IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2023

PRONOUNCED ON : 21.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.20358, 20362 to 20366 of 2010

W.P.No.20358 of 2010:-

1.K.Murugesan
2.K.Perumal
3.C.Murugesan
4.P.Nagarajan
5.M.Kulandaivelu : Petitioners

-vs-

1.The Tamil Nadu Electricity Board,
Rep. By its Chairman,
800, Anna Salai,
Chennai – 2.

2.The Chief Engineer,
(Personnel)
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai – 2.

3.The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamil Nadu Electricity Board,

Mettur Dam, Mettur – 1.

4.K.Velumani,
Assessor,
Office of the Assistant Engineer (O& M),
Tamil Nadu Electricity Board,
Mechari West Section,
Mettur Electricity Distribution Circle,
Salem District.

5.K.Veerappan,
Assessor,
Office of the Assistant Engineer (O& M),
Tamil Nadu Electricity Board,
Konganapuram Section,
Mettur Electricity Distribution Circle,
Edavapadi Taluk, Salem District.

6.N.Nachi Gowndan,
Assessor,
Office of the Assistant Engineer (O& M),
Tamil Nadu Electricity Board,
Sampalli Section,
Mettur Electricity Distribution Circle,
Salem District.

7.A.Murugesan,
Assessor,
Office of the Assistant Engineer (O& M),
Tamil Nadu Electricity Board,
Mettur Rural Section,
Mettur Electricity Distribution Circle,
Salem District.

8.K.Selvakumar,
Assessor,
Office of the Assistant Engineer (O& M),
Tamil Nadu Electricity Board,

Vaikundam Section,
Mettur Electricity Distribution Circle,
Sangagiri Taluk,
Salem District. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent made in (Per) B.P.(F.B.)No.7 dated 21.08.2010 quash the same and direct the respondents 1 and 2 to prepare the panel of Assessors for promotion to the post of Inspector of Assessment by including the petitioners other the Assessors who possess the Special Qualification junior grade Accountancy certificate.

For Petitioners : Mr.S.N.Ravichandran

For Respondents : Mr.K.Rajkumar (R1 to R3)
Standing Counsel
No appearance (R4 to R8)

COMMON ORDER

As the prayer in all the cases is one and the same, these writ petitions have been heard together and disposed of through this common order.

2. In all these writ petitions, the prayer is for issuance of writ of declaration, declaring the impugned board proceedings in impugned (Per)B.P.(FB)No.07 dated 21.08.2010 as unconstitutional, insofar as the petitioners are concerned and for a further direction to the respondents to promote the petitioners as Inspector of Assessment.

3. All the petitioners joined as Assessors on various dates in the Tamil Nadu Electricity Board (in short 'Board') and are working in the office of the Assistant Engineers. All of them have passed the Departmental Junior Grade Accountancy test during August, 2009 and the respondents also sanctioned one incentive increment with effect from 10.08.2009 by order dated 22.04.2010.

4. The Board, based on 12(3) settlement issued an order in B.P.Ms.(FB)No.74, Secretariat Branch dated 25.08.1987. Clause 18 of the above order prescribes passing of special test and sub clause (i) states that, Assessor appointed after the date of settlement should pass Accountancy (Lower Grade) test for considering their case for promotion to the post of Inspector of Assessment and they will be given an advance increment from the date of passing the test. For the post of Inspector of Assessment, possessing Accountancy Junior Grade qualification is vital and essential, both in the interest of Board's administration and consumer welfare.

5. According to the petitioners, the service conditions are regulated by the Tamil Nadu Electricity Board Service Regulations. In Regulation 96(2), the method of promotion and the respective qualifications both technical and educational are stipulated. The next avenue of promotion is to the post of Inspector of Assessment, for which a pass in Accountancy Junior Grade test is a special qualification to consider the names of the Assessor for promotion to the post of Inspector of Assessment as per order in B.P.(FB).No.48 dated 19.11.2007 by way of amending the service regulations in Amendment No.5 of 2007.

6. For the past 20 years, promotions were made only on the basis of the aforesaid qualification method. Now, the Board succumbed to the pressure of certain vested interested inefficient (in service) group and deleted this qualification for promotion to the post of Inspector of Assessment. The Board passed and order in (Per).B.P.(FB)No.7 (Administrative Branch) dated 21.08.2010, decided to amend the regulation so as to dispense with this qualification of passing of the Accountancy (Junior Grade) test for the purpose of promotion to the post of Inspector of Assessment.

7. The common case of the petitioners is that the qualification prescribed for the post of Inspector of Assessment on the date of vacancy alone is relevant and those who are qualified on that date are entitled for consideration and promotion if they are not disqualified otherwise. The vacancy of 1641 Inspector of Assessments fell as on date throughout the State.

