



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) Nos.11121 to 11127 of 2019

and

W.M.P.(MD) Nos.8483 to 8489 of 2019

V.Santhanakrishnan	... Petitioner in WP(MD) . 11121 of 2019
N.Ragunath,	... Petitioner in WP(MD) . 11122 of 2019
M.Shankar,	... Petitioner in WP(MD) . 11123 of 2019
P.Prabavathy,	... Petitioner in WP(MD) . 11124 of 2019
E.Rajkumar,	... Petitioner in WP(MD) . 11125 of 2019
S.Rajkumar,	... Petitioner in WP(MD) . 11126 of 2019
M.Malathi,	... Petitioner in WP(MD) . 11127 of 2019

-vs-

1. State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
Energy Department, Fort St. George, Chennai - 600 009.

2. State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai - 600009.

3. TANGEDCO,
Rep., by its Chairman-cum-Managing Director,
TANGEDCO, 10th Floor, NPKRR Maligai,
144, Anna Salai, Chennai - 600 002.

4. The Chief Engineer (Personnel),
TANGEDCO, 10th Floor, NPKRR Maligai,
144, Anna Salai, Chennai.

... Respondents in all WPs

Common Prayer:- These Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to include the name of the petitioner in the panel for promotion to the post of Assistant Executive Engineer for the year 2018 issued in Letter No. 093166/375/G.1/G.11/2018-4, dated 03.12.2018 by the fourth respondent within the time stipulated by this Court.



In all W.Ps.

For Petitioner : Mr.S.Louis
for Mr.R.Alagumani

For RR1 & 2 : Mr.N.Satheesh Kumar
Additional Government Pleader

For RR3 & 4 : Mr.S.Arivalagan

COMMON ORDER

The relief sought for in the present writ petitions is to direct the respondents to include the names of the petitioner in the panel for promotion to the post of Assistant Engineer for the year 2018 in Letter No. 093166/375/G.1/G.11/2018-4, dated 03.12.2018 by the 4th respondent.

2. The petitioners are now working as Assistant Engineer and aspiring to secure promotion to the post of Assistant Executive Engineer. The petitioners state that their cases are to be considered for promotion by way of implementing the Reservation Rules.

3. The learned counsel for the petitioners made a submission that the shortfall vacancies in the promotional post is to be taken into consideration for the purpose of promoting the petitioners to the post of Assistant Executive Engineer. It is contended by the petitioners that there is no adequate representation in the cadre of Assistant Executive Engineer and therefore, the shortfall vacancies are to be calculated.

4. The learned counsel appearing for the Electricity Board raised an objection by stating that reservation was scrupulously followed by TANGEDCO while appointing persons. However, there is no reservation for promotional post and thus, question of assessing the shortfall vacancies does not arise at all. Once the persons are appointed by implementing the rule of reservation, the promotions are granted subject to the eligibility and other conditions. Therefore, an ineligible person cannot be promoted by calculating the vacancy and there is no such rule in force in TANGEDCO. In this regard, the learned counsel referred to para 9 of the counter filed by the 4th respondent, which reads as follows:-

"9. The Supreme Court in Civil Appeal No.1226 of 2010 judgment dated 07.02.2020 (Non Reportable) held in Mukesh Kumar & Another vs. the State of Uttarakhand & others held that reservation in



promotion is not a fundamental right and the states cannot be compelled to make laws in this regard for Scheduled Castes (SC) and Scheduled Tribes (ST). In an order passed on Friday, justice L.Nageswara Rao said that "Article 16(4) and 16(4-A) are in the nature of enabling provisions, vesting a discretion on the State Government to consider providing reservations, if the circumstances so warrant," he said in the order.

(i) The judgment says that it is settled law that the state cannot be directed to give reservations for appointment in public posts. The order further adds that the state is not bound to make a reservation for SCs and STs in matters of promotions. However, if the state wishes to exercise its discretion and make such provision, it has to collect quantifiable data showing 'inadequacy of representation of that class in public services,' the judgment reads.

(ii) There are several major Supreme Court judgments that have, in the past, ruled that Articles 15(4) and 16(4) do not provide a fundamental right.

(iii) A five-judge apex court bench, as early as 1962 in the *M.R.Balaji v. State of Mysore* had ruled that Article 15(4) is an "enabling provision", meaning that "it does not impose an obligation, but merely leaves it to the discretion of the appropriate government.

(iv) The court was hearing a challenge to an order passed by the erstwhile state of Mysore reserving 68 percent of seats in engineering and medical colleges for educationally and socially backward classes and SCs and STs.

(v) Five years later, in 1967, another five-judge bench in *C.A.Rajendran v. Union of India* reiterated this position, holding that the government is under no constitutional duty to provide reservations for SCs and STs, either at the initial stage of recruitment or at the stage of promotion.

(vi) Article 16(4), it said, does not confer any right on the citizens and is an enabling provision giving discretionary power to the government to make reservation.

(vii) The position went on to be reiterated in several other decisions, including the nine-judge bench ruling in *Indra Sawhney v. Union of India* (1992) and the five-judge bench decision *M.Nagaraj v. Union of India* (2006).

(viii) The top court, however, said that if the



decision of the state government to provide reservations in promotion is challenged then the state concerned will have to place before the court the quantifiable data that reservations became necessary on account of inadequacy of representation of SCs and STs without affecting general efficiency of administrative as mandated by Article 335."

5. This Court is of the considered opinion that it is an admitted fact that the rule of reservation has been followed at the time of appointment and accordingly, adequate representation as per the rule of reservation has been granted. Once the rule of reservation has been implemented in appointment, promotions are to be granted in accordance with the rules in force. Grant of further reservation for promotion is not contemplated under the TANGEDCO services. The Hon'ble Supreme Court also reiterated that State cannot be compelled to provide further reservation for promotion to the higher post. The Hon'ble Supreme Court in C.A.No.1226 of 2010 dated 07.02.2020 (**Mukesh Kumar & Another vs. State of Uttarakhand & Others**) held that reservation in promotion is not a fundamental right. If at all any process of appointment is taken up for direct recruitment to the post of Assistant Executive Engineer, then alone the question of calculating the backlog vacancy would arise, but not otherwise.

6. As far as reservation for promotion is concerned, the Hon'ble Supreme Court in unequivocal terms held that promotion can never be claimed as a matter of right and further, there is no such Reservation Rules in force for promotion in TANGEDCO and for these reasons, the cases of the writ petitioners are to be considered in accordance with the promotion rules in force. Whenever a decision is taken to fill up the promotional post by way of promotion, then all the eligible persons who all are aspiring to secure promotion are to be considered for inclusion of their names in the panel including the names of the petitioner, if they are otherwise eligible.

7. With the above observations, these Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2022

Sub Assistant Registrar(CS)



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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Energy Department,
Fort St. George, Chennai - 600 009.

2. The Principal Secretary to Government,
The State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
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3. The Chairman-cum-Managing Director,
TANGEDCO, 10th Floor, NPKRR Maligai,
144, Anna Salai, Chennai - 600 002.

4. The Chief Engineer (Personnel),
TANGEDCO, 10th Floor, NPKRR Maligai,
144, Anna Salai, Chennai.

+1 CC to M/s.SPL.GP. (SR-21699[F] dated 27/04/2022)

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ss (CO)

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