

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.28813 of 2011

L.Muthuraj

... Petitioner

-Vs-

1.The Managing Director

Tamil Nadu Tea Plantation Corporation Limited
(TANTEA), TANTEA Complex, Orange Grove Road
Coonoor - 643 101, The Nilgiris District.

2.Mr.G.Vijayasankar

Junior Engineer, Ryan Tea Factory
Cinchona, Cinchona Post
Valparai, Coimbatore District.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Ref.No.E3/17719/2010 dated 21.01.2011 and quash the same and direct the first respondent to appoint the petitioner as Junior Engineer by direct recruitment and grant all consequential benefits to the petitioner.

(prayer amended as per order dated 27.09.2012
by order of this court and made in
MP1/2012 in WP.No.28813/2011

For Petitioner : Mr.P.Rajendran

For Respondents: Mr.S.Prabhu,

Additional Government Pleader-for R1
Mr.Sedhu Madhavan - for R2

सत्यमेव जयते
O R D E R

The prayer sought for herein is to to call for the records relating to the impugned order of the first respondent in Ref.No.E3/17719/2010 dated 21.01.2011 and quash the same and direct the first respondent to appoint the petitioner as Junior Engineer by direct recruitment and grant all consequential benefits to the petitioner.

2. The petitioner and the second respondent were working in the first respondent tea factory. While so, a post of Junior Engineer (Mechanical) fell vacant and in order to fill up the post, applications from eligible candidates by direct recruitment was called for, in which in-service candidates like

the petitioner and the second respondent also participated along with seven other candidates. Interview was conducted on 21.01.2011. Subsequently, the second respondent was selected and appointed as Junior Engineer (Mechanical), whereas the candidature of the petitioner was not considered or rejected, compared with the alleged inter-se merit between the petitioner and the second respondent. Therefore, challenging the selection and consequential appointment made in favour of the second respondent by order dated 21.01.2011, the petitioner has filed the present writ petition with the aforesaid prayer.

3. Mr.P.Rajendran, learned counsel appearing for the petitioner would submit that, the petitioner is having the qualification of Diploma in Mechanical Engineering, whereas the second respondent is having the qualification of Diploma in Automobile Technology. Moreover, the petitioner has been working in the Mechanical Engineering Division and therefore he is the most suitable candidate to be considered for selection to the post of Junior Engineer (Mechanical). However, without considering the candidature of the petitioner, though the second respondent is having lesser qualification compared to the petitioner, he was selected and appointed. Hence, such selection and appointment made by the first respondent in favour of the second respondent is bad in law and therefore the order is liable to be interfered with and a consequential direction has to be given to the first respondent to select the petitioner to the said post of Junior Engineer (Mechanical) and appoint him as such.

4. However, Mr.S.Prabhu, learned Additional Government Pleader (Forests) appearing for the first respondent would submit that, insofar as the post of Junior Engineer (Mechanical) is concerned, the relevant rule provided in the Staff Service Rules of Tamil Nadu Tea Plantation Corporation Limited is as follows.

"B.E. (Mech) or D.M.E. with experience of 5 years in a Tea Factory"

Therefore, the educational qualification prescribed for appointment to the said post of Junior Engineer (Mechanical) is B.E (Mech) or D.M.E., with experience of five years in a tea factory and based on these qualifications the candidates who attended the interview, including the second respondent and the petitioner were considered and based on the performance of the second respondent in the interview, the second respondent was selected by the Selection Committee constituted in this regard. Considering the rich experience and relevant qualification, the second respondent was appointed through the impugned order as Junior Engineer (Mechanical). Hence, the said selection and

appointment cannot be questioned plausibly without any reason.

5. However, Mr.Rajendran, learned counsel for the petitioner would submit that, when the candidate with the qualification of Diploma in Mechanical Engineering is available, preference should have been given to him only and without giving any such preference to a qualified candidate ie., the petitioner, the respondents ought not to have selected the second respondent, who is admittedly having lesser qualification ie., Diploma in Mechanical Engineering (Automobile Technology). Moreover, his line of work experience is not directly related with Mechanical Engineering field compared to the petitioner. Therefore, on these grounds, the selection and appointment made to the second respondent is bad in law, he contended.

6. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents, and also perused the materials placed on record.

7. The qualification prescribed under the relevant Service Rules of the Tamil Nadu Tea Plantation Corporation Limited is quoted above. Admittedly, the petitioner is having the qualification of Diploma in Mechanical Engineering and the second respondent is having the qualification of Diploma in Mechanical Engineering with Automobile Technology and no preference is suggested to be given as per the Rules. Insofar as the five years experience is concerned, it has been explained by the first respondent in the counter affidavit, which reads as under.

