



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.07.2021	16.07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.886 of 2020

and

C.M.P. (MD) Nos.4854 & 5886 of 2020

1.Tamil Nadu Generation and
Distribution Corporation Ltd.,
Rep.by its Chairman cum Managing Director
NPKRR Maligai
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

...Appellants/Respondents 1 to 3

-vs-

1.Sathish Kannan ...1st Respondent/Petitioner

2.R.Kousalya Devi.P ...2nd Respondent/4th Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 28.02.2020, passed in W.P.(MD) No.5739 of 2017, on the file of this Court.

Prayer in WP(MD). 5739/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the selection of Kausalya Devi P. in serial number 18 of published selection list of 21 Assistant Engineer/ Electrical (ECE/EIE) by

<https://hcservices.ecourts.gov.in/hcservices/>



direct recruitment 2015-2017 and quash the selection of Kausalya Devi P. and consequently direct the respondents to consider petitioners candidature for the post of Assistant Engineer(ECE/EIE) in Scheduled Tribe category.

For Appellants : Mr.G.R.Balakumar
for Mr.T.S.Gopalan
For Respondents : Mr.G.Prabhu Rajadurai for R1
Mr.S.Ramu for R2

J U D G M E N T

T.S.SIVAGNANAM, J.

The Tamil Nadu Generation and Distribution Corporation Ltd., ("TANGEDCO" for brevity) is the appellant before us questioning the correctness of the order and direction issued in W.P.(MD) No.5739 of 2017, dated 28.02.2020.

2. The first respondent sought for issuance of a writ of certiorarified mandamus to quash the selection of the second respondent herein to the post of Assistant Engineer / Electrical (ECE/EIE) by direct recruitment for the period 2015-2017 and consequently, to direct the appellants to consider the first respondent's candidature for the said post in the category reserved for Scheduled Tribe.

3. The first respondent holds Bachelor Degree in Electronics and Instrumentation Engineering and he applied for selection to the post of Assistant Engineer pursuant to the Notification issued by the appellants, dated 28.12.2015, notifying 21 vacancies. The first respondent participated in the written examination conducted on 31.01.2016 and according to him, though he obtained 20.667 marks was not called for the viva voce. The first respondent would contend that he is eligible to be called for viva voce in the Scheduled Tribe-General Non-Priority category for the said post and since the interview call letter was not received by him, he submitted a representation dated 22.03.2017. But, he was not permitted to attend viva voce. The appellants published the official select list in their website on 01.04.2017, from which, the first respondent found that the second respondent was selected in the post earmarked for the Scheduled Tribe priority category and Inter-Caste Marriage. It is contended that the second respondent secured only 4.333 marks in the written examination and her selection is liable to be set aside. The first respondent further contended that in order to select candidates of their own choice, the appellants have applied the reservation and rotation as also the priority category without any basis and the selection of the second respondent is a colourable exercise of power. It is further



contended that the priority category reserved for the candidates for inter-caste marriage is not applicable to the selection and therefore, the selection of the second respondent is liable to be set aside.

4. Further, it is contended that to claim priority on inter-caste marriage, the recruitment ought to have been conducted only from the candidates sponsored from the Employment Exchange based on merit and seniority, which was not followed in the subject recruitment and hence, priorities are not applicable to the recruitment. Further, it is contended that the first respondent holds ME Degree and has secured 20.667 marks in the written examination and 76% in the academic subjects and even if the first respondent has not been called for interview, his grand total will be 21.367, whereas the grand total of the second respondent is only 9.159 and therefore, the selection of the second respondent is illegal. On the above grounds, the first respondent prayed for setting aside the selection of the second respondent and consequently, to direct his candidature to be considered.

5. The appellants resisted the prayer sought for in the writ petition by contending that TANGEDCO is incorporated under the Companies Act, 1956 and it is wholly owned by the Government of Tamil Nadu. It being one of the successor entity to the erstwhile Tamil Nadu Electricity Board (TNEB) created under the provisions of the Electricity (Supply) Act, 1948 ("the Act" for brevity). It is further submitted that in exercise of powers conferred under Section 79(c) and (k) of the Act, TNEB published the Tamil Nadu Electricity Board Service Regulations (in short, "the Regulations"). The TNEB was trifurcated into the TNEB Limited (Holding Company), the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and the Tamil Nadu Transmission Corporation Limited (TANTRANSCO) and by virtue of the saving provision contained in Section 181 of the Electricity Act, 2003, the TNEB Service Regulations govern the service conditions of the employees in TNEB / TNGEDCO.

