

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

Writ Petition Nos.3153, 6165 and 14985 of 2018

COMMON ORDER: (per Hon'ble Sri Justice M.S. Ramachandra Rao)

Since common issues of law and fact arise for consideration in these Writ Petitions, they are being disposed of by this common order.

2. The petitioners in these Writ Petitions are aspirants for the post of Sub Engineer (Electrical) which posts were notified by the erstwhile Andhra Pradesh Transmission Corporation Limited (for short 'APTRANSCO') on 15.12.2011 in the composite State of Andhra Pradesh prior to its bifurcation with effect from 01.06.2014 into the new State of Telangana and the residuary State of Andhra Pradesh. A total of 339 posts of Sub Engineers (Electrical) had been notified for direct recruitment in the said notification. The written examination for qualified and eligible candidates was conducted on 15.04.2012 and the age requirement was specified as between 18 to 36 years as on 01.07.2011.

3. Out of the 339 posts, 133 posts were for Telangana Area of the then composite State of Andhra Pradesh and the balance 206 posts belong to Andhra Area of the erstwhile State of A.P. and the posts were to be filled up 20% open and 80% local quota basis.

4. There was a clause in the said notification which prescribed consideration of cases of in-service contract workers also by giving them weightage marks of 45 depending on the length of the service in the APTRANSCO/Discoms i.e., 2 ½ marks per every half year i.e., 180 days service as contract worker as per a Memorandum of Settlement dt.18.12.2010 reached before the Additional Commissioner of Labour and Conciliation Officer, Government of A.P. between Representatives of APTRANSCO and recognized Trade Unions.

5. This clause was challenged by some persons in W.P.No.3753 of 2012 and batch.

6. On 09.12.2013, the said batch of Writ Petitions was disposed of restricting the weightage marks to 20% only.

7. In the mean time on 16.01.2012, the APTRANSCO issued another notification to fill up another 1648 posts of Junior Lineman vacancies fixing the date of examination. This also contained the same clause mentioned above with regard to weightage marks for in-service contract workers. There was a subsequent notification also issued on 26.02.2012 by the erstwhile APTRANSCO for filling up the posts of Sub-Engineers.

8. The common order in W.P.No.3753 of 2012 and batch was challenged in W.A.No.110 of 2014 and batch by some contract labour employees.

9. On 03.06.2014, a Division Bench of this Court modified the order of the learned Single Judge in W.P.No.3753 of 2012 and batch and issued the following directions:

- “(a) The restriction of marks for weightage for the service candidates to 20% as directed by the learned single judge, is upheld;*
- (b) The contract labour, who are otherwise eligible to apply, shall be awarded 1 mark for each completed block of six months of service subject to maximum of 20%;*
- (c) The other directions issued by the learned Single Judge are affirmed and upheld;*
- (d) A fresh written test shall be conducted by the respective Discoms for the respective posts for ‘80’ marks, by informing all the applicants at least four (4) weeks in advance before conducting of the examinations; and*
- (e) The entire process shall be completed within a period of six (6) months from today.”*

10. Aggrieved by the said order of the Division Bench in W.A.No.110 of 2014 and batch, the APTRANSCO filed SLP (C) C.C.No.20284 of 2014 in the Supreme Court of India to the extent the Division Bench had directed conduct of fresh written test for 80 marks is concerned.

11. On 18.12.2014, the said SLP and batch were dismissed with a non-speaking order.

12. Thereafter, Review W.A.M.P.No.4180 of 2014 in W.A.No.110 of 2014 and Review W.A.M.P.No.4158 of 2014 in W.A.No.610 of 2014 were filed by A.P. Central Power Distribution Company Limited and A.P. Southern Power Distribution Company Limited. They were dismissed on 26.12.2014.

13. This was questioned in SLP (C) C.C.No.8266 of 2015 and SLP (C) C.C.No.8442 of 2015 by the AP Southern Power Distribution Company Limited.

14. On 11.05.2015, both SLPs were dismissed.

15. Review W.A.M.P. No.3048 of 2017 in W.A.No.110 of 2014 and batch were filed by some contract labour and others for reviewing the common judgment dt.03.06.2014/25.07.2014 in W.A.No.110 of 2014 and batch to the limited extent of the direction with regard to conduct of fresh written test for 80 marks is concerned alleging that the written test was not a subject matter in the earlier litigation either in the Writ Petitions or in the Writ Appeals and only weightage marks were in issue in those cases.

