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W.P.No.41359 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.41359 of 2016
and W.M.P.Nos.35323 to 35325 of 2016

S.Senthil Kumar

... Petitioner

Vs.

1.The Tamil Nadu Civil Supply Corporation Ltd.,
12, Thambusamy Street,
Kilpauk, Chennai – 600 010
By its representative The Chairman.

2.The Principal Secretary cum
Managing Director,
The Tamil Nadu Civil Supply Corporation Ltd.,
12, Thambusamy Street,
Kilpauk, Chennai – 600 010

3.The General Manager (Administration)
The Tamil Nadu Civil Supply Corporation Ltd.,
12, Thambusamy Street,
Kilpauk, Chennai – 600 010.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to
issue a writ of Certiorarified Mandamus, calling for the records dated



W.P.No.41359 of 2016

7.10.2016 passed by the 2nd respondent vide Notification No.AE15/76070/2013 and quash the same and further direct the 1st respondents Board to fix ratio in between Direct Recruitment and Recruitment by Transfer from lower categories and to direct the 3rd respondent to resort to Direct Recruitment only when there is no eligible employees of Corporation available and to prepare panel of eligible candidates from lower categories of corporation for the appointment to the post of Shift Engineer duly following the Rule of Reservation in a transparency manner and to appoint petitioner as Shift Engineer accordingly within the time from as may be fixed by this court.

For Petitioner : Mr.G.P.Arivuchudar for
M/s.Law Square

For Respondents : Mr.R.P.Murugan Raja
Government Advocate

ORDER

The recruitment notification dated 07.10.2016 issued by the respondents to fill up the vacancies in the cadre of Shift Engineer is under challenge in the present writ petition.

2.The petitioner was appointed as Helper through District Employment



W.P.No.41359 of 2016

WEB COPY

Exchange. He was promoted to the post of Assistant Store Keeper and further promoted as Assistant Operator. Again he was promoted to the post of Boiler Operator, since he acquired Boiler Certificate, which is the requisite qualification. The petitioner states that he is fully qualified for promotion to the post of Shift Engineer as per rules in force.

3.The grievance of the writ petitioner is that when eligible in-service candidates are available for promotion to the post of Shift Engineer and the mode of filling up of the vacancy of Shift Engineer is by way of promotion, then, the respondents ought not to have issued the recruitment notification for direct recruitment to the post of Shift Engineer.

4.The learned counsel for the petitioner mainly contended that in the event of direct recruitment, the petitioner and other similarly placed persons will loose their opportunity for promotion and therefore, the recruitment notification is to be set aside.



W.P.No.41359 of 2016

WEB COPY

5.The learned counsel for the writ petitioner drew the attention of this Court with reference to the rules stating that the post of Shift Engineer/Service Engineer is to be filled up by way of promotion. When the rule contemplates promotion, the notification for direct recruitment is untenable.

6.Persual of the notification impugned dated 07.10.2016 reveals that the employees working in TNCSC who are having prescribed technical qualification in the recognized institution are requested to furnish their willingness to appear for examination and interview, while recruiting candidates through Employment Exchange on or before 04.11.2016, by sending application prescribed in Annexure-2 Head Office, the willing persons are requested to furnish their attested copies of technical qualification certificate and community certificate. Thus, an opportunity was provided to the in-service candidates also to submit their applications for appointment to the post of Shift Engineer by way of direct recruitment.



W.P.No.41359 of 2016

WEB COPY

7.The direct recruitment is the decision taken by the administration which cannot be questioned by the writ petitioner. Writ petitioner is an employee and an opportunity was provided to the in-service candidates to participate in the process of selection. While so, the contention that the opportunity was denied cannot be accepted. No employee can claim that he should be promoted as promotion *per se* cannot be claimed as an absolute right by an employee. Mode of filling up of the vacancies are the decisions to be taken by the competent authorities. Direct recruitment is permissible and therefore, the authorities competent had taken a decision to fill up the post by way of direct recruitment and further provided an opportunity to the in-service candidates to submit application to participate in the process of selection.

8.The eligibility criteria to participate in the written examination or prescription of technical qualifications are the administrative propagative of the authorities competent. An employee in-service cannot contend that he should be promoted without undergoing the examination to be conducted by



W.P.No.41359 of 2016

the respondents. Such a claim is untenable as prescription of qualifications, eligibility criteria are within the powers of the administrative authorities and thus, the employees cannot claim any right over the mode of recruitment which is otherwise contemplated under the rules in force.

9. Whenever a promotion process is undertaken by the competent authorities and if the panel of eligible persons in the feeder category are considered for inclusion of their names for promotion, then alone, the case of the writ petitioner also to be considered along with all other eligible candidates in the order of seniority and by following the procedures as contemplated under the Rules. In other words, consideration being a right of an employee at the time of grant of promotion, names of all the eligible persons are to be considered in accordance with Rules. However, in the present case, the notification impugned was issued for direct recruitment to fill up the post of Shift Engineer, wherein, in-service candidates were also provided with an opportunity to participate in the written examination. That being the factum established, the claim of the petitioner to set aside the



W.P.No.41359 of 2016

WEB COPY

recruitment notification deserves no merit consideration. That apart, the notification was issued in the year 2016 and the process would have been completed by this time and for all these reasons, the petitioner is not entitled for the relief. However, whenever an administrative decision is taken to fill up the post of Shift Engineer by way of promotion, then the names of all the eligible persons including the petitioner is to be considered in accordance with rules and by following the seniority and other procedures in the manner contemplated.

10. With these observations, this writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

23.09.2022
(2/3)

Index : Yes
Internet : Yes
Speaking order
ssr



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W.P.No.41359 of 2016

S.M.SUBRAMANIAM, J.

SSR

To

- 1.The Tamil Nadu Civil Supply Corporation Ltd.,
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By its representative
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