6. It is further submitted that as per Regulation 89(a) of the Regulations, the normal method of recruitment to any class of service or category or grade is both by direct recruitment and by promotion. The said regulation stipulates reservation in appointments and the same is followed in its letter and spirit. Pursuant to the Government Order in G.O.(Ms) No.44, Labour and Employment (T2) Department, dated 11.03.2015, a decision was taken to recruit personnel from open market and accordingly, orders were issued by the appellants in (Per) FB TANGEDCO Proceedings No.10, Administrative Branch, dated 10.12.2015. Pursuant thereto, Notification No.1/2015, dated 28.12.2015, was published in the newspapers inviting applications for the post of 375 Assistant Engineer / Electrical, Mechanical and Civil. The posts were to be filled up by a selection process comprising of a written examination



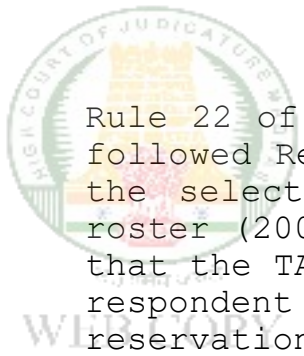
and viva voce.

7. It is further submitted that the first respondent applied for the said post online as per the conditions stipulated in the Notification. The first respondent belongs to Scheduled Tribe Community. Written examination was conducted on 31.01.2016 and the marks secured by the candidates were published on 30.07.2016. The first respondent has secured 20.667 marks. The viva voce was conducted between 13.03.2017 and 18.03.2017 for the post of 375 Assistant Engineers. The cut off marks for the viva voce for the post of Assistant Engineer / Electrical for ECE/ETE Stream is as follows:

SL.No	Type	SC W	SC GL	ST W	ST GL	MBC W	MBC GL	BCO W	BCO GL	BCM W	GT W	GT GL
1.	Prior ity	--	19.0 0	--	(-) 2.33	--	17.0 0	--	19.3 3	--	--	23.0 0
2.	Non- Prior ity	29.0 0	39.3 3	--	--	33.6 7	38.3 3	38.0 0	40.3 3	25.6 7	42.0 0	52.6 7

8. It is further submitted that the above cut off marks were arrived after taking into consideration of the number of slots to be fixed for a particular community based on the communal rotation in terms of G.O.(Ms) No.65, dated 27.05.2009 and G.O.Ms.No.142, dated 14.10.2009. The candidates in the ratio of 1:5 i.e. for every one vacancy, five candidates belonging to that community and priority (as the case may be) were called for viva voce. The number of vacancies allotted for ECE/EIE Stream based on the Notification No.01/2015, dated 28.12.2015, is 21 vacancies and the Notification clearly mentioned the distribution of vacancies. In terms of the distribution of vacancies as notified, only one post was notified for Scheduled Tribe community. In terms of the Government Orders referred above, the vacancy for Scheduled Tribe is earmarked for priority category and candidates in the ratio of 1:5 were called for viva voce and the second respondent, who was called for the viva voce, has secured 4.333 marks in the written examination and the last candidate in the said category has scored only -2.33 marks.

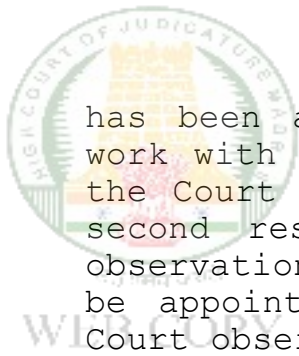
9. Further, it is submitted that the allegation made by the first respondent that TANGEDCO violated the norms and rules applicable to the direct recruitment is incorrect, since the TANGEDCO had issued proceedings in (Per) FB TANGEDCO Proceedings No.5, dated 20.01.2015, adopting the communal roster as made applicable pursuant to the Government Order in G.O.Ms.No.142, dated 14.10.2009 and G.O.(MS) No.65, dated 27.05.2009, which is the Government Order notifying 200 points communal roster for filling up vacancies in all categories through the candidates sponsored by the Employment Exchange. Since TANGEDCO has not filled up the vacancies through Tamil Nadu Public Service Commission, they have not adopted



