



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 04.02.2022

ORDER PRONOUNDED ON : 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P. (MD) .No.7110 of 2017

and

WMP (MD) .Nos. 5624 & 5625 of 2017

A.Ponnar

...Petitioner

Vs

1.The Chief Engineer/Personnel

Tamil Nadu Generation and Distribution Corporation Limited

(TANGEDCO)

144, Anna Salai

Chennai - 2

2.The Senior Personnel Officer /Recruitment

O/o.The Chief Engineer

Tamil Nadu Generation and Distribution Corporation Limited

(TANGEDCO)

144, Anna Salai

Chennai - 2

3.Mr.S.Sankar Anand

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the selection list of the 1st respondent and quash the same and direct the 1st respondent to fix the correct cut off marks for each category and to re-do the selection as per rule 22 of the general rules.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
For Mr.J.Anandkumar

For R1 & R2 : Mr.Veerakathiravan
Additional Advocate General
Assisted by Mr.S.Arivazhagan
Standing Counsel for TNEB

ORDER

The above Writ Petition has been filed to quash the selection list of first respondent and direct the first respondent to fix the correct cut off marks for each category and to re-do the selection as per Rule 22 of the Tamil Nadu State and Subordinate Service Rules.



2.The first respondent herein issued a notification on 28.05.2015 calling for selection for the post of Assistant Engineer (Electrical) for the total vacancy of 273. Pursuant to the said notification, the petitioner has applied for the said post through on-line. The petitioner had secured 40.333 marks out of 100 in the written examination conducted on 31.01.2016. The petitioner participated in the viva-voice and secured 1.50 marks. Taking into consideration of 85% of the marks in the written examination and other marks secured by the petitioner, the grand total of the marks secured by the petitioner was 39.477.

Pleadings in the Writ Petition:

3.The petitioner has further contended that he belongs to MBC community and the cut off as per the selection list published by the first respondent is 39.542. The petitioner had challenged the said selection list on the following grounds:

3.(i).The first respondent Corporation has not followed Rule 22 of the Tamil Nadu State and Subordinate Service Rules for selecting the candidates which is based upon 200 points roster.

3(ii).The selection list indicates that the general turn candidates have not been arranged in a descending order of merit. The candidates falling under other communal reservation category have also been not arranged in the descending order of merit.

3(iii).The petitioner has contended that the reserved candidates namely SC, ST, MBC and BC candidates have been accommodated only in the roster and not in the general turn based upon the higher marks secured by them in the examination.

3(iv).In view of the above said fact, the petitioner has lost his opportunity of getting accommodated in the MBC category.

3(v).The petitioner has further contended that as per Rule 5(H) of the Notification, reservation of appointment to Destitute Widows and Ex-Servicemen will not apply to this recruitment. However, in violation of the notification, the first respondent Corporation has given priority to many persons under the category of Ex-servicemen in the selection list.

3(vi).The petitioner has further contended that the horizontal category of reservation meant for women should be accommodated only within the vertical reservation of communal rotation. However, the first respondent Corporation has declared two cut off marks for men and women in EEE category. Hence, it is evident that the horizontal reservation meant for women has not been accommodated within the vertical reservation of communal rotation. This has resulted in double entry and has taken away the opportunity of many persons in the queue.

3(vii).The petitioner has further contended that as per Clause -2 of the notification, 52 seats are reserved under MBC quota for Assistant Engineer/EEE. In such an event, the marks secured by the last candidate namely 52nd candidate should have been fixed as cut off mark for MBC category. However, the cut off mark for MBC category has been fixed based upon the marks secured by the 25th person in the selection list.



3(viii).The petitioner has further contended that those candidates who have secured lesser marks have been accommodated in the general turn and those who have secured higher marks have been accommodated in their respective communal category.

