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Writ Petition No.32157 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2023

PRONOUNCED ON : 08.08.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.32157 of 2005

M.Sankar

.... Petitioner

Vs.

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

2. The Chief Engineer (Personnel),
T.N.E.B.,
800, Anna Salai,
Chennai – 2.

3. The Superintending Engineer, (C.E.D.C., South),
T.N.E.B.,
110 KV S.S.,
K.K. Nagar Complex,
K.K.Nagar, Chennai – 83.

.... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to per B.P.(F.B) No.26 Administrative Branch dated 16.8.2005 of 1st respondent and the consequential letter by 2nd respondent dated



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31.8.2005 made in letter No.054161/276/G55/G551/2005-1 quash the same in so far as the petitioner is concerned and direct the respondents to consider and appoint the petitioner to the post of Assistant Engineer (Electrical) by Internal selection as applied for by the petitioner in the application dated 26.9.2005.

For Petitioner: : Mr.K.Selvaraj

For Respondents : Mr.David Sundar Singh
Standing Counsel for TANGEDCO

ORDER

The petitioner has filed this petition for a Writ of Certiorarified Mandamus for quashing the Board Proceedings of the 2nd respondent viz., Per.BP (FB) No.26 Administrative Branch dated 16.08.2005 and consequential letter dated 31.08.2005 in respect of the petitioner alone and further prays for a direction to post him as Assistant Engineer/Electrical by internal selection.

2. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent-Board and perused the documents.

3. The service matrix of the petitioner is that the petitioner is a Diploma Holder in Electrical and Electronics Engineering in the year 1996 and he joined the service of the Board on 17.09.1999 as Technical Assistant and



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joined B.E (Electrical) Degree, as part time course in the year 2002 and completed the course in the year 2005.

4. It appears that before acquiring B.E. qualification in May 2005, the method for recruitment according to Regulation 92 of the Tamil Nadu Electricity Board Service Regulation in the post of Assistant Engineer is to be filled up by internal selection and Direct recruitment in the ratio of 1:1. For the purpose of appointment, all internal selection will be made on the basis of the service rendered after acquiring B.E.

5. It appears that as per the counter statement, the (Per).B.P.(FB) No.31, (Adm. Branch) dated 04.12.2000, written examination was added as an additional factor for the recruitment to the post of Assistant Engineer/Electrical, both by direct recruitment and internal selection, which resulted in filing of WP No.20157 of 2000. Therefore, in view of the said writ petition, vide another Board Proceedings in (Per.) B.P.No.59 (SB) dated 13.11.2001, the system of conducting written examination has been dispensed with for internal selection and however, vide (Per.)B.P.(FB)No.17 (SB) dated 06.03.2002, further condition that internal selection shall be made based on a minimum length of service rendered after acquiring B.E. Degree or equivalent qualification as may



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be decided by the Board from time to time, was imposed, as the eligibility criteria.

6. Following BP No.17 dated 06.03.2008, the Board has withdrawn the written examination for internal selection and prescribed the rule that minimum period of one year regular service may be rendered after acquiring B.E. Degree or equivalent qualification for internal selection to the category of Assistant Engineer/Electrical, Mechanical and Civil thereof. The said BP No.26, is under challenge.

7. As stated above, the narration of events leading to the present Board Proceedings i.e. B.P.No.26, is clear and it is stated that the required minimum period of one year regular service after acquiring BE Degree or equivalent qualification, is essential to apply on the date of call letter and also stated that the Board is competent to frame service regulations and to supplement the same; the respondent board is also empowered to issue directions from time to time and the conditions now imposed does not vitiate the service regulation.

<https://www.mhc.tn.gov.in/judis> 8. On factual position, learned standing counsel for the respondent-



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Board stated that since the petitioner has passed BE Degree in May 2005, in view of the amendment by way of Board Proceedings B.P.No.26 impugned herein, he should serve for one year and thereafter only he could be considered for promotion and therefore, he is not eligible to be considered for the present internal selection.

9. Learned counsel for the petitioner could contend that the Board in exercise of powers conferred under Section 79(c) and (k) of the Tamil Nadu Electricity Supply Code framed Regulation called Tamil Nadu Electricity Board Service Regulations, which is having the statutory posts. The regulation is an additional service requirement applicable to the petitioner. Regulation prescribes internal selection and direct recruitment to the post of Assistant Engineer (Electrical). The eligibility for internal selection is only a decree in Electrical and Electronics Engineering and no further condition is imposed much less as stated in the impugned order that a minimum period of one year regular service, is required after acquiring BE Degree or equivalent qualification and therefore, the present impugned B.P.No.26 is violative of the above rules.

10. My attention is drawn to the fact that for the direct recruits there is no restriction as to the year of completing BE degree whereas prescribing



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such a condition to the employees of the Board for internal selection is discriminating the better person for the appointment, in short, when no such condition has been imposed for recruitment made in earlier period, the petitioner has accrued the right on this ground also and thus, challenged the impugned Board Proceedings.

11. Admittedly for the direct recruitment of similar post, no such condition of one year experience after acquiring BE Degree is incorporated. The only contention raised by the learned Standing Counsel for the respondent-Board is that the petitioner cannot insist that his application should be considered even though he does not possess the minimum requirement of one year regular service after acquiring BE degree.

12. In the instant case, the petitioner has obtained BE degree in May 2005. He applied for the post in the year June 2005. In view of the amendment that was brought in by way of impugned BP No.26, the service candidate should have rendered a minimum period of one year service after acquiring the BE degree.

<https://www.mhc.tn.gov.in/judis> 13. In the reply affidavit it is brought to my notice that by (Per.)BP



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No.10 Administrative Branch dated 06.05.2006, the 2nd respondent has relaxed the prescribed norm of one year regular service after acquiring BE Degree in respect of certain category of people on the ground that no such person in that category is available.

14. This Court is not expressing anything with regard to the said relaxation by the said proceedings BP No.10 dated 06.05.2006. The condition that was newly added with effect from 2005 prescribing one year minimum service after acquiring the BE Degree has been relaxed which shows that it is not a technical post. Had it been a technical post, there should have been no such relaxation for any person, as the case may be.

15. In the instant case, it is also not in dispute by the respondent-Board that for direct recruitment there is no such restriction that he should have worked for one year after acquiring BE decree and hence, I find that such a prescription of rendering minimum period of one year regular service after acquiring B.E degree is not in consonance with the Board's Regulations. Further, it is represented by the learned counsel for the writ petitioner that the petitioner has been permitted to apply for the internal selection in the subsequent year and was promoted on 03.03.2007.



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16. Since the petitioner has already retired from service, in the interest of justice, this Court is inclined to pass the following orders:

(i) the respondents are directed to give notional promotion to the petitioner herein from the year 2005, however he is not entitled for any arrears of pay between 2005 and 2007, on the principal of 'No Work No Pay'.

(ii) Periodical increment has to be given notionally and has to be calculated only for monetary purpose and such an order shall operate prospectively.

17. To the limited extent indicated above, the writ petition stands allowed. No costs.

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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08.08.2023



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To

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RMT.TEEKAA RAMAN,J
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Pre-delivery order in
Writ Petition No.32157 of 2005

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