Rule 22 of Tamil Nadu State and Subordinate Service Rules, but, has followed Regulation 89(3) of the Regulations. It is submitted that the select list was prepared based on merit and as per communal roster (200 points in the vertical rotation). Thus, it is contended that the TANGEDCO has not violated any norms as alleged by the first respondent and the only vacancy, as per the communal rotation and reservation, is for Scheduled Tribe priority category and it was rightly allotted and the second respondent was selected as she belongs to Scheduled Tribe community and she is an inter-caste marriage candidate. Since the first respondent had secured only 20.667 marks in the written examination, he was not called for viva voce under the General Category as the cut off mark for the General Turn (GT) Category was 52.67. On the above grounds, the appellants prayed for dismissal of the writ petition.

10. The learned Single Bench, after taking note of the facts placed before it by the appellants as well as the first respondent / writ petitioner, framed a question for consideration in Paragraph No.8 of the impugned order. The question framed was as to whether "Inter-caste Marriage" can be considered for priority during the recruitment process under the Notification dated 28.12.2015? It was noted that 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) states that reservation of appointment to Destitute Widows and Ex-Servicemen will not apply to the present recruitment. The learned Writ Court noted the submission of the appellants that priority has been extended to Inter-caste Marriage category and that the appellants relied upon the 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.

11. The learned Writ Court found fault with the the appellants in applying the priority category for Inter-caste Marriage, since the recruitment process was not through Employment Exchange. The Court referred to the decisions in the case of **J.Kavitha vs. The Government of Tamil Nadu rep.by the Secretary to Government, Higher Education Department and another** in W.P.(MD) No.23393 of 2018, dated 28.11.2018 and in the case of **V.Srinivasan vs. The Member Secretary, Medical Services Recruitment Board** in W.P.No.32300 of 2019, dated 20.11.2019. Thus, the learned Writ Court pointed out that the first respondent / writ petitioner had secured 20.667 marks in the written examination and the last candidate in the category of Scheduled Tribe priority had secured -2.333 and even if the credit of the balance of 15% reserved for the viva voce is not given to the first respondent, still the first respondent would stand qualified for being appointed to the post. After recording the said finding, the learned Writ Court held that though the appointment of the second respondent is not as per the Regulations in force, the fact remains that the second respondent



has been appointed with effect from 17.03.2017 and continuing to work with the appellants for almost three years and at this stage, the Court does not intend to interfere with the appointment of the second respondent. Nevertheless, in view of the findings and observations made therein, the first respondent would be entitled to be appointed to the post of Assistant Engineer. Therefore, the Court observed that the appellants should not take such measures and thereby disturb the appointment made in favour of the second respondent and accordingly, the prayer for quashing the appointment of the second respondent was rejected. After holding so, the learned Writ Court directed the appellants to appoint the first respondent to any post of Assistant Engineer in the appellants' Corporation, within a time frame. Aggrieved by such direction, the appellants are before this Court by way of this appeal.

12. To be noted that the first respondent / writ petitioner has not filed any appeal nor questioned the findings of the learned Writ Court refusing to grant the relief sought for in the writ petition and refusing to quash the appointment of the second respondent. Thus, in this appeal, we are required to consider as to whether the direction issued in Paragraph No.15 of the impugned order is justifiable or not.

13. We have elaborately heard Mr.G.R.Balakumar, learned counsel appearing for Mr.T.S.Gopalan, learned counsel on record for the appellants; Mr.G.Prabhu Rajadurai, learned counsel appearing for the first respondent and Mr.S.Ramu, learned counsel appearing for the second respondent.

14. The first aspect that is to be considered is as to whether the priority quota would be applicable to the selection, which was conducted by the appellants, pursuant to the Notification No.1/2015, dated 28.12.2015. In the preceding paragraphs, we have set out the facts which are not in dispute. The marks secured by the respondents 1 and 2, as mentioned above, is not disputed. The fact that the respondents 1 and 2 belong to a Scheduled Caste community is also not in dispute. The claim of the second respondent that she is an Inter-caste Marriage candidate is also not disputed. The only dispute raised by the first respondent / writ petitioner is that the priority category for Inter-caste Marriage candidate cannot be extended to the selection pursuant to the Notification No.1/2015 as the Notification does not specifically stipulate that such priority will be granted.