8. The petitioners have further pleaded that there is a chequered history of making similar amendment by the respondents in the Accounts Branch and the same was negatived and set at naught by the judicial orders passed by this Court in W.P.No.10055 of 2006 dated 19.12.2007, as against which, the Board preferred an appeal in W.A.No.1613 of 2007 before this Court, in which the Division Bench of this Court directed the Board to implement their proposal as made at Clause (a), (b) and (c). Insofar as rest of the Accounts Supervisors are concerned, who have not been empaneled, the respondents were directed to take a decision in regard to their upgradation, taking into consideration the settlement reached under Section 12(3) of the Industrial Disputes Act, 1947 and pass appropriate orders after negotiating the matter with all concerned interested Unions (Associations, Federations, Sangams, etc.,).

9. Pursuant to the above order, the Board attempted to promote the unqualified hands. One Srishankar filed a writ petition in WP.No.23106 of 2009 and by order dated 14.07.2010, this Court directed the Board to promote 800 qualified hands as on 30.06.2010 out of 915 vacancies and remaining vacancy to be filled with unqualified hands after negotiation with the Board by the respective Unions. This clearly discloses the intention of the Board is to promote the unqualified in every field.

10. The common ground agitated by the petitioners challenging the Board proceedings in impugned (per) B.P.(FB)No.07 dated 21.08.2010 (in short 'impugned proceedings') is that by passing of the proceedings, it is an attempt to promote the unqualified assessors for the post of Inspector of Assessment in dispensing the passing of required Junior Grade Accountancy Test as per the Tamil Nadu Electricity Board Service Regulation - 96(1)(b). A reliance is placed upon by the petitioners in B.P.Ms.(Ch)No.212, Secretary

Branch, dated 12.06.1987 and the relevant portion is extracted hereunder:-

> *"It is noticed that panels of officials suitable for promotion to higher posts are prepared on the basis of requirements assessed as and when necessity arises rather than on a scientific basis. It is considered desirable that panels are prepared well in advance to meet the requirements of one year so that appointments can be made from the panel when necessity arises therefore, without any delay, thereby eliminating the need for keeping a post vacant. After careful consideration, it has been decided that a crucial date be fixed for preparation of panel for each category and a programme of action also determined so as to ensure that the panel is prepared well in advance, The validity of the panel will be for one year from the date of approval of panel."*

11. On the factual situation, the petitioners stated that on the date of impugned Board proceedings, there were nearly 1641 vacancies for the post of Inspector of Assessment. They relied upon the judgment of Hon'ble Supreme Court for the earlier attempt made by the very same respondents in Civil Appeals No.6961-6966 of 1983 dated 23.02.1995 and the relevant portion is extracted hereunder:-

> *"It was rightly held that Section 79 of the*

Electricity Supply Act 1748 did not permit the delegate to make subordinate legislation with retrospective effect. So far as the validity of the above Regulations on the avail of Article 14 and 16 was concerned it was held that granting exemption from passing the test to persons who have failed in the examination for three times would be arbitrary on the fact of it. We agree with the High Court that by permitting thrice failed candidate to be considered for promotion of exempting the test would amount to give premium to inefficiency. We see no ground to interfere with the impugned judgment of the High Court. We agree with the reasoning and the conclusion- reached therein. The Civil Appeals are dismissed. No costs."

12. Thus, the learned counsel appearing for all the petitioners would state that the qualified Assessors are available for the promotion to the post of Inspector of Assessment and any promotion to the unqualified employees from the post of Assessors is ultravires and the Regulation 98(i)(b) and 96(i)(b) are liable to be struck down. The impugned proceedings of the second respondent in dispensing with technical qualification of pass in Accountancy Junior Grade test for the Assessors for the promotion to the post of Inspector of Assessment is passed on 21.08.2010. However, as on date, there are many persons like the petitioners, qualified and eligible for promotion prior to the impugned proceedings and hence, the petitioners are to be promoted as Inspector of Assessment. A reliance is placed on the judgment of the Hon'ble Apex Court in ***Y.V.Rangaiah and Others vs. J.Sreenivasa Rao and Others*** reported in ***1983 (3) SC 284***.

13. The second respondent filed counter in all petitions and the petitions filed for vacating stay are also adopted as counters in the main writ petitions. In the counter dated 24.09.2010, it is averred that through the proceedings in +B.P. Ms. (FB) No.74, dated 25.08.1987, orders were issued to implement the bi-monthly system of card billing of energy charges and collection as per the settlement reached with the unions under section 12(3) of I.D. Act, 1947. The above settlement came into effect from 01.10.1987. In the aforesaid proceedings, it has been ordered that passing of Accountancy (Junior Grade) Test by Assessors, who were appointed as Assessors in the Board on or after the date of settlement (i.e.) 01.10.1987, is a must for considering them for promotion to the post of Inspector of Assessment. Accordingly the Board has issued amendment to the Tamil Nadu Electricity Board Service Regulations vide the proceedings in Per. B.P.

(FB) No.48/Sectt. Branch/dated 19.11.2007.

