



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **28.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P. (MD)No.5739 of 2017

and

W.M.P. (MD) .Nos.4589 and 4590 of 2017

WEB COPY

Sathish Kannan

.. Petitioner

Vs.

1.The Tamilnadu Generation and Distribution Corporation Limited,
Rep. by its Chairman cum Managing Director,
No.144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer (Personnel),
TANGEDCO,
NPKRR Maligai,
No.144, Anna Salai,
Chennai - 600 002.

3.The Senior Personnel Officer/Recruitment,
TNEB Building,
8th Floor, NPKRR Maligai,
No.144, Anna Salai,
Chennai - 600 002.

4.R.Kousalya Devi.P
[R4 impleaded vide court order
dated 11.04.2017 in
W.M.P. (MD) .No.4922/2017]

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the selection of the Kausalya Devi.P., in serial number 18 of published selection list of 21 Assistant Engineer/Electrical (ECE/EIE) by direct recruitment 2015-2017 and quash the selection of Kausalya Devi. P., and consequently direct the respondents to consider the petitioner's candidature for the post of Assistant Engineer (ECE/EIE), in Scheduled Tribe category.

For Petitioner	: Mr.G.Prabhu Rajadurai for Mr.R.Ganesh Prabhu
For Respondent Nos.1 to 3	: Mr.S.M.S.Johny Basha Standing Counsel
For Respondent No.4	: Mr.R.Ramu



ORDER

The petitioner herein had participated in the recruitment process for the post under the category of Scheduled Tribes General Non Priority. The petitioner has sought for appointment to the post of Assistant Engineer in the said category, by challenging the selection of the fourth respondent herein, on the ground that the petitioner has obtained 20.667 marks in the evaluation during the selection process, whereas the fourth respondent had obtained only total of 9.157.

2. The learned counsel for the petitioner would submit that the respondents had appointed the fourth respondent by giving priority to her under the Inter-Caste Marriage category and since such category is not provided either under the notification or is permissible under the Government Regulations, the appointment itself is bad and in view of the total marks obtained by the petitioner, he would be eligible under the category of Scheduled Tribes General Non-Priority. In support of his submissions, the learned counsel for the petitioner relied upon two unreported decisions of this Court.

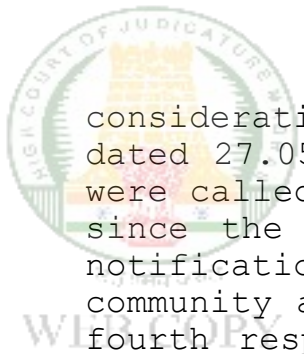
3. The learned Standing Counsel appearing on behalf of the respondents 2 & 3 would submit that as per the general clauses in the notification, priority for Inter-caste Marriage is permissible and therefore, there is no infirmity in the selection of the fourth respondent for the said post.

4. The learned counsel for the fourth respondent also reiterated the same submissions and further added that incase this Court finds the selection to be bad, the fourth respondent should not be put to any prejudice, since there was no fault on the part of the fourth respondent.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The notification describes the procedure for selection in two successive stages whereby 85% marks would be awarded for the written examination of the candidates and 15% for viva-voice in Technical, General and Managerial skills. The petitioner was awarded with 20.667 marks in the written test, which aspect is not in dispute.

7. As per the counter affidavit filed, the fourth respondent had scored 4.33 marks in the written examination and the last candidate under the Scheduled Tribes priority category had scored -2.333 marks, who was called for the viva-voice interview during the recruitment process. The only reason assigned by the respondents for preferring the fourth respondent instead of the petitioner is that, the cut of marks was arrived by taking into



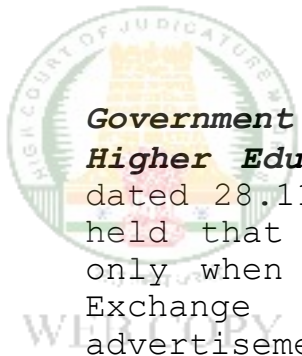
consideration the communal rotation as prescribed in G.O.Ms.No.65, dated 27.05.2009 and G.O.Ms.No.142 dated 14.10.2009. The candidates were called for viva-voice in the ratio of 1:5 in that community and since the vacancies allotted for the relevant stream as per the notification was 21, only one post had notified for Scheduled Tribes community and by applying the Government Orders referred above, the fourth respondent, who had obtained 4.33 marks was given priority since she falls under the category of Inter-caste Marriage.

8. The short question that arises for consideration in the present writ petition is as to whether 'Inter-caste Marriage' can be considered for priority during the recruitment process under the notification dated 28.12.2015?.

9. As per Clause 5(A) of the notification, the rule of reservation for appointments was made applicable and the distribution of the vacancies would be made as per the Rules in force. Clause 5 (H) refers that reservation of appointment to Destitute Widows and Ex-Servicemen will not apply to the present recruitment. By referring to these two clauses, the learned Standing Counsel would state that priority has been extended to Inter-caste Marriage category. Apparently, the respondents are trying to infer that such a priority has been extended in view of these two clauses. However, the fact remains that there is no specific clause in the notification, which states that such a priority to candidates of inter-caste marriage would be extended.