4.The petitioner has contended that in view of various error in the selection list which is clearly in violation of Rule 22 of Tamil Nadu State and Subordinate Service Rules. The petitioner has lost his opportunity of getting selection under MBC category. Hence, he prayed for quashing the selection list and for appointing him under MBC quota.

Pleadings of the respondents:

5.The respondents 1 and 2 have filed a detailed counter. The contentions in the counter are as follows:

5(i).The first respondent Corporation is the successor of Tamil Nadu Electricity Board and the Subordinate Service Rule Regulations are in force for the first respondent Corporation by virtue of Section 181 of the Electricity Act, 2003.

5(ii).The selection and appointment of the candidates to the first respondent Corporation are made as per Tamil Nadu Electricity Board Service Regulations and hence, the contentions of the writ petitioner that Rule 22 of Tamil Nadu State and Subordinate Service Rules have not been followed is not legally sustainable.

5(iii).The first respondent Corporation has contended that Rule 89(3) of Tamil Nadu Electricity Board Service Regulations governs the mode of reservation to be followed at the time of appointment.

5(iv).The first respondent Corporation has further contended 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.

5(v).The first respondent has further contended that pursuant to the direction of this Hon'ble High Court and consequential order of the Government in G.O.No.44 dated 11.03.2015, a decision to recruit personnel from open market as well as from obtaining list from Employment Exchange was undertaken.

5(vi).The first respondent Corporation has further contended that the recruitment to the post of Engineer of the first respondent Corporation is not filled up through TNPSC. Hence, the first respondent Corporation has not adopted Rule 22 of Tamil Nadu State and Subordinate Service Rules and has followed only TNEB Service Regulation No.89(3).

5(vii).The Corporation has further contended that the selection list was prepared based on the merit of the marks and as per communal roster (200 points in the vertical reservation) by the Corporation. Since the source of direct recruitment is through employment exchange as well as through paper publication, the first respondent Corporation has followed G.O.Ms.No.142, dated 14.10.2009 with regard to the priority. Hence, one Saranraj who had applied for the post of Assistant Engineer/EEE by direct recruitment under priority category of Ex-servicemen quota was selected and appointed.



5(viii).In respect of the posts to which the rule of reservation of appointment applies, 30 percent of vacancies shall be set apart for women candidate. Hence, the women candidates shall also be entitled to compete for the remaining 70 percent of vacancies along with male candidates. Since women candidates not only participate under their horizontal reservation of 30%, but also in the general category along with male candidates for 70% of the vacancies, it was necessary on the part of the Corporation to fix two cut off marks for men and women in such category.

5(ix).In general turn, the candidates have been filled up based on the merits of the marks from all the community. In MBC category it has been filled up based on the merits of the marks from MBC community only.

5(x).After filling up the vacancies under general turn and other respective communal category, the Corporation has prepared the cut off marks based on the lowest marks of last candidate of the General Turn, communal category and women quota.

6. The first respondent Corporation has further contended that the rule of reservation has been strictly followed and selection list has been published based upon the marks of the candidates in each one of the categories and there is no violation on any one of the service regulations applicable to the first respondent Corporation.

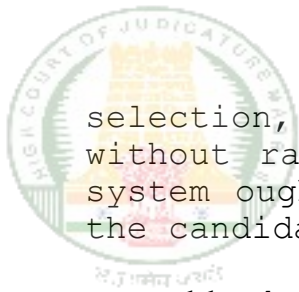
7.The first respondent had further contended that the petitioner had secured only 39.447 marks whereas cut off marks for MBC is 39.542 marks. Hence, the contention of the writ petitioner that he was not selected due to erroneous preparation of selection list is not legally sustainable.

Contentions of the Counsel for the petitioner

8.Based upon the said pleadings, the learned Senior Counsel appearing for the writ petitioner had contended that totally 273 candidates have been selected and there is no segregation in the selection list with regard to the general turn and communal category. He further pointed out that the candidates falling under general turn have not been listed in the descending order of the marks.

