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W.P.No.15482 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM :

The Hon'ble MR.JUSTICE ABDUL QUDDHOSE

**W.P. No.15482 of 2020
and W.M.P.Nos.19326 and 19327 of 2020**

1. K.Rajaraman
 2. R.Hariharasubramanian
- .. Petitioners

-VS-

1. Tamil Nadu Generation and Distribution Corporation Ltd., Rep. by its Chairman-cum-Managing Director, 10th Floor, NPKRR Maaligai, 144, Anna Salai, Chennai 600 002.
 2. The Chief Engineer-Personnel, Tamil Nadu Generation and Distribution Corporation Ltd., 8th Floor, NPKRR Maaligai, No.144, Anna Salai, Chennai 600 002.
- .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the selection list published for Direct Recruitment for the Post of Assistant Engineer/ Electrical 2017-2019 in Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) pursuant to Notification



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No.01 of 2018 dated 14.02.2018 is vitiated by illegality and consequently direct the 2nd respondent fit candidates who have secured high marks against the General Turn points in the 200 point roster irrespective of their community and fit the petitioners who have secured 49 marks in the written exam in the Backward Class turn in the 200 point roster and appoint them for the post of Assistant Engineer, Electrical and Electronic Engineering 2017-2019.

For Petitioner : Mrs.Nalini Chidambaram,
Senior Counsel
for Mrs.C.Uma

For Respondents : Mr.K.Rajkumar,
Stdg. Counsel

* * * * *

ORDER

This writ petition has been filed for a declaration to declare that the selection list published for direct recruitment to the post of Assistant Engineer/Electrical 2017-2019 in TANGEDCO pursuant to Notification No.01 of 2018 dated 14.02.2018 is vitiated by illegality and a consequential direction has been sought to direct the 2nd respondent to fit candidates who have secured high marks against the General Turn points in the 200 point roster irrespective of their community and fit the petitioners who have secured 49 marks in the



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written examination in the Backward Class turn in the 200 point roster and appoint them in the post of Assistant Engineer, Electrical and Electronic Engineering 2017-2019.

2. As per the aforementioned recruitment notification, 81 posts were reserved for general turn. According to the petitioners, as per the rule of reservation, 39 candidates barring GT Women should have been selected against the GT turn purely based on merit. But, according to the petitioners, on scrutiny of the selection list, it shows that one Mr.Ashutosa Kumar, who secured 88th rank in the merit list, was selected against the GT turn. Also, one Mr.Dinesh Kumar, who scored highest marks of 67.33 in the written examination was selected against the BC turn instead of GT turn. It is also stated by the petitioner that Vignesh D. who scored 62.67 marks is fitted against the MBC turn instead of being fitted against GT turn.

3. According to the petitioners, if the first respondent had understood the scope of rule of reservation and communal roster, the above anomalies would not have arisen in the selection list and the petitioners belonging to the BC community who had scored 49 marks



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would have got selected against the 30% of the vacancies reserved for BC candidates. In the aforementioned circumstances, the petitioners claim that the entire selection list published for the post of Assistant Engineer in TANGEDCO pursuant to the notification No.01/2018 dated 14.02.2028 is vitiated by illegality. According to the petitioners, they are entitled to be appointed as Assistant Engineer (Electrical/Electronic) in TANGEDCO in view of the irregularities committed by the respondents in the selection process.

4. According to the petitioners, similarly placed persons, namely, J.Aravind and M.Sathiyamoorthy, who had also questioned the selection process under the very same impugned recruitment notification, had approached the Madurai Bench of this Court in W.P. (MD) Nos.12887 and 13092 of 2019 and they were granted the relief sought for.

5. In the case on hand, a counter has been filed by the respondents (TANGEDCO), wherein in paragraph 14, it has been stated as follows:



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"14. .. the mode of selection for all the Direct Recruitment/ Internal selection is made based on the merit of the marks and as per communal roster as per G.O.Ms.No.65 (P&AR) Dept., dated 27.05.2009 (200 points communal roster) issued by the Government of Tamil Nadu and as per Regulation 89 of TNEB Service Regulation, wherein in Regulation 89(3)c of TNEB Service Regulation, it was specifically stated that selection for appointment shall be made in the order of rotation specified in roster. In the 200 points communal roster, the turn specifically marked for General category are filled up by the candidates based on the merit of hte marks irrespective of their community and in the case of turns marked for BCO, MBC, SC, ST, SCA, BCM then such turns are filled up based on the merit of the marks from their respective community. TANGEDCO has not violated any norms and conditions of the TNEB Service Regulation and communal roster for preparation of the selection list. Moreover, there is no specific instruction or orders received from the Government of Tamil Nadu, to select General category initially and thereafter to follow the communal roster as requested by the petitioners. ..."