15. To examine the correctness of the stand taken by the first respondent / writ petitioner, we have carefully perused the Notification No.1/2015. As per the distribution of vacancies in Clause-2 of the Notification, one post of Assistant Engineer in ECE / EIE has been earmarked for Scheduled Tribe candidate. In terms of Clause-5A of the Notification, the Rule of reservation of



appointments is applicable to the post, which was notified for selection and the distribution of vacancies will be as per rule in force. In terms of Clause-5H, reservation of appointment to "Destitute Widows" and "Ex-Servicemen" will not apply to the said recruitment. Clause-5I states that even after filling up of the posts reserved for Scheduled Caste Arunthathiyars on preferential basis, if more number of qualified Arunthathiyars are available, they shall be entitled to compete with the Scheduled Castes other than Arunthathiyars in the inter-se merit among them and if any posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars. Clause-10 gives instructions to the candidates as to how to apply. In terms of Sub-Clause (1), applications have to be made only through online. In terms of Sub-Clause (4)(iii), scanned copy of degree certificate, priority certificates, PSTM, Destitute widow certificates etc., of the candidates should be in PDF format only. Clause-11 gives further instructions to the candidates applying online. Sub-Clause (7) to Clause-11 mentions about the scanned copy of the certificates which are required to be uploaded in PDF format by the candidates, who are applying for the post. The certificates and the relevant description are in a tabulated form. In Clause-3 of the said tabulated form, the list of priority certificates has been mentioned and one among them is the certificate to establish the claim for priority under Inter-caste Marriage. In the description column, it is stated that this certificate is required to be produced to avail special category reservation (if applicable).

16. The sheet anchor of the arguments of the learned counsel appearing for the first respondent / writ petitioner is that Serial No.3 in Clause-11(7) states that those certificates are required to be scanned and uploaded only if special category reservation is applicable and nowhere in the Notification, priority category has been notified and therefore, the appellants erroneously applied the priority category quota and illegally selected the second respondent. From the select list, we are able to see that the priority quota for Inter-caste Marriage has not been applied to the Scheduled Tribe candidates alone, but also to General Turn candidates, Backward candidates, Most Backward candidates and Scheduled Caste candidates.

17. It is relevant to note that the Government in G.O.(Ms) No.44, Labour and Employment (T2) Department, dated 11.03.2015, has directed implementation of the Judgment of this Court in W.A.No.1027 of 2013, dated 09.06.2014. In the said Government Order, the order passed by this Court in W.P.No.26162 of 2010, dated 02.08.2012, has been referred to. In the said order, the selection process for appointment to the posts only from candidates sponsored through Employment Exchanges was quashed and the State Government was directed to fill up the posts by inviting applications from all



eligible persons along with names sponsored by the Employment Exchange by advertising in newspapers and other media to enable all the eligible persons to compete for the posts.

18. The Director of Employment and Training challenged the order dated 02.08.2012 by filing W.A.No.1027 of 2013, which was dismissed by Judgment dated 09.06.2014 reiterating that posts should be filled up by issuing advertisement in at least two newspapers out of which one must be in vernacular language having wide circulation in the respective State, apart from calling for list from the Employment Exchange in order to comply with Articles 14 and 16 of the Constitution of India. The Court directed the Judgment to be circulated to the Chief Secretary to the Government of Tamil Nadu with a direction to circulate the same to all Secretaries of various Departments.

19. The Director of Employment and Training, by communication dated 16.02.2015, addressed the Government to issue suitable orders on the implementation of the Judgment, dated 09.06.2014 in W.A.No.1027 of 2013. Accordingly, G.O.(Ms) No.44, dated 11.03.2015, was issued directing the Secretaries of all the Departments to adhere to the said Judgment, while filling up the posts under their control. Therefore, in any recruitment, the drawal of the candidates cannot be restricted only to the Employment Exchange, but it is one among the modes from which the name of candidates can be secured, but it is mandatory that the post should be advertised in the newspapers having wide circulation. The object behind the said direction was to ensure that a large pool of candidates are made available and the best talent is selected and appointed to the various posts in the Government and Quasi-Government Institutions.

20. Further, G.O.(Ms) No.142, dated 14.10.2009, has not been shown to be adopted by the TANGEDCO and therefore, it cannot be made applicable unless and otherwise it has been adopted by TANGEDCO. To put it in a different form, if the candidates apply for the post by direct recruitment and they are drawn from two sources, namely, those candidates whose names have been sponsored from Employment Exchange and those candidates, who apply from the open market pursuant to the advertisement issued in the newspapers, then automatically priority category could be made applicable. On the contrary, if the recruitment process is conducted only by inviting applications from the open market by issuing advertisement in the dailies, then unless and until it is shown that G.O.(Ms) No.142 has been adopted by TANGEDCO, the same cannot be made applicable.

