistant is to be considered only if he possess a educational qualification of a degree viz., B.A., B.Sc., B.Com., etc. However, the writ petitioner is of the opinion that such an enhancement in the educational qualification shall not have any effect in respect of the existing employees already serving in the respondent Board.

15.The learned counsel for the writ petitioner cited a judgment of Hon'ble Supreme Court of India in the case of **Y.V.Rangaiah and Others Vs. J.Sreenivasa Rao and Others** reported in **(1983) 3 Supreme Court Cases 284**, and the relevant portion is extracted hereunder:

"9.....Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

16.The Hon'ble Supreme Court in the above case cited supra, dealt that the panel, which was prepared in that particular case. No doubt, if the panel was already finalized in respect of the qualification prescribed at the time of preparation of the same is to be adhered to.

17.The learned counsel for the petitioner further cited a judgment of the Hon'ble Supreme Court rendered in the case of **Deepak Agarwal and Another Vs. State of Uttar Pradesh and others** reported in **(2011) 6 Supreme Court Cases 725**. The learned Senior Counsel relied on paragraph 15, which is extracted hereunder:

"Mr.Dinesh Dwivedi, learned Senior Counsel for the State submits that the ratio in Y.V.Rangaiah is not applicable in the facts of this case. There is no requirement under Rule 7 of the applicable Rules in this

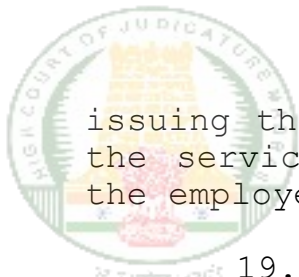


case to prepare a yearwise panel of the selected candidates. Therefore, no acquired or vested right of the appellants has been taken away. Under Rule 7, the vacancies have only to be identified. The right accrues only at the time of consideration for promotions. Therefore, the amendment has not been given a retroactive effect. The matter is covered by the judgment in Dr.K.Ramulu as a conscious decision has been taken by the State to exclude the two parts of STO and SSO from the feeder cadre from promotion as DEC."

However, on perusal of the entire judgment, this Court is willing to quote Paragraph 26 of the very same judgment which reads as follows:

"26.It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force"on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V.Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment."

18.However, in the present writ petition, there is no such incident took place and now she is challenging the amendment issued in respect of the educational qualification. Therefore, the judgment cited *supra* by the learned counsel for the petitioner cannot have any avail to the petitioner. The legal principles settled in this regard are to be considered rather than the points argued by the learned counsel for the petitioner that the writ petitioner has got vested right in respect of educational qualification, which were prevailing prior to the issuance of the amendment. The contentions raised by the writ petitioner in this regard deserves no merit consideration in view of the settled principle of law that prescription or amendment of educational qualification or the service conditions are the prerogative administrative powers vested with the employer. Such a power cannot be taken away at the instance of the employees as sought for in this writ petition. Amendment of service condition or educational qualification remains as a part of service conditions and it is a condition imposed at the time of



issuing the order of appointment itself. When it becomes a part of the service conditions flows along with the order of appointment, the employees cannot question any amendments issued.

19. This Court is of the opinion that promotion or appointment can never be claimed as a matter of right. However, consideration for promotion is a fundamental right. Whenever, the process of preparation of a panel or a provisional list is sought to be prepared, then only the right of the qualified employees will accrue. An amendment issued by the employer in respect of the educational qualifications will not construe any legal right for the employees so as to challenge the same on the ground that they should be given promotion or appointment based on the old educational qualifications prescribed in pre amendment rules. If such an argument is accepted, then the same will have a disastrous consequences of proceeding backward, in respect of the development of the State or State owned organizations. This Court is not inclined to consider such an arguments advanced on behalf of the writ petitioner. In a developing nation, change in educational qualifications and other criteria or enhancing the qualifications is certainly imminent to provide constant progress in respect of the development of our great Nation. Advancement of educational qualifications, verification of antecedents, transparency and equal opportunity are the essential characters for the purpose of undertaking the process of appointment or promotions. The improvements in the service conditions are certainly required not only for the development of the organization, but also to provide effective public administration by the State as well as by the Union. This Court is of an undoubted opinion that consistent and constant review of all these factors are certainly required and a periodical review will be of more effect in respect of the development of our great nation. It is desirable that an expert committee in this regard, by the State or State owned organizations is to be constituted for the purpose of developing and improving not only the service conditions, but also the other rules in this regard.