9.The learned Senior Counsel further contended that 200 points roster should be used only to identify the number of posts earmarked for various category under vertical reservation. Once the number of vacancy is earmarked for each category in the current selection by using the roster, thereafter the roster will have no further role at all to play in the matter of selection. After identifying the number of vacancies used for each category selection has to be made purely based on merits.

10.The learned Senior Counsel further contended that as per 200 points roster system, the first respondent Corporation has already identified the number of posts in each one of the category even at the time of publication of notification. However, at the time of



selection, the roster system has been followed for the second time without ranking the candidates based upon their marks. The roster system ought not to have been followed at the time of selection of the candidates based upon their marks.

11.The learned Senior Counsel by taking the Court elaborately through the selection list pointed out that the candidate No.1 has secured 36.032 marks, the 2nd candidate has secured 61.826 marks, 3rd candidate has secured 55.707 marks, 6th candidate has secured 57.483 marks. The jumping of the candidates would clearly show that 200 points roster system has been followed in filling up the candidates under the general turn also. As far as general turn is concerned, the question of following 200 points communal roster system does not arise at all. The candidates belonging to all communities irrespective of any priority or otherwise should be accommodated in the descending order of the marks obtained by them. As per notification, 83 posts have been left out for the general turn. Hence, the first 83 candidates should have been accommodated only based upon their marks irrespective of their communal rotation or other priority category. However even in the first 83 candidates, column Nos. 2 and 3 in the selection list indicate the 200 points roster system and the community to which they belong or the priority category to which they belong. Hence, the entire selection list is clearly in violation of the reservation system even as per the notification issued by the first respondent Corporation.

12.The learned Senior Counsel further contended that there is no segregation of the candidates based upon the general turn, SC, ST, MBC and Backward candidates based upon the merit of their marks. All 273 candidates have been arranged in sequence referring to 200 point roster system and their communal category along with priority, if any.

13.The learned Senior Counsel appearing for the petitioner referred to 89(3)(b) of the Tamil Nadu Electricity Board Service Regulations which is extracted as follows:

89(3)(b). The claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities) Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe, Backward Class (other than Most Backward Class/Denotified Community) Backward Class Muslims or Most Backward Class/Denotified Community selected on the basis of merit, the number of posts reserved for the scheduled castes, the scheduled tribes, the backward classes, (other than Most Backward Classes/Denotified Communities), Backward Class Muslims or the Most Backward Classes/Denotified Communities as the case may be, shall not in any way be affected."



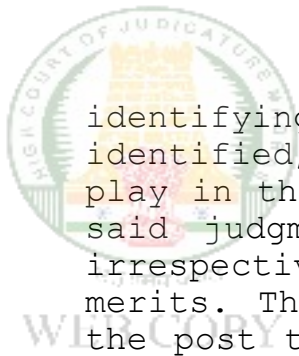
14.The learned Senior Counsel further contended that even assuming that Rule 22 of the Tamil Nadu State and Subordinate Service Rules is not applicable to the appointment of posts to the first respondent Corporation, the above said regulation of the Corporation will clearly indicate that the candidates falling under each reserved category and general turn will be filled only on the basis of merit. As per the said regulations, the candidates accommodated in their communal quota shall not affect their right to participate in the general turn. However, a perusal of the impugned selection list will clearly indicate that a candidate falling under a reserved category have been accommodated only under the reserved category and he has not been accommodated in the general turn despite having secured higher marks than the candidates falling under the first 83 vacancies of general turn.

15.The learned Senior Counsel appearing for the petitioner further contended that as per employment notification published in Clause 5(H), the reservation for destitute widows and ex-servicemen is not applicable under the recruitment. However, a perusal of the selection list will indicate that the 7th candidate in the selection list has been selected under the priority quota of ex-servicemen. He further contended that a perusal of the selection list will indicate that more than 15 persons have been selected under the priority quota of ex-servicemen when the said reservation has been specifically excluded in the employment notification.