16. On 13.10.2017, Review W.A.M.P.No.3048 of 2017 in W.A.No.110 of 2014 and batch was disposed of by a Division Bench setting aside the order to the limited extent that it directed conduct of fresh written test. The Division Bench directed the Transmission Corporation of Telangana State (for short 'TSTRANSCO') and the APTRANSCO to take a decision on the selections made pursuant to the notifications issued in 2011 and 2012 in accordance with law, with utmost expedition, and in any event, within four (4) months from the date of receipt of a copy of that order.

17. W.P.No.26400 of 2015 and batch were filed by some persons who were appointed to various posts pursuant to the notifications issued in

2011 and 2012 and who were issued show cause notices by the Transmission Corporation and the Distribution Companies to show cause why their services should not be terminated as the selections made pursuant to order of a Single Judge on 09.12.2013 in W.P.No.11639 of 2012 were set aside by a Division Bench on 03.06.2014 in W.A.No.110 of 2014 and batch.

18. On 13.10.2017, the said Batch was also disposed of holding that the earlier order of the Division Bench requiring them to conduct fresh examination had been set aside in the Review Petitions and the show cause notices therefore cannot be sustained. It set aside the show cause notices but made an observation that the Transmission Corporations and the Distribution Companies are no longer obligated to conduct a fresh examination or to cancel earlier notifications.

19. The TSTRANSCO issued proceedings TOO(CGM-HRD) Rt.No.519 dt.11.12.2017 ordering that earlier notifications dt.15.12.2011, 16.01.2012 and 26.02.2012, issued prior to 02.06.2014 for the direct recruitment of Sub Engineer (Electrical), Junior Assistant and Junior Lineman Posts with reference to the zones of Telangana are deemed to have lapsed.

20. Thereafter, a fresh notification No.05/2017 dt.28.12.2017 was issued by the TSTRANSCO for direct recruitment to 174 posts of Sub Engineer (Electrical) in the age group 18 to 44 years as on 01.07.2017.

21. The APTRANSCO also issued T.O.O. (Per.ED/HRD&Plg) Rt.No.665 dt.13.06.2018 stating that it had decided that the selections pursuant to the notifications issued in 2011-12 were not to be proceeded with in view of the order dt.13.10.2017 in Review W.A.M.P.No.4180 of 2014.

The plea in W.P.No.3153 of 2018

22. In W.P.No.3153 of 2018, the petitioner who belongs to Telangana State (post bifurcation) challenged TOO(CGM-HRD) Rt.No.519 dt.11.12.2017 and fresh notification No.05/2017 dt.28.12.2017 contending that he participated in the written test held on 15.04.2012 pursuant to the notification dt.15.12.2011 with Hall Ticket No.5410112 and got 67 marks out of 100 marks, secured 358 rank and he would get 20 marks as weightage for his past service; and that the TSTRANSCO should be directed to continue the process of selection pursuant to the notification dt.15.12.2011 and consider his case for appointment as Sub Engineer (Electrical) under BC-E category to which he belongs as per his merit.

23. It is his contention that he was orally informed that the TSTRANSCO had taken the decision not to act pursuant to the notification dt.15.12.2011 since it would result in persons having A.P. State nativity getting appointed in the said Organization. He contends that the said apprehension and even if it is true, on that ground appointments cannot be denied to the selected candidates.

24. It is contended that if the selections pursuant to the notification dt.15.12.2011 are not finalized, most candidates who applied pursuant to the said notification to the post of Sub Engineer (Electrical) would become age barred.

25. It is also contended that in any event, if it is necessary to cancel the notification dt.15.12.2011, TSTRANSCO and the APTRANSCO have to jointly take a decision and the former cannot unilaterally take a decision in the matter because it was not in existence as on 15.12.2011 or on 16.01.2012 or on 26.02.2012.

26. Example is given of appointment to the post of Security Guards and Firemen in A.P. Genco Limited where a notification was issued in 2013 for recruitment of those posts and it is contended that in 2015, the T.S.Genco followed territorial jurisdiction of the Projects under its control and filled up 20% posts with open/non-local candidates and 80% posts by local candidates following the rule of reservation and the TSTRANSCO can follow the same pattern even with regard to the 133 vacancies in its jurisdiction notified in the notification dt.15.12.2011.