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6. Heard Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioners and Mr.K.Rajkumar, learned standing counsel appearing for the respondents-TANGEDCO.

7. The learned standing counsel appearing for the respondents-TANGEDCO raised the very same contentions that were raised by the learned Additional Advocate General before the Madurai Bench of this Court. He would submit that TANGEDCO has its own independent Service Regulations and what is applicable to the Government servants of the Government of Tamil Nadu would not apply to TANGEDCO employees. According to the learned standing counsel, 200 points communal roster was followed and that is how the impugned selection list was published.

8. This Court is unable to accept the said contention raised by the learned standing counsel appearing for the TANGEDCO. As rightly pointed out by the learned senior counsel appearing for the petitioners, the turns specifically marked for general category are filled up by the candidates based on the merit of the marks irrespective of the community. The issue is no longer *res integra*.



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The Hon'ble Supreme Court, in the decision rendered in ***State of Tamil Nadu vs. Shobana*** reported in **2021 (4) SCC 686**, held that the principle that such of the reserved category candidates who make it on their own merit have to be adjusted against the general category vacancies cannot be doubted or argued in view of the catena of judgments already pronounced by the Hon'ble Supreme Court.

9. In the case on hand, the error committed by the TANGEDCO is that the meritorious reserved category candidates were not appointed against general category vacancies. Therefore, the case projected by the writ petitioners have to be necessarily accepted.

10. The Madurai Bench of this Court, in respect of the writ petitions filed by similarly placed persons in W.P.(MD) Nos.12887 and 13092 of 2019 by order dated 12.09.2022 has also taken the very same view, but however was not inclined to quash the selection list. This Court is also in agreement with the view taken by the Madurai Bench of this Court in its order dated 12.09.2022 referred to supra. The Madurai Bench of this Court followed the order dated 25.04.2022 passed by a learned Single Judge in W.P. (MD) No.7110 of 2017



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(A.Ponnar vs. The Chief Engineer/Personnel, Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO), Chennai), for not quashing the impugned selection list, but instead granting the relief the petitioners had sought for in the writ petitions. This Court is also in agreement with the said view.

11. Further, in the instant case, the persons who have been selected are not party respondents and therefore, this Court cannot quash the entire impugned selection list which will be detrimental to their interest.

12. The learned standing counsel appearing for the TANGEDCO would also submit that the order of the Madurai Bench of this Court was the subject matter of challenge before the Division Bench, which was also dismissed on the ground of delay.

13. Therefore, it is clear that the order of the learned Single Judge dated 12.09.2022 passed in W.P. (MD) Nos.12887 and 13092 of 2019 has attained finality. However, the learned standing counsel appearing for the respondents (TANGEDCO), after drawing the



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attention of this Court to the following authorities, namely,

- a) ***S.S.Balu vs. State of Kerala and others, (2009) 2 SCC 479;***
- b) ***Jagdish Lal and others vs. State of Haryana and others, (1997) 6 SCC 538;*** and
- c) ***Bharat Sanchar Nigam Limited vs. Ghanshyam Dass, (2011) 4 SCC 374;***

would submit that the present order should not be treated as a precedent, as there are so many fence-sitters who have missed the bus and who have not approached this Court at the earliest point of time. After perusing the aforementioned judgments, this Court is in agreement with the apprehension raised by the learned standing counsel appearing for the respondents-TANGEDCO.

14. Since the respondents have committed an error in the selection process and the petitioners have been able to convince this Court that they are entitled for appointment to the subject post, necessarily the writ petition will have to be disposed of by directing TANGEDCO to appoint the petitioners to the post of Assistant Engineer (Electrical/Electronic) within a period of four weeks from today, without there being any further delay. Their appointment will



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date back to 05.02.2020. However, it is made clear that the petitioners are not entitled to any consequential arrears of pay. It is also made clear that in view of the decisions relied upon by the learned standing counsel for the respondents-TANGEDCO, which have been referred supra, this order shall not be treated as a precedent in future, as any future claim will be hit by delay and laches.

With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.01.2023

Index : Yes/No

Speaking/non-speaking order

sra



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- To
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Corporation Ltd., 10th Floor,
NPKRR Maaligai, 144, Anna Salai,
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Abdul Quddhose, J.

(sra)

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