16.The learned Senior Counsel relied upon Paragraph No.14 of the judgment of our High Court reported in **2012 7 MLJ Page 241** which is extracted as follows:

"14.A perusal of the above judgments would keep at least two things beyond any pale of doubt. Firstly, the roster is not vacancy based, but the same is only post based. It identifies the number of posts earmarked for various categories under the vertical reservations and posts left behind for open quota as well as special reservations. Secondly, after so identifying the posts, it should be calculated as to how many vacancies are to be filled up under various categories in the current selection. If once the number of vacancies earmarked for each category in the current selection is identified by using the roster, thereafter the Roster will have no further role to play in the matter of selection. After identifying the number of vacancies earmarked for various categories, the selection for each category has to be made purely based on merit following the method detailed below."

17.The learned Senior Counsel further contended that after considering the various Hon'ble Supreme Court judgments and our High Court judgments, the learned Single Judge of our High Court has arrived at a conclusion that 200 points roster is not vacancy based but only post basis. The said roster system can be used only for



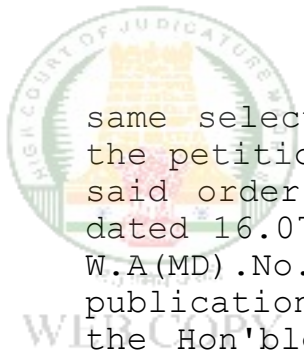
identifying the number of posts. Once number of posts were identified, thereafter the said 200 points roster has no role to play in the selection process. He further contended that as per the said judgment, the general turn candidates have to be selected irrespective of the caste or other priority but only based upon merits. Thereafter, the vertical reservation should be applied for the post that too the candidates should be ranked on the basis of their marks. He further pointed out that after completing the identification of the candidates falling under vertical reservation, the employee has to verify whether the horizontal reservation candidates has already accommodated in the said vertical reservation. Only in a case where horizontal reservation candidates could not get accommodation in the vertical reservation (communal reservation), the authorities have to delete some candidates from vertical reservation so as to accommodate the candidates falling under horizontal reservation. Hence, the learned Senior Counsel contended that in the present case, the general turn candidates falling under 83 vacancies have not been separately indicated. 200 points roster system has been applied even for the general turn candidates. That apart, the roster system has been followed even during the selection process. He further contended that the candidates have been accommodated in their respective communal category only even if they have secured more marks which enable them to get accommodated in the general turn. Hence, he prayed for allowing the writ petition and to quash the entire selection process.

Contentions of the Counsel for the Respondents:

18.The learned Additional Advocate General appearing for the first respondent Corporation has contended that Rule 22 of the Tamil Nadu State and Subordinate Service Rules is not applicable to the first respondent Corporation. He further contended the first respondent Corporation has got a separate service regulation. As per regulation No.89(3)(b), there is no reference about Rule 22 of the Tamil Nadu State and Subordinate Service Rules. The first respondent Corporation has followed a different mode of reservation for selecting and appointing the candidates. Hence, the reference about Tamil Nadu Public Service Commission and Rule 22 of the Tamil Nadu State and Subordinate Service Rules by the writ petitioner is not legally sustainable.

19.The learned Additional Advocate General further contended that the last candidate who was accommodated in MBC has secured 39.542 marks whereas the petitioner has secured just 39.447 marks alone. Hence, the petitioner cannot seek to quash the entire selection process, when he has not secured higher than the cut off marks. He further contended that it is not the case of the petitioner that a candidate falling under MBC quota who has secured lesser marks than to him, has been selected.