27. It is also contended that in TOO Rt.No.519 dt.11.12.2017, the TSTRANSCO has not mentioned any reasons and so on the said ground alone it is liable to be set aside on the ground that principles of natural justice are violated.

28. It is also contended that both the Corporations cannot justify their action in not completing the recruitment pursuant to pre-2014

notifications on the basis of the order dt.03.06.2014/25.07.2014 in W.A.No.110 of 2014 and batch and that if the Division Bench actually intended it, it would have said so, and the respondents cannot ignore the law laid down in **East Coast Railway and another Vs. Mahadeva Apparao and others**¹ that there cannot be cancellation of a process of recruitment without any reasons as it would be a case of decision being taken without due and proper application of mind to the relevant facts; that such a decision would be arbitrary; and a selection process cannot be scuttled for *mala fide* reasons.

29. According to him, the TSTRANSCO is not justified in issuing the notification No.05/2017 on 28.12.2017 without logically concluding further proceedings pursuant to the notification dt.15.12.2011 and that its action is arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India. He also sought for stay of all further proceedings pursuant to the notification No.05/2017 dt.28.12.2017.

The pleadings in W.P.No.6165 of 2018 and W.P.No.14985 of 2018

30. In W.P.No.6165 of 2018 and W.P.No.14985 of 2018, 30 individuals and 4 individuals respectively belonging to the State of Telangana, some of whom were working on contract basis, also raised similar pleas like the petitioner in W.P.No.3153 of 2018 and sought similar reliefs. They also sought for consideration of their cases for appointment in the existing vacancies with effect from the date of

¹ (2010) 7 SCC 678

appointment of other candidates i.e., 18.01.2014 with all consequential benefits including arrears of salary.

31. It is specifically contended by all the counsels for the petitioners that no reasons are mentioned in the order in TOO(CGM-HRD) Rt.No.519 dt.11.12.2017 of TSTRANSCO for canceling the process of selection pursuant to the notifications prior to 02.06.2014; there is no mention of this order in the notification No.05/2017 dt.28/12/2017; the TSTRANSCO was under an obligation to inform with regard to cancellation of the previous notifications prior to 02.06.2014; there is no legal basis for issuing TOO(CGM-HRD) Rt.No.519 dt.11.12.2017 deeming all notifications issued prior to 02.06.2014 as lapsed; there is no provision in the A.P. Reorganisation Act, 2014 regarding deemed lapsing of notifications issued by the erstwhile organizations; since the TSTRANSCO was not in existence on 15.12.2011 or on 16.01.2012 or on 26.02.2012, it had no independent jurisdiction to cancel the earlier notifications and it has to take a collective decision along with the APTRANSCO in the matter; the TSTRANSCO and the APTRANSCO cannot interpret the order dt.13.10.2017 in Review W.A.M.P.No.4180 of 2014 and batch as empowering them to cancel the notifications issued earlier; that even if the said entities wanted to cancel the earlier selection process, such decision should not be taken in an arbitrary manner and should be justifiable as held in the decision of the Supreme Court in **East Coast Railway** (1 supra) and model employers like the TSTRANSCO and APTRANSCO cannot act in such arbitrary manner; and so the Writ Petitions should be allowed.

Contentions of TSTRANSCO

32. The TSTRANSCO filed a counter in W.P.No.3153 of 2018 stating that the APTRANSCO did not proceed with the selection of candidates who applied pursuant to the notifications issued in 2011 and 2012 except conducting of written test on 15.04.2012 for the recruitment to the post of Sub Engineers, but did not give any reasons for this.

33. It is stated that both the TSTRANSCO and the APTRANSCO have taken a decision not to proceed with the notifications issued prior to 02.06.2014. It is denied that only to avoid appointing some candidates of A.P. nativity, the said decision was taken.

34. It is contended that a policy decision was taken not to proceed with recruitment pursuant to pre-2014 recruitment notifications in view of the A.P. Reorganisation Act, 2014 and the judgment dt.13.10.2017 of the High Court in W.P.No.26400 of 2015 and batch. Reliance is placed on the following sentence in the said order :

“In the light of the order passed by us in Review W.A.M.P.(sr) No.110362 of 2015 in W.A.No.110 of 2014 & batch dated 13.10.2017, setting aside the directions issued by the earlier Division Bench in W.A.No.110 of 2014 and batch dated 03.06.2014 to the limited extent fresh examination was directed to be conducted, the respondent-Transmission Corporation and the Distribution Companies are no longer obligated to conduct a fresh examination or to cancel the earlier notifications.”(emphasis supplied)

35. It is contended that there is no obligation on the TSTRANSCO to consult the APTRANSCO for taking a decision for recruitment to the posts in the said Organization.

