

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30639 of 2015

and

M.P.Nos.1 & 2 of 2015

1.C.Mohanraj

2.C.Siva Sankaran

3.G.Venkatesan

4.G.Murugan

5.R.Murugesan

...Petitioners

-Vs-

1.The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Administrative Branch,
No.144, Anna Salai,
Chennai - 600 002.

2.The Superintendent Engineer,
General Construction Circle,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
K.N. Colony, Salem - 636 014.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the order in Letter No. 053139/G.58/G.582/2009-3 dated 25.06.2012 and quash the same and to issue consequential directions to the respondents to regularly absorb the petitioners in the service of the respondent Corporation TANGEDCO and appoint the petitioners as Mazdoor notionally with retrospective effect from 12.02.2009 with all consequential benefits.

For Petitioners :Mr.V.Tamizhanban
for M/s.Kriish Law Associates

For Respondents :Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

ORDER

The order of rejection dated 25.06.2012, rejecting the claim of the writ petitioners to absorb in a sanctioned post in the time scale of pay, is under challenge in the present writ petition.

2. The writ petitioners were engaged as Contract Labourers in the office of the second respondent-TANGEDCO. The grievance of the writ petitioners is that they served as Contract Labourers for more than 10 years and therefore, they are entitled to be absorbed in a sanctioned post in the time scale of pay.

3. It is contended that the respondents agreed to absorb 6,000 casual labourers out of 21,600 contract labourers under 12(3) Settlement and board proceedings was also issued in B.P.No.44, dated 06.09.2007 to absorb the contract labourers in regular vacancy. When the board also considered that the contract labourers shall be absorbed in a regular vacancy, the case of the writ petitioners were denied. The representation sent to the respondents in this regard was also rejected and thus, the writ petitioners are constrained to move this writ petition.

4. The learned Standing Counsel appearing for the respondents objected the contention of the writ petitioners by stating that, no doubt the board has taken a policy decision to absorb the contract labourers in a regular vacancy. However, such absorptions are to be made strictly in accordance with the terms and conditions issued in B.P.No.44, dated 06.09.2007. The eligibility qualification and other criteria, as contemplated under the board proceedings, were verified and the respondents found that the petitioners were not eligible for absorption in a regular vacancy and accordingly, their claim for appointment was rejected. The case of the eligible persons alone was considered and those candidates were permanently absorbed.

5. The petitioners now state that few ineligible candidates were also absorbed by the board and therefore, the said benefit is to be extended to the petitioners.

6. Question arises whether any irregularity or illegality occurred in a matter of appointment and such irregularity or illegality can be cited as a precedent for the purpose of securing appointment in public services.

7. In this regard, it is relevant to rely on the judgment of the Hon'ble Supreme Court of India in the case of Basawaraj and another Vs. Special Land Acquisition Officer reported in (2013) 14 SCC 81, wherein it was held as follows:-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K.Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937)."

8. In the case of Ekta Shakti Foundation Vs. Government of NCT of Delhi reported in (2006) 10 SCC 337, the Hon'ble Supreme Court held as follows:-

"12. It was submitted that in some other cases, a departure has been made. No definite material has been placed in that regard. In any event,

"Article 14 has no application or justification to legitimize an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the similar benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no."

13. In Coromandel Fertilizers Ltd. v. Union of India and Ors., [(1984) Supp SCC 457], it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the

anvil of Article 14 was rejected.

14. "If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose." [See : Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Others [(1997) 1 SCC 35].

15. "30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p. 465, para 9)

'Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and

legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.'

Again In Jaipur Development Authority's case (supra) this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp. 51-52, para 28)

'Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.'

31. In State of Haryana & Ors. v. Ram Kumar Mann [1997 (3) SCC 321] this Court observed:

'The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly Circumstanced person claim equality under Section 14 for Reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot

be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right'." [See : State of Bihar and others v. Kameshwar Prasad Singh and Another [(2000) 9 SCC 94]."

9. The principles are now settled that an illegality or irregularity cannot be a ground to claim equality or discrimination under Articles 14 and 16 of the Constitution of India. Thus, induction of one or two persons who are otherwise not qualified cannot be a ground to issue a direction in a writ proceedings to appoint the petitioners who were found otherwise not eligible for such appointments.

10. That apart, the learned Standing Counsel for the respondents reiterated that the board has not violated the terms and conditions of the board proceedings issued in B.P.No.44, dated 06.09.2007. The contention of the writ petitioners in this regard are also incorrect.

11. Even presuming that there was an irregularity in the matter of appointment, such irregularity cannot be continued in perpetuity and in fact if such irregularity is found within a reasonable time, then all suitable actions are to be initiated to rectify the same. This being the principles to be followed, the petitioners, who were not found eligible for appointment to a sanctioned post, is in consonance with the board proceedings issued in B.P.No.44, dated 06.09.2007.

12. Thus, this Court is not inclined to grant the relief as such sought for by the writ petitioners. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

hvk

To

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+1cc to M/s.T.S.Gopalan & CO, Advocate SR.No.39087

+1cc to Mr.K.Elangoo, Advocate SR.No.39784

W.P.No.30639 of 2015

BR(CO)

CB(18/07/2022)