10. Insofar as the clause that the Rule of reservation would be made applicable in the recruitment process is concerned, the respondents would rely upon two Government Orders in G.O.Ms.No.65 P&AR Department, dated 27.05.2009 and G.O.Ms.No.142 P&AR Department, dated 14.10.2009. While G.O.Ms.No.65 relates only to Communal Roster, G.O.Ms.No.142 clarifies that the reservation would be made applicable only for recruitments made through Employment Exchange. I am not able to appreciate as to how reliance could be placed on G.O.Ms.No.142 for the purpose of enabling the respondents to give priority for Inter-caste Marriage category, when admittedly the present recruitment process is not through Employment Exchange. As a matter of fact, paragraph No.2 of G.O.Ms.No.142 categorically exempts such category, when the recruitment is not through Employment Exchange. Apart from the aforesaid Government Orders, no other reason has been assigned by the respondents in giving preference to the appointment of the fourth respondent. In the absence of any regulations, which would entitle the respondents to give preference to the fourth respondent to the post, it can only be stated that the appointment of the fourth respondent itself is contrary to the recruitment process and therefore illegal.

11. A similar situation arose for consideration before this Court in W.P.(MD)No.23393 of 2018 in the case of **J.Kavitha vs. The**



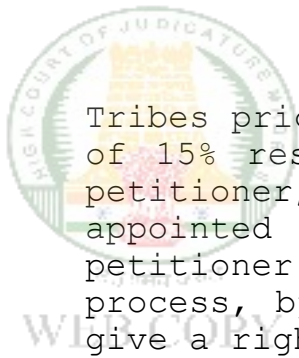
Government of Tamil Nadu, rep. by the Secretary to Government, Higher Education Department and another and this Court by order, dated 28.11.2018 had referred to the relevant Government Orders and held that Inter-caste Marriage categories can be made applicable only when the recruitment is made exclusively through Employment Exchange and not when recruitment are made through upon advertisements. The relevant portion of the order reads as follows:

"3. Learned counsel for the respondents would submit that G.O.Ms.No.188 dated 28.12.1976 which was later amended by G.O.Ms.No.229 P&AR Department dated 07.04.1988 and clarification letter issued by the P&AR Department vide 76183/R/2002-2 dated 17.02.2003 has made very clear that horizontal reservation for specific categories like Destitute widow, Inter-caste Marriage are applicable only when recruitment is made exclusively through employment exchange seniority and not when recruitments made through open advertisements. Further, it is also submitted that TRB is only a nodal agency which conducts exams and not a policy making body to decide whether reservation should be given to any special category during recruitment."

12. A similar view was also taken in the case of **V.Srinivasan vs. The Member Secretary, Medical Services Recruitment Board** in **W.P.No.32300 of 2019** in the order dated 20.11.2019 as follows:

"5. The learned counsel appearing for the respondent would submit that G.O.Ms. No.188 dated 28.12.1976 which was later amended by G.O.Ms.No.229 P&AR Department dated 07.04.1988 and clarification letter issued by the P& AR Department vide 76183/R/2002-2 dated 17.02.2003 has made very clear that horizontal reservation for specific categories like Destitute Widow, intercaste Marriage are applicable only when recruitment is made exclusively through employment exchange seniority and not when recruitments made through open advertisements. Further, it is also submitted that the respondent is only a nodal agency which conducts exams and not a policy making body to decide whether reservation should be given to any special category during recruitment."

13. While such being the position, there was no justification or legality in the selection process, insofar as the fourth respondent herein is concerned. In view of the selection of the fourth respondent, the petitioner was not subjected to further stages of the selection, apart from the written examination while evaluating the 85% marks allotted for written examination in the notification, the petitioner had scored 20.667 marks in the written examination and the last candidate in the category of Scheduled



Tribes priority had scored -2.333. Even if the credit of the balance of 15% reserved for the viva-voice interview is not given to the petitioner, still the petitioner would stand qualified for being appointed to the post. Apart from the same, the very fact that the petitioner was deprived of being subjected to the further selection process, by illegally selecting the fourth respondent itself, would give a right to the petitioner to be considered for the appointment.

14. Though this Court would find that the appointment of the fourth respondent is not as per the Regulations in force, the fact remains that the fourth respondent has been appointed w.e.f., 17.03.2017 and is continuing to work under the respondent/TANGEDCO for the past almost three years. At this stage, this Court does not intend to interfere with the appointment made to the fourth respondent. Nevertheless, in view of the findings and observations made in this order, the petitioner herein would be entitled to be appointed to the post of Assistant Engineer. This Court would only observe that the respondents should not take such measures and thereby disturb the appointment made in favour of the fourth respondent and therefore the prayer for quashing the appointment of the fourth respondent is not given consideration. However, the petitioner would be entitled for the consequential prayer sought for, in view of the observations made above.

15. In the result, there shall be a direction to the respondents to appoint the petitioner to any post of Assistant Engineer in the respondent/Corporation, atleast within a period of twelve weeks from the date of receipt of a copy of this order.

16. This Writ Petition stands allowed accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

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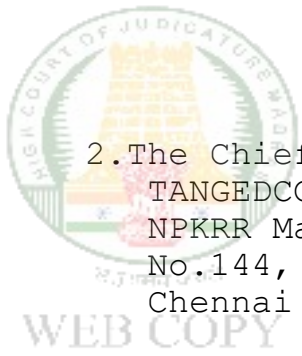
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Sub Assistant Registrar(CS)

PJL

To

1. The Chairman cum Managing Director,
The Tamilnadu Generation and
Distribution Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.



2.The Chief Engineer (Personnel),
TANGEDCO,
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Chennai - 600 002.

3.The Senior Personnel Officer/Recruitment,
TNEB Building,
8th Floor, NPKRR Maligai,
No.144, Anna Salai,
Chennai - 600 002.

+1 CC to Mr.R.GANESHPRABU, Advocate (SR-9204[F] dated 28/02/2020)
+1 CC to Mr.S.RAMU, Advocate (SR-9221[F] dated 28/02/2020)
+1 CC to Mr.S.M.S.JOHNNY BHASHA, Advocate (SR-9674[F] dated
02/03/2020)

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