36. In W.P.No.14985 of 2018, the TSTRANSCO filed a counter-affidavit reiterating the contents of the counter-affidavit filed by it in W.P.No.3153 of 2018.

37. It is contended that the TSTRANSCO had come into existence from that date, an administrative decision was taken to cancel the notifications issued prior to 02.06.2014 with reference to territorial zones of Telangana and the order in TOO(CGM-HRD) Rt.No.519 dt.11.12.2017 was accordingly issued. It is also stated that the petitioners participated in the exam held on 25.02.2018 pursuant to the notification No.05/2017 dt.28.12.2017. It is stated that suppressing the said fact, petitioners filed W.P.No.14985 of 2018 on 23.04.2018.

38. Reliance is also placed on the decision of the Supreme Court in **K.D.Sharma Vs. Steel Authority of India Limited and others**² to contend that the jurisdiction under Article 226 of the Constitution of India is equitable and discretionary. It is also contended that no legal right of the petitioner has been crystallized since the earlier selection was not finalized.

39. Alternatively it is contended that the earlier notifications are deemed to have lapsed.

² (2008) 12 SCC 481

40. It is contended that merely because some of the candidates participated pursuant to the earlier notifications issued in 2011 and 2012, no legal right is conferred on them since no appointment orders were issued pursuant to the said selections. It is contended that the judgment in **East Coast Railway** (1 supra) does not apply.

41. In W.P.No.6165 of 2018, the contentions in the counters filed in W.P.Nos.3153 and 14985 of 2018 are reiterated by the TSTRANSCO. It is again pointed out that merely because some of the candidates were selected pursuant to the notifications issued in 2011-12, no vested right is created in their favour as no appointment orders were issued pursuant to the said selection. It is also contended that those notifications were issued by the APTRANSCO, which did not have any jurisdiction after 02.06.2014 over the territory of Telangana , and so they lapse insofar as territory of State of Telangana and APTRANSCO can always proceed if it so desires with regard to the earlier notifications.

STAND OF A.P.TRANSCO

42. No counter-affidavits were filed by APTRANSCO in these three Writ Petitions, but Sri Y.Nagi Reddy, learned Standing Counsel for APTRANSCO has placed on record Board Resolution dt.25.04.2018 of the APTRANSCO to cancel the exam conducted in the combined State of A.P. by it vide notification dt.15.12.2011 and to issue fresh notification for A.P. share of posts as per orders of the High Court, the Note given to the Board of the APTRANSCO for the said Board Meeting; and also T.O.O. (Per.ED/HRD&Plg) Rt.No.665 dt.13.06.2018

canceling the notifications dt.15.12.2011, 16.01.2012 and 26.02.2012 for direct recruitment of Sub-Engineer (Electrical) and Junior Assistant (LDC) posts on regular basis for A.P. share of posts.

POINTS FOR CONSIDERATION

43. From the above contentions, the following questions arise for consideration:

(a) *Whether the petitioners who appeared in the written examination pursuant to the notifications issued on 15.12.2011, 16.01.2012 and 26.02.2011 and qualified therein are entitled to insist that they must be appointed pursuant to the said selection?*

(b) *Whether the decision of the T.S.Transco in T.O.O. (CGM-HRD) Rt.No.519 dt.11.12.2017 to declare that the above referred notifications issued prior to 02.06.2014 for direct recruitment of Sub Engineer (Electrical), Junior Assistant and Junior Linemen posts with reference to the Zones of Telangana are deemed to have lapsed? and*

(c) *Whether Notification No.5/2017 dt.28.12.2017 issued by T.S.Transco proposing to fill up posts of Sub-Engineer (Electrical) is sustainable or not?*

Point (a) :

44. We shall first consider the following question :

“Whether the petitioners who appeared in the written examination pursuant to the notifications issued on 15.12.2011, 16.01.2012 and 26.02.2011 and qualified therein are entitled to insist that they must be appointed pursuant to the said selection?”