20.He further contended that a writ petition was filed by <https://hcservicescourts.gov.in/hcservices/> in W.P.(MD).No.5739 of 2017 seeking to quash the



same selection list. The said writ petition was allowed directing the petitioner therein to be appointed within 12 weeks. However, the said order of the learned Single Judge was set aside by an order dated 16.07.2021 by the Hon'ble Division Bench of our High Court in W.A(MD).No.886 of 2020. When the entire selection process and the publication of the selected candidates has already been confirmed by the Hon'ble Division Bench of our High Court, the request of the petitioner at this point of time cannot be considered. Hence, he prayed for dismissal of the writ petition.

21.I have given anxious consideration to the submission made by the learned Senior Counsel appearing on either side.

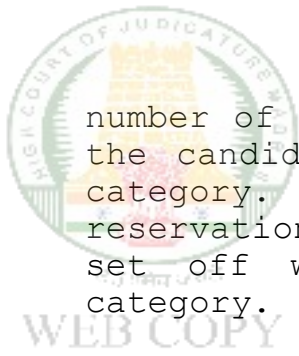
Discussion:

22.There is no dispute that the writ petitioner has applied for the post of Assistant Engineer/EEE pursuant to the notification issued by the first respondent Corporation. There is also no dispute to the fact that he belongs to MBC category and the petitioner has secured 39.447 marks. The only ground on which the petitioner has challenged the selection list published by the first respondent Corporation is that the rule of reservation has not been properly followed by the first respondent Corporation. According to the petitioner, Rule 22 of the Tamil Nadu State and Subordinate Service Rules pertaining to the reservation has not been strictly followed by the first respondent Corporation. However, the Corporation has taken a stand that the said rule is applicable only for the selection made by the Tamil Nadu Public Service Commission and the said rule is not applicable to the first respondent Corporation.

23.Even assuming that Rule 22 of the Tamil Nadu State and Subordinate Service Rules is not applicable to the first respondent Corporation, let us analyse whether the selection list published by the Corporation is in accordance with their own service regulation. As per Clause-2 of the notification, different number of posts have been identified for general turn and other communal categories, totalling 273 candidates for the post of Assistant Engineer/EEE. As per Clause 5(A), the first respondent Corporation has declared that the rule of reservation of appointment is applicable to the post and the distribution of vacancies will be as per rule in force and as per Clause-5(H), the Corporation has declared that the reservation for destitute widows and ex-servicemen is not applicable in the present recruitment.

24.As per regulation 89(3)(b) of Tamil Nadu Electricity Board Service Regulations, the candidates falling under each category shall be ranked according to their merit. In case, a candidate having benefit of communal reservation is accommodated under general turn, the same cannot in any way affect the post reserved for the said communal category.

25.A combined perusal of employment notification along with <https://hcservices.courts.gov.in/hcservices/sevice-regulation> as stated supra, will make it clear that once



number of vacancies are identified as per roster system, thereafter the candidate will be ranked only as per merit in the respective category. Just because, a candidate having benefit of communal reservation is accommodated in the general turn, the same cannot be set off while calculating the vacancies in the said communal category.

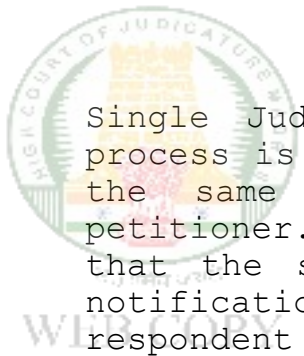
26.A perusal of the impugned selection list will clearly indicate that there is no segregation of the list on the basis of general turn or any one of the communal categories. All 273 candidates have been listed under a single category. The candidates have not been ranked as per their merit either in the general turn or in any one of the communal category (communal reservation has not been shown separately) .

27.The impugned selection list also shows that the roster system has been followed even during the selection process and hence, the candidates have not been ranked in the descending order of the marks secured by them. Some of the candidates have been selected under the priority category of ex-servicemen even though the employment notification clearly indicate that such a reservation is not available for the present selection.