14. A three members committee was constituted in (Rt) B.P. (Ch) No.4 (Adm.Br.) dated 17.07.2010, comprising of (1) Superintending Engineer/Chennai EDC/North (2) Financial Controller/Revenue and (3) Executive Engineer/O&M/Anna Salai Division to study the requirement or otherwise of the Accountancy (Junior Grade) Test for the Assessors, for their promotion to the post of Inspector of Assessment considering their nature of job in the present context of computerization of LT Billing under Project Best and make suitable recommendations. The finding of the committee was accepted and consequently, qualification prescribed in the aforesaid board proceedings was dispensed with, which resulted in passing of the impugned proceedings.

15. The learned counsel appearing for the official respondents stated that it is always permissible for the Board to do away with the qualification once he finds that such a qualification is outdated or unnecessary and also stated that majority of the unqualified assessors have already completed 23 years of service and they are at the verge of the retirement and hence, in order to provide a small promotion before retirement, the Board proceedings appears to have been passed.

16. When the matter was posed for final disposal after hearing the rival submissions on either side, it appears that all the petitioners have filed an undertaking affidavit stating that they are willing to forego backwages in the claim for promotion notionally with effect from 02.11.2010. Accordingly, at para 2 of the undertaking affidavit, they have stated as follows:-

"......I am willing to forego the backwages for promotion to the post of Inspector of Assessment with effect from 02.11.2010 to 19.04.2012 and to keep seniority in appropriate place in the seniority list of the Inspector of Assessment with all attendant benefits......"

17. The learned counsel appearing for the petitioners stated that based upon the undertaking affidavit, orders may be passed.

18. Heard the learned counsel appearing for the petitioners and the learned standing counsel for the respondents.

19. The writ petitions have been filed challenging the impugned board proceedings dated 21.08.2010, whereby the passing of the Accountancy Junior Grade test for promotion to the post of Inspector of Assessment was dispensed with. The docket orders passed by this Court reveal the fact that by order dated 03.09.2010 in the miscellaneous petitions, this Court has granted interim stay of the implementation of the impugned Board proceedings with retrospective effect.

20. By order dated 02.11.2010, the above said interim order was modified as under:-

"......Hence, the stay granted already stands vacated reserving the right of the 11 petitioners alone in the seven writ petitions, insofar as the right of the petitioners is concerned and directed the Board to keep 11 posts vacant till the disposal of the writ petitions and all other vacancies can be filled up......"

21. From the counter filed by the Board, it is stated that on the date of modification order, ie., 02.11.2010, 1169 qualified assessors have been promoted as Inspector of Assessment, who are at the verge of retirement. However, the petitioners are eligible for promotion to the post of Inspector of Assessment as on 02.11.2010, however, promoted only on 31.04.2012. Some of the persons have been promoted on 19.04.2012.

22. After perusing of the order of modification dated 02.11.2010, the respondent Board was directed to keep 11 posts vacant, which are still vacant. On the facts and circumstances of the case, I find from the decision of the Hon'ble Apex Court in ***Y.V.Rangaiah and Others vs. J.Sreenivasa Rao and Others*** reported in ***1983 (3) SC 284*** that the vacancies that are occurred prior to the amendment Rules, could be covered by the old Rules and not by the amended Rules.

23. The factual matrix of these cases is squarely applicable under the ratio laid down by *Y.V.Rangaiah* case referred to supra. In ***Union of India and Another vs. The Central Administrative Tribunal, Chennai and Others*** reported in ***2009 Writ L.R.82***, the Division Bench of this Court has proved the said decision and also held as follows:-

> *".....It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority.....*
>
> *The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a ell-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights.*
>
> ......
>
> *By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallised.*
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> ....
>
> *Undoubtedly, the Government has got the power under proviso to Article 309 of the Constitution to make rules and amend the rules giving retrospective effect. Nevertheless, such retrospective amendments cannot take away the vested rights and the amendments must be*

reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution....

....

At any rate, law is well settled that the Executive Instructions cannot be issued retrospectively affecting any right."

24. Considering the above, I am inclined to accept the contention of the learned counsel appearing for the petitioners, since the facts and circumstances are similarly covered in *Y.V.Rangaiah* case referred to supra.

25. In view of the affidavit of undertaking filed by the petitioners, these writ petitions are partly allowed to the limited extent that (i) the relief of declaration of declaring the impugned proceedings dated 21.08.2010 is unconstitutional is only in respect of these petitioners alone; (ii) by virtue of the affidavit of undertaking, the petitioners are not entitled for the backwages for the promotion to the post of Inspector of Assessment with effect from 02.11.2010 to 19.04.2012; (iii) The petitioners are entitled to notional promotion as Inspector of Assessment without backwages till 2012 and the seniority in the appropriate place in the seniority list of Inspector of Assessment with all attendant benefits is hereby granted. No costs.

21.12.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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TO:-

1.The Tamil Nadu Electricity Board,
Rep. By its Chairman,
No.800, Anna Salai,
Chennai – 2.

2.The Chief Engineer,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai – 2.

RMT. TEEKAA RAMAN, J.

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Pre-Delivery Common Order made in
W.P.No.20358, 20362 to 20366 of 2010

Dated:
20.12.2023