45. This issue has been considered by the Supreme Court in several cases.

46. In 1991, the Supreme Court held in **Shankarsan Dash vs. Union of India**³ that if a number of vacancies are notified for appointment and adequate numbers of candidates are found fit, still the successful candidates cannot acquire an indefeasible right to be appointed. According to the Court, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post and unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, the Court also stated that *it does not mean that the State has the license of acting in an arbitrary manner; and the decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.* It declared that *if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test and no discrimination can be permitted.*

47. The Court referred to its earlier decision in **Neelima Shangla vs. State of Haryana**⁴ and observed that in that case a view was taken that it is open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of the qualified candidates.

³ (1991) 3 S.C.C. 47

⁴ (1986) 4 S.C.C. 268

48. This was reiterated in 1993 in **Asha Kaul (Mrs.) and another vs. State of Jammu and Kashmir and others**⁵. The Supreme Court again stated that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right of appointment. But the Court also stated that *there is an obligation on the part of the Government to act fairly and the whole exercise cannot be reduced to a farce*. It observed that having sent requisition / request to the Public Service Commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government, - *the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment*.

49. Therefore, on point (a), we hold that though there is no vested right in the candidates selected in the qualifying examination for getting appointed to the advertised / notified posts, the State cannot cancel the recruitment process arbitrarily without there being any bona fide or appropriate reasons.

50. If the State does so, it cannot take the plea that notwithstanding its arbitrary action, the petitioners cannot be granted any relief.

Point (b) :

51. We shall next consider the question :

⁵ (1993) 2 S.C.C. 573

“Whether the decision of the T.S.Transco in T.O.O. (CGM-HRD) Rt.No.519 dt.11.12.2017 to declare that the above referred notifications issued prior to 02.06.2014 for direct recruitment of Sub Engineer (Electrical), Junior Assistant and Junior Linemen posts with reference to the Zones of Telangana are deemed to have lapsed?”

52. In this context it is apposite to refer to the decision of the Supreme Court in **East Coast Railway** (1 supra). In that case, notification was issued by the appellant before the Supreme Court proposing to conduct a written / practical typewriting test to fill up posts of Chief Typists. Twelve candidates appeared in the test held on 30.10.2006 the result of which was announced on 22.11.2006. But, interviews were not held.

One of the selected candidates approached the Central Administrative Tribunal for a direction to the appellant to proceed with the selection.

In the meantime, the appellant's Divisional Manager issued an order on 14.12.2006 canceling the typewriting test conducted on 30.10.2006.

By another notification, a fresh typewriting test was notified to be held on 16.12.2006 for all the twelve in-service candidates who had appeared in the earlier test. The result of the test was not announced.

The Tribunal then dismissed the O.A. on the ground that the test earlier conducted was rightly cancelled inasmuch as the candidates were made to take the test in batches and no option was given to them to bring their own typewriters.

This was challenged in the High Court which allowed the Writ Petition and set aside the order of the Tribunal and also the order by which the earlier test was cancelled.

The High Court directed the appellant to proceed with the selection process pursuant to the notification dt.18.10.2006 and the practical test conducted on 30.10.2006 in terms thereof. The High Court held that no reasons for cancellation of the test having been recorded even on the file contemporaneously maintained for that purpose, and they cannot be supplied in the affidavit filed in reply to the Writ Petition challenging the said order, especially when the cancellation of the test was not, according to the High Court necessitated by any irregularity in the conduct of the test or any *mala fides* vitiating the same.

The Supreme Court held:

“24. In the instant case the order passed by the competent authority does not state any reasons whatsoever for the cancellation of the typing test. It is nobody’s case that any such reasons were set out even in any contemporaneous record or file. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing the order cancelling the test.

“30. We may hasten to add that while application of mind to the material available to the competent authority is an essential prerequisite for the making of a valid order, that requirement should not be confused with the sufficiency of such material to support any such order. Whether or not the material placed before the competent authority was in the instant case sufficient to justify the decision taken by it, is not in issue before us. That aspect may have assumed importance only if the competent authority was shown to have applied its mind to whatever material was available to it before

cancelling the examination. Since application of mind as a threshold requirement for a valid order is conspicuous by its absence, the question whether the decision was reasonable having regard to the material before the authority is rendered academic. Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard-and-fast rule can be formulated in that regard nor do we propose to do so in this case.”