"6. Now, against the selection and appointment of Thiru.G.Vijayashankar, the petitioner (the other internal candidate) filed the present writ petition requesting to direct the first respondent to consider his representation dated 28.07.2011 with a prayer to reconsider the appointment order issued to the second respondent and appoint him as Junior Engineer by direct recruitment and grant him all consequential benefits. Though the petitioner has claimed that the 2nd respondent, Thiru.G.Vijayashankar is less qualified than the petitioner, the second respondent / Thiru G.Vijayashankar has 9 years experience in the maintenance of Tea machineries in private tea factories and 12 years experience in Tea manufacture in this Corporation and he has also passed Diploma in Mechanical Engineering with Automobile Technology and as such the qualifications are in accordance

with the Staff Service Rules of this Corporation, whereas the petitioner was having about 12 years experience as Turner in this Corporation and had also passed Diploma in Mechanical Engineering. However, based on the performance of the candidates before the Selection Committee, they have selected the 2nd respondent and he was appointed."

8. Based on the experience of the second respondent compared with the petitioner, the Selection Committee constituted in this regard, selected the second respondent and accordingly he was appointed through the impugned order.

9. It is a settled proposition that, at the time of appointment if any violation of the basic educational qualification and experience in appointment is made, that can be considered to be an illegal appointment and such action of appointment is impermissible.

10. Here, in the case on hand, the educational qualification of B.E (Mech) and D.M.E., are treated on par. Insofar as the experience is concerned, both are having enough experience and on comparison of the experience of the petitioner and the second respondent, the selection committee constituted in this regard, having considered the long years of experience possessed by the second respondent in various other factories in the very same field, as has been said in Para 6 of the counter affidavit, has selected the second respondent. Therefore, that kind of selection based on merits by the Committee constituted in this regard, cannot be found fault with.

11. Therefore, for all the above reasons, this Court feels that, the petitioner cannot successfully challenge the selection made in favour of the second respondent.

12. However, learned counsel for the petitioner submits that, there are still vacancies in the post of Junior Engineer (Mechanical) and since those posts have not been filled up, even though eligible candidates like the petitioner are available, he seeks the indulgence of this Court.

13. Insofar as the filling up of the vacant posts is concerned, it is for the first respondent to decide to fill up the posts if they desire according to the need for the personnel in the factory concerned and once they decide to fill up the posts in future, all eligible candidates including the petitioner shall be taken into account and accordingly the selection committee to be constituted in this regard, if any, shall take into account the past experience of the persons like the petitioner and accordingly a decision can be taken.

14. With the above observations, this writ petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

KST

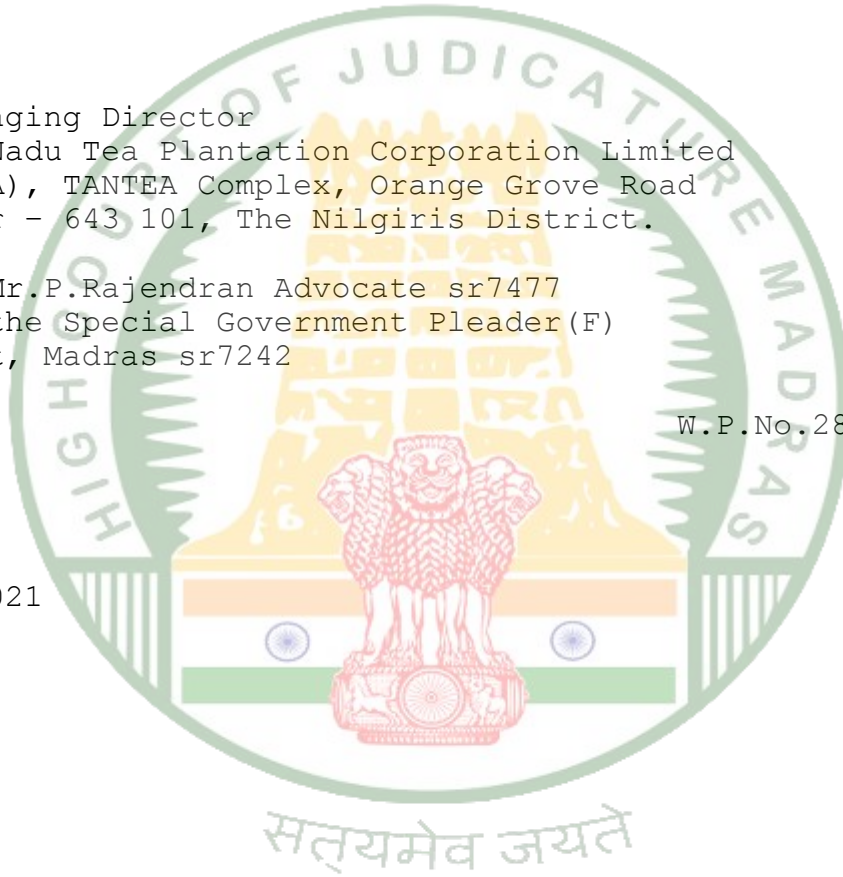
To

1.The Managing Director
Tamil Nadu Tea Plantation Corporation Limited
(TANTEA), TANTEA Complex, Orange Grove Road
Coonoor - 643 101, The Nilgiris District.

+1 cc to Mr.P.Rajendran Advocate sr7477
+1 cc to the Special Government Pleader(F)
High Court, Madras sr7242

W.P.No.28813 of 2011

mp(co)
aa01/03/2021



WEB COPY