28.In view of the above said discussion, this Court can easily come to a conclusion that de hors of Rule 22 of the Tamil Nadu State and Subordinate Service Rules, the present selection process followed by the first respondent Corporation is clearly in violation of their own service regulation and the employment notification issued by them. The rule of reservation has not been followed even as per their own service regulation. The candidates have been ranked not as per their marks but in a zig-zag manner. The roster system has been followed for all 273 candidates, strangely even for the candidates selected in the general turn. Hence, the entire selection process is completely in violation of the employment notification and their own service regulations.

29.The learned Additional Advocate General appearing for the first respondent Corporation has pointed out that the selection process has already been completed and the appointment orders have been issued way-back in the month of March 2017 and quashing the selection list at this point of time will completely disturb all the prospects of all the selected candidates.

30.The learned Additional Advocate General had relied upon a Division Bench judgment of our High Court dated 16.07.2021 made in W.A(MD).No.886 of 2020 which arises out of an order passed by a learned Single Judge in W.P(MD).No.5739 of 2017 dated 28.02.2020. The said writ petition was filed by the petitioner contending that he falls under the Schedule Tribe- General non priority category. The petitioner had contended that the fourth respondent in the said writ petition has been selected under inter-caste priority quota



Single Judge has arrived at a finding that the said selection process is not in tune with the employment notification and quashed the same and directed the Corporation to appoint the writ petitioner. However, a Division Bench of our High Court has held that the said priority quota has not been excluded in the said notification and hence, the priority granted in favour of the fourth respondent in the writ petition cannot be found fault with. When there was only one vacancy available for ST category and the same has already been filled up by the fourth respondent in the writ petition, the writ petitioner will not be entitled to any other relief. Based upon the said findings, the Hon'ble Division Bench of our High Court has set aside the order of the learned Single Judge and allowed the writ appeal.

31.A perusal of the order of the learned Single Judge and the Division Bench will clearly indicate that the issue of communal rotation and the violation of the rule of reservation were not the subject matter of the said writ petition and the writ appeal. The only issue before the Division Bench was the applicability of priority quota to the said selection. However, in the present case, the employment notification and the service regulation, have been violated in selecting the candidates for Assistant Engineer/EEE for 2015-2017. Hence, the reference made by the learned Additional Advocate General about the said Division Bench Judgment will not be applicable to the facts and circumstances of the present case.

32. A perusal of the impugned selection list will clearly indicate that, if the candidates who have secured higher marks have been accommodated in the general turn instead of their respective communal reservation, certainly the petitioner would get selected under MBC quota. First 83 candidates have been selected under the general turn as per the notification. The last candidate selected in the general turn belonging to MBC community has secured 44.775 marks. In fact, that is higher than the marks secured by the first candidate in the general turn which is 36.032. Many candidates who have been selected under their communal rotation have secured more marks than those selected under the General Turn. Hence, the petitioner has been wrongly deprived of being selected for the post of Assistant Engineer (Electrical), in view of the wrong implementation of the reservation policy by the respondent Corporation.

33.The learned Additional Advocate General has further contended that since the selection of the candidates has already been completed in March 2017, the selected candidates have already joined service, their service cannot be disturbed at this point of time. However, the learned counsel for the petitioner pointed out that still there are vacancies in the said post and he could be accommodated even without disturbing the already selected candidates.



Conclusion:

34.Considering the above said facts and plight of the candidates who have already been selected and joined the service, this Court is inclined to pass the following orders:

(1). The prayer of the writ petitioner to quash the impugned selection list of the first respondent is rejected.

(2).The first respondent Corporation is directed to appoint the petitioner to the post of Assistant Engineer/EEE within a period of 12 weeks from the date of receipt of a copy of this order.

36.With the above direction, this Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

Msa

To

1.The Chief Engineer/Personnel

Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)

144, Anna Salai
Chennai - 2

2.The Senior Personnel Officer /Recruitment

O/o.The Chief Engineer

Tamil Nadu Generation and Distribution Corporation Limited
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+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-20772[F] dated 25/04/2022)

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