53. However, since all the candidates who appeared for the test held on 30.10.2006 in that case had also taken the subsequently conducted test on 16.12.2006, it directed the appellant to re-examine the matter in the following manner :

“33. If upon due and proper consideration of the representation received from the candidates who were unsuccessful in the first examination, the competent authority comes to the conclusion that the test earlier held suffered from any infirmity or did not give a fair opportunity to all the candidates, it shall be free to pass a fresh order cancelling the said examination after recording such a finding in which event the second test conducted under the directions of the Tribunal would become the basis for the selection process to be finalised in accordance with law. In case, however, the authority comes to the conclusion that the earlier test suffered from no procedural or other infirmity or did not cause any prejudice to any candidate, the second test/examination shall stand cancelled and the process of selection finalised on the basis of the test held earlier....

34. *The order passed by the High Court is to that extent modified and the present appeals disposed of leaving the parties to bear their own costs. In order to avoid any delay in the finalisation of the process of appointments which have already been delayed, we direct that the competent authority shall pass an appropriate order on the subject expeditiously but not later than two months from today.”*

54. Thus, in the above case, the court did not go into the issue whether there is sufficient material before the appellant in that case to cancel the earlier selection process because there was no evidence of application of mind by the competent authority to whatever material was placed before him for taking the said decision. But, it did not rule out that if such material existed, it can be examined by the Court to decide whether or not the decision was arbitrary.

55. Recently, in **Dinesh Kumar Kashyap and others vs. South-East Central Railway and others**⁶, the Supreme Court reiterated that though mere selection does not give any vested right to the selected candidate to be appointed, at the same time, when a large number of posts are lying vacant and the selection process has been followed, then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates; just because discretion is vested in the authority, it does not mean that it can be exercised arbitrarily. According to the Court, *though it is not incumbent upon the employer to fill all the posts, it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the panel.* It referred to its earlier decision in **R.S. Mittal vs. Union of India**⁷ wherein it had held that when a person was selected by the selection board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for

⁶ (2019) 12 S.C.C. 798

⁷ (1995) Suppl. 2 S.C.C. 230

appointment and that *there has to be a justifiable reason to decline to appoint a person who is on the select panel*. The Court then held :

“6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State.”

56. The above observations aptly apply to the instant cases as well and we respectfully follow the above decisions.

57. We shall once again refer to the contents of T.O.O. (CGM-HRD)

Rt.No.519 dt.11.12.2017. It states :

“TSTRANSCO hereby orders that the earlier notifications, if any, issued prior to 02.06.2014 for the direct recruitment of Sub-Engineer / Elect., Junior Assistant and Junior Lineman posts with reference to the zones of Telangana are deemed to have been lapsed.”

58. Since the basis of taking the above decision was not clear, the Senior Counsel appearing for TSTRANSCO was requested to make available the file relating to the said decision.

59. Accordingly, the same was made available.

60. The file produced contains a note put up to the Board of the TSTRANSCO which mentions that the notifications were issued during 2011-12 for Direct Recruitment of Sub-Engineer, Junior Assistant (Accounts) and Junior Lineman; the modalities of giving 45% weightage to in-service contract labour; challenge thereto in the High Court and the order dt.03.06.2014 in the batch of Writ Petitions reducing the weightage from 45 to 20 marks; the bifurcation of the erstwhile APTRANSCO into APTRANSCO and TSTRANSCO w.e.f. 02.06.2014; opinion of the Counsel of the TSTRANSCO; order dt.13.10.2017 in Rev. W.A.M.P. No.4180 of 2014 and batch in W.A.Nos.110 of 2014 and batch; and in para no.5 abruptly states :

“5. In the light of the above judgment, the issue was discussed in TSPCC meeting on 27.11.2017 and it was decided to issue fresh notification for the vacancies available as on to-day as per requirement. The earlier notifications, if any, issued prior to 02.06.2014 are deemed to have been lapsed.”

61. Even the APTRANSCO's decision in TOO(Per-ED/HRD& Planning) Rt.No.665 dt.13.06.2018, simply quotes the order dt.13.10.2017 in Rev.W.A.M.P.No.4180 of 2014 and batch in W.A.No.110/2014 and batch and records that the Board of A.P. TRANSCO cancels the notifications dt.15.12.2011, 16.01.2012 and

26.02.2012 for direct recruitment of Sub-Engineer (Electrical) and Junior Assistant (L.D.C.) Posts on regular basis for A.P. share of posts. Even here, there is no mention of reason for scrapping the selections pursuant to the earlier notifications of 2011-12.