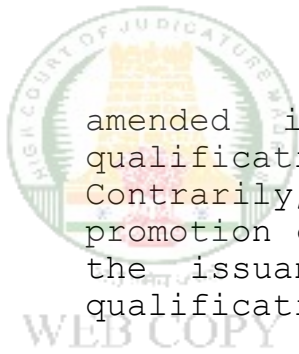
20. This Court is of the opinion that the State/Union and the organizations have to look forward in respect of the advancements and the developments of our country. In this regard, it is certainly imminent that the State has to periodically amend the rules for improving the qualifications and other criteria for public appointments and promotions. The Courts have to approve and appreciate such actions of the State for the purpose of taking our nation forward. Progress in prescribing the higher qualifications will be certainly advantage to the organization and it cannot be held that the same will amount to disadvantage to the existing employees.

21. The existing employees and their service rights are certainly protected in the cadre they work. The protection is to be



given in respect of the post they hold, i.e., to say that the salary, emoluments and other perquisites attached to the particular posts alone is to be protected and the protection cannot be extended in respect of further appointments or promotion to any other higher posts. The interpretation of the learned counsel for the petitioner cannot be accepted since the protection of service conditions are to be extended only in respect of the posts in which the employees are working and the same will not cover any further appointment or promotion to the higher post. Such being the concept to be adopted, this Court finds no irregularity or illegality in amending the qualifications for the post of Junior Assistant. The qualification of Secondary School Leaving Certificate [hereinafter referred to as "SSLC"] for the post of Junior Assistant was existing for many decades, unchanged. Even, this Court is of the opinion that there is a long delay in enhancing the qualifications for the post of Junior Assistant. "SSLC" is the minimum educational qualification prescribed long ago and considering the current day educational growth amongst the citizen, certainly enhancement of educational qualifications in all the departments are required. After the Parliament enacting the Right to Education Act and even prior to that an awareness to provide education to the children had undergone a consistent progress and the literacy level in our country is constantly improving. Under these circumstances, when large number of youth possessing the qualification of degree and they are better qualified for performing the duties and responsibilities of the clerical post, an opportunity is certainly required and this apart, this Court is of the view that prescription of higher qualification will also encourage the students to pursue higher studies. For instance, a student stopping the school education at "SSLC" level, certainly will be kindled to pursue his/her higher studies. Improvement in a consistent manner will also encourage the students to pursue the higher studies and as of now, large number of graduates are unemployed in our country and therefore, enhancement of qualification in this regard will certainly improve the public administration, and also will provide better opportunities to the unemployed youth of this great Nation.

22. The concept of service protection is to be granted to the existing employees are certainly limited to the post in which they are working. Protection cannot be granted so as to prevent the employer from prescribing or modifying the educational qualifications in the rules for the higher posts. The service protection has got a limited purpose and there cannot be any life time protection so as to include all further promotion to the higher posts. Such an argument will create an anomalous situation and the same cannot be considered as an actual purpose for granting such service protection. The service conditions including salary, allowances, perquisites in the posts in which the employees are working alone, deserves to be protected and certainly not the higher posts. An employee aspiring for appointment or protection to the higher posts should acquire the higher qualification prescribed or



amended in the rules. Only on acquiring such an amended qualifications, those existing employees would be considered. Contrarily, the employees cannot plead that they should be given promotion or appointment based on the old rules prevailing prior to the issuance of the amendment in respect of the educational qualifications.

23.The learned Standing Counsel cited the judgment of Hon'ble Supreme Court of India in the case of **K.Jagadeesan Vs.Union of India and others** reported in **(1990) 2 Supreme Court Cases 228**, the relevant portion of the order are extracted here under:

"4.The main argument of learned counsel for the appellant is that the Tribunal was in error in holding that the rule affected merely a chance of promotion which the appellant had. It was submitted by him that although the appellant could not claim any right to be promoted, he certainly had the right to be considered for promotion and the amendment to the rule carried out by the said notification depriving of that right was bad in law.

5.Strong reliance was placed by the learned counsel for the appellant on the decision of this Court in **T.R.Kapur V.State of Haryana** where it was held that right to be considered for promotion is a condition of service. This decision is, however, of no assistance to the learned counsel in support of his argument because the bench which rendered the said decision has stated as follows: (SCCp.595,para16)

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect...It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be."

It was further held that:(SCCp.595, para 16)

"an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively."

It was, however, clarified that:(SCCp.595, para 16)

"unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotion cannot be recalled."



6.It is only in this sense, that is, as set out in the immediately preceding paragraph that the view has been taken that the Rules cannot be retrospective. The ratio of this decision is not applicable to the case before us as there is no question of reverting the appellant. Again, it has been held by a bench comprising three learned Judges of this Court, in **State of Maharashtra V.Chandrakani Anant Kulkarni** (at paragraph 16, Page 142 of the said report), that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not."