21. In the decisions referred to by the learned Writ Court both in the case of **J.Kavitha and V.Srinivasan**, the recruitment was to the post in the Government Institution and not in any Quasi-

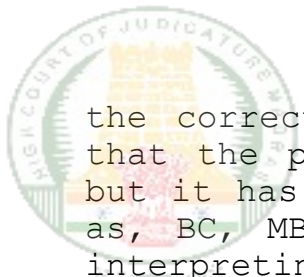


Government or Government Companies as in the case on hand. Therefore, those decisions are distinguishable on facts.

22. The learned counsel appearing for the first respondent referred to the decision of the Honourable Supreme Court in **Renu vs. District & Sessions Judge [(2014) 14 SCC 50]** to emphasize the point that the important requirement of public appointment is that of transparency. We find that there is no material placed by the first respondent before the learned Writ Court or before us to establish that the selection process was not transparent. In the absence of any such material nor specific pleading, the said decision cannot be made applicable to the facts and circumstances of the case on hand.

23. Above all, the writ petition was filed much after the second respondent and other candidates had joined the post and the second respondent is continuing to work from March, 2017. In fact, the learned Writ Court though made certain observations in favour of the first respondent, no relief was granted to him and the prayer for quashing the appointment of the second respondent stood rejected. In such circumstances, the learned Writ Court could not have issued direction to accommodate the first respondent in the post of Assistant Engineer. This direction could not have been issued as it is unworkable for more than one reason. Firstly, the selection process has been completed and the selected candidates have joined and functioning since March, 2017 onwards. Therefore, the question of issuing direction to appoint the first respondent in the post of Assistant Engineer during April, 2020 would not arise. Secondly, the claim of the first respondent is predicated on the fact that he belongs to a Scheduled Tribe community. As per the distribution of vacancies, for the post of Assistant Engineer (ECE/EIE), only one post has been earmarked for the Scheduled Tribe community and the said post has been filled up by the second respondent by extending the benefit of priority granted to the candidates of Inter-caste Marriage. Therefore, the question of accommodating the first respondent / writ petitioner in the post of Assistant Engineer does not arise.

24. On a plain reading of the Notification, we find that there is a clear mention in Clause-11(7) with regard to the priority category. If the contention of the appellants was not to extend the benefit of priority, then there was absolutely no need or necessity to mention about the documents, which are to be uploaded by the candidates. The learned counsel appearing for the first respondent laid emphasis on the words "if applicable" mentioned in the tabular column. In Serial No.3 of Clause-11(7), list of certificates, which are nine in number, has been mentioned. Out of the nine priority categories, the Notification specifically excludes only two of the reserved categories, namely, Destitute Widow and Ex-Serviceman. Thus, it goes without saying that seven other priority categories would be considered for selection and this, in our view, would be



the correct interpretation of the Notification, because it is not that the priority has been implemented for Scheduled Tribe alone, but it has been implemented for all other reserved categories, such as, BC, MBC, SC and GT. Thus, this would be the correct way of interpreting the Notification. In any event, the first respondent has not challenged the Notification No.1/2015, though he would not be entitled to challenge the same as he has participated in the selection process pursuant to the said Notification. Thus, we have no hesitation to hold that the direction issued by the learned Writ Court to appoint the first respondent in the post of Assistant Engineer is not sustainable. For all the above reasons, the appellants are entitled to succeed.

25. In the result, the writ appeal is allowed and the direction issued by the learned Writ Court in the order dated 28.02.2020 in W.P.(MD) No.5739 of 2017 directing the first respondent to be appointed in the post of Assistant Engineer is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

Krk

+1 CC to M/s.T.S.GOPALAN & CO P.MALINI, Advocate (SR-23054[F] dated 19/07/2021)

+1 CC to M/s.G.PRABHU RAJA DURAI, Advocate (SR-23055[F] dated 19/07/2021)

W.A. (MD) No.886 of 2020
and

C.M.P. (MD) Nos.4854 & 5886 of 2020
16.07.2021

KMV (CO)

KB(28.07.2021) 10P 3C