62. The Division Bench order dt.13.10.2017 in Rev.W.A.M.P.No.4180 of 2014 and batch in W.A.No.110/2014 and batch merely stated that the Bench is not expressing any opinion on the decision which the TSTRANSCO and APTRANSCO should take pursuant to the order passed by the Bench and that its order shall not be understood as a mandamus to either of them or to the Distribution companies to proceed with the selection process undertaken pursuant to the earlier notifications of 2011 and 2012 or to make appointment pursuant thereto, and that these matters are for the said organizations to consider. The Bench directed them to take a decision on the selections made pursuant to the said notifications *in accordance with law*.

63. This indicates that any decision not to proceed further and give appointment letters to selected candidates by the TSTRANSCO and APTRANSCO pursuant to the said notifications cannot be taken arbitrarily as observed in **Shankarsan Dash** (4 supra) and **Asha Kaul** (5 supra).

64. As regards reliance placed by the respondents on the judgment dt.13.10.2017 of the High Court in W.P.No.26400 of 2015 and batch is concerned, the following sentence in the said order was relied upon :

“In the light of the order passed by us in Review W.A.M.P.(sr) No.110362 of 2015 in W.A.No.110 of 2014 & batch dated 13.10.2017, setting aside the directions issued by the earlier Division Bench in W.A.No.110 of 2014 and batch dated 03.06.2014 to the limited extent fresh examination was directed to be conducted, the respondent-Transmission Corporation and the Distribution Companies are no longer obligated to conduct a fresh examination or to cancel the earlier notifications.”(emphasis supplied)

65. The last portion of the said order is not in favour of the respondents as the Bench held that the respondents are *not* obligated to cancel the earlier notifications. Therefore, they cannot interpret the said order as obligating them to cancel the earlier notifications.

66. It is shocking that both TSTRANSCO and APTRANSCO acted as if this Court gave a license to them to cancel the selections pursuant to the said notifications as per their whims and fancies and hide behind the said order dt.13.10.2017 in Rev.W.A.M.P.No.4180 of 2014 and batch in W.A.No.110/2014 and batch.

67. The other event which is mentioned by both of them is the happening of the event of bifurcation of the erstwhile composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh w.e.f. 02.06.2014 pursuant to the enactment of A.P. Re-organization Act, 2014 and the consequent creation of the successor A.P.TRANSCO and TSTRANSCO, the transmission corporation entities for those two States.

68. We did not find any provision in the said enactment prohibiting continuance of selection processes pursuant to notifications issued in the

combined State of Andhra Pradesh prior to 02.06.2014. The counsel for respondents were unable to point out any such provision in the said enactment. More importantly, in all these notifications issued prior to 02.06.2014 such as the one on 15.12.2011, the posts were indicated zone-wise clearly as under :

Name of the Zone	Open	Local	Total
Visakhapatnam	20	47	67
Vijayawada	18	43	61
Kadapa	23	55	78
Hyderabad Metro	15	34	49
Hyderabad Rural	14	34	48
Warangal	11	25	36
Total	101	238	339

69. The first three zones fall in the residuary State of Andhra Pradesh post bifurcation w.e.f. 02.06.2014 and the latter three zones would fall in the new State of Telangana.

70. Merely because the notifications were issued by the erstwhile A.P.TRANSCO for territories covered by both States, and subsequently, there was bifurcation of the composite State of Andhra Pradesh, we do not find any impediment for the successor entities of APTRANSCO and TSTRANSCO to proceed with the process of selection pursuant to the said notification and give appointment letters to the qualified candidates.

71. In this regard, the clue is provided in Section 79 of the A.P. Reorganization Act, 2014 which states :

“79. Provisions as to continuance of officers in same post : Every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Andhra Pradesh in any area which on

that day falls within one of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State. “

72. If existing employees of the State of Andhra Pradesh, post bifurcation, would continue to hold the office in the successor State in which they are working on 02.06.2014, any persons appointed pursuant to the notifications issued prior to 02.06.2014 by the erstwhile APTRANSCO would also likewise become the employee of the successor transmission corporation entity of the successor State depending on which zone he gets selected to and in which State the said zone falls.