24.Yet another judgment in the case of **Hardev Singh Vs. Union of India and Another** reported in **(2011) 10 Supreme Court Cases 121**, the Hon'ble Supreme Court held in paragraph 17, 25 and 26 which is extracted as hereunder:

"17.It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant-General but he had a right to be considered for promotion to the rank of Lieutenant-General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant-General.

25.In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in **Virender S.Hooda Vs. State of Haryana** where this Court had held in para 4 of the judgment that:(SCC p.699)

"4....when a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commissioner from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

26.Similarly, in **Balco Employees' Union Vs. Union of India**, it has been held that a court cannot strike down a policy decision taken by the Government merely because



it feels that another policy would have been fairer or wiser or more scientific or logical. ..."

25.The legal principles in this regard are unambiguously clarified by the Hon'ble Supreme Court of India in the above two cases by stating that the promotion can never be claimed as a matter of right. However, consideration alone can be claimed as right.

26.Considering the facts and circumstances of the case, this Court is of the view that the amendment effected in respect of the educational qualification for promotion to the post of Junior Assistant is in consonance with the powers vested on the respondents under the Tamil Nadu Electricity Board Regulations. The Regulations provides ample powers for the respondents to alter or amend the educational qualification and other criteria for appointments and promotions. On a careful reading of the regulations, the powers of the Board cannot be disputed. Therefore, this Court has to consider whether any violation of any legal right in respect of writ petitioner in the post she is presently holding. As far as the averments of the writ petitioner is concerned, she has not raised any dispute in respect of the service conditions of the post, in which she is presently working. The writ petitioner is employed as permanent employee in the said post and she is availing the benefits including salary, perquisites etc., as per the rules and regulations which is force and there is no grievance in respect of the existing cadre, in which the writ petitioner is working. The grievances of the writ petitioner is that her future prospects to the promotional post of Junior Assistant alone is in stake. Since, this Court is of the opinion that, the promotion can never be claimed as a matter of right. This Court is of the opinion that enhancement of qualifications for the higher post cannot have any grievances in respect of the petitioner. The petitioner cannot have any *locus standi* to challenge the amendment in view of the fact that the qualification prescribed in the post of Junior Assistant cannot have any applicability in respect of the post in which the writ petitioner is presently working. Thus, the writ petitioner has not established any legal right in respect of the enhancement of educational qualification for appointments or promotions to the post of Junior Assistant and this Court is of an undoubted opinion that the writ petitioner has failed to establish any legal right, so as to consider her claim that relates to the relief sought for in this writ petition.

27.The learned counsel appearing on behalf of the writ petitioner states that as per the settlement, it is required that 9 (A) notice is to be issued to the writ petitioner. However, no such notice was issued and therefore, they have violated the settlement arrived at between the workmen and the Management of the Tamil Nadu Electricity Board. Further, it is stated that Section 9(A) has not been complied with and therefore, the amendment is to be quashed.



28.Rebutting the contentions of the petitioner, the learned Standing Counsel has stated that Section 9(A) of the Industrial Disputes Act, has no relevance in respect of the facts and circumstances of the present case. In this regard, Schedule-IV of Section 9(A), Clause 8 of the Industrial Disputes Act stipulates, "withdrawal of any customary concession or privilege or change in usage". The reference made in this regard cannot be applied in the present writ petition. Prescription of educational qualifications in the special rules cannot be construed as a customary concession or privilege or change in usage. Prescription of educational qualifications and other criteria in the service rules are entirely different and unconnected with the phrases used in the above provision of the Industrial Disputes Act. The rules are framed under Article 309 of the Constitution of India and the amendments and the modifications in the qualifications and other classes are made by the competent authority and therefore, reference made by the learned senior counsel for the petitioner cannot be accepted in respect of impugned amendment in this writ petition.

29.This Court is of the opinion that, the respondent Board has got every powers to enhance or modify the educational qualifications for the higher posts and even as per the settlement, the protection for service conditions are provided only for the post in which the employees are working and not in respect of any amendment or modification in respect of educational qualifications for the higher posts. The provision of Industrial Disputes Act cannot have any relevance in respect of the facts and circumstances of the case on hand. When the post of Junior Assistant is governed by the special rules, the same alone will prevail. The General Act will not have any implications when the special rules provides a specific qualifications for a particular post or cadre. It is an established legal principle that the special rules will prevail over the general law. This being the principle, this Court is not inclined to consider the arguments as advanced by the learned counsel for the petitioner that the provisions of the Industrial Disputes Act to be complied with before issuing any amendment to the service rules in respect of the post of Junior Assistant.

30.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1.The Chief Engineer Personnel,
Tamil Nadu Generation and Distribution Corporation Limited,
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2.The Superintending Engineer,
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3.The Chairman
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16/10/2020)

W.P. (MD) .No.10272 of 2014
15.10.2020

BK (CO)
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