73. It is contended by Sri G. Vidyasagar, Senior Counsel for TSTRANSCO, that it would be difficult to verify the genuineness of the service certificates / qualifications of the persons who got selected pursuant to the examination held by the erstwhile APTRANSCO as per the pre-2014 notifications, but we do not agree with the said contention because whenever a selection process is started, including the new notification No.05 of 2017 dt.28.12.2017, the TSTRANSCO would have to verify the genuineness of the certificates relating to qualification or service rendered by contract labour.

74. Another contention was raised by the said Standing Counsel that petitioners in these cases had also appeared in the examination conducted by TSTRANSCO pursuant to the notification No.05/2017

dt.28.12.2017 and so the last portion of the judgment of the Supreme Court in **East Coast Railway** (1 supra) be followed.

75. On the facts of that case, only 12 employees have taken the written test pursuant to the earlier selection process which was later abandoned, but in the instant case, it is not even the case of the TSTRANSCO that only the Writ Petitioners had taken the selection test pursuant to notifications issued prior to 02.06.2014 and also pursuant to the Notification No.5 of 2017. Therefore, the said analogy cannot be invoked by the TSTRANSCO.

76. Though the decision of the Supreme Court in **Kerala State Beverages (M&M) Corporation Ltd. vs. P.P. Suresh and others**⁸ was cited by the Senior Counsel for TSTRANSCO stating that there is no principle of substantive legitimate expectation and that a decision-maker has freedom to change policy in public interest and such discretion is not fettered, the said principle, in our considered opinion, is not attracted in the instant case since we do not find any valid reasons given by the TSTRANSCO for abandoning the selection process pursuant to the earlier notifications issued by APTRANSCO on 15.12.2011, 16.01.2012 and 26.02.2012.

77. Accordingly, we hold that there is no valid reason existing for issuance of T.O.O. (CGM-HRD) Rt.No.519 dt.11.12.2017 by the TSTRANSCO stating that the pre-2014 notifications issued by APTRANSCO on 15.12.2011, 16.01.2012 and 26.02.2012 have lapsed.

⁸ (2019) 9 S.C.C. 710

However, since the instant cases relate to only to cases of candidates who aspire for posts of Sub-Engineers (Electrical) only, we would grant relief only as regards the said posts and not other posts such as Junior Lineman or Junior Assistant.

78. Therefore, we hold on point (b) that the decision of the T.S.TRANSCO in T.O.O. (CGM-HRD) Rt.No.519 dt.11.12.2017 declaring that the above referred notifications issued prior to 02.06.2014 for direct recruitment of Sub Engineer (Electrical), with reference to the Zones of Telangana are deemed to have lapsed, is unsustainable and accordingly we set it aside and direct the TSTRANSCO to continue the process of selection to the said post of Sub-Engineer (Electrical) pursuant to the Notifications issued by the erstwhile APTRANSCO on 15.12.2011, 16.01.2012 and 26.02.2012 and issue appointment letters to all selected candidates including the Writ Petitioners subject to their meeting all other eligibility conditions.

Point (c) :

79. As a result of our findings on points (a) and (b), we hold that on point (c) that Notification No.5/2017 dt.28.12.2017 issued by T.S.TRANSCO proposing to fill up posts of Sub-Engineer (Electrical) is unsustainable.

Conclusion :

80. Accordingly, the Writ Petitions are allowed; and the action of T.S.TRANSCO in T.O.O. (CGM-HRD) Rt.No.519 dt.11.12.2017

declaring that the above referred notifications issued prior to 02.06.2014 for direct recruitment of Sub Engineer (Electrical), with reference to the Zones of Telangana are deemed to have lapsed, and Notification No.5/2017 dt.28.12.2017 issued by T.S.TRANSCO proposing to fill up posts of Sub-Engineer (Electrical) are illegal, arbitrary and violative of Article 14 of the Constitution of India; they are accordingly set aside; and we direct the TSTRANSCO to continue the process of selection to the said post of Sub-Engineer (Electrical) pursuant to the Notifications issued by the erstwhile APTRANSCO on 15.12.2011, 16.01.2012 and 26.02.2012 and issue appointment letters to all selected candidates including the Writ Petitioners subject to their meeting all other eligibility conditions. No costs.

81. As a sequel, miscellaneous petitions pending if any in these Writ Petitions, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 06-03-2020

Svv/ndr