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W.P No.18664 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.18664 of 2019

And

W.M.P.Nos. 6566 & 6565 of 2022

And

W.M.P.Nos. 18007, 18010 of 2019

1. Sankaralingam Archana Devi
2. Sangavi Natarajan ... Petitioners

-Vs-

1. Tamil Nadu Generation & Distribution Corporation Ltd.,
Rep. by its Chairman cum Managing Director
144, Anna Salai, Chennai - 600 002.
2. The Chief Engineer/Personnel
Tamil Nadu Generation & Distribution Corporation Ltd.,
144, Anna Salai, Chennai - 600 002.
3. The Superintendent Engineer
CEDC/North/Chennai -2
Tamil Nadu Generation & Distribution Corporation Ltd.,
144, Anna Salai, Chennai - 60 002.



W.P No.18664 of 2019

4. Thiru. A.Kanakasivan

... Respondents

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PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records from the first respondent relating to the Board Proceedings Ms.No. 733 dated 16.06.1975 and quash the same as illegal, arbitrary, without jurisdiction and contrary to Regulation 97 of the Tamil Nadu Electricity Board Service Regulations and in violation of Article 14 and 16 of the Constitution of India and to consequently direct the respondents 1 and 2 to publish the seniority list of Junior Assistants/Accounts recruited through selection conducted pursuant to notification No.02/2016 dated 29.02.2016 in terms of Regulation 97 of the Tamil Nadu Electricity Board Service Regulations and consider them for promotion to the post of Assistant based on that by considering their representation dated 12.06.2019.

For Petitioners	:	Mr. K.Srinivasa Murthy for M/s. Row and Reddy
For RR 1 to 3	:	Mr. Anand Gopalan for M/s. T.S. Gopalan & Co
For 4th Respondent	:	Mr. S.N. Ravichandran

ORDER



W.P No.18664 of 2019

WEB COPY

The Writ Petition has been filed by two petitioners who both stand on equal footing and therefore, after obtaining necessary permission as is required under the Rules have filed a single Writ Petition.

2. The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records of the first respondent /the Chairman cum Managing Director, Tamil Nadu Generation & Distribution Corporation Ltd., at Chennai, relating to Board Proceedings Ms.No. 733, dated 16.06.1975 and quash the same as being contrary to Regulation 97 of the Tamil Nadu Electricity Board Service Regulations and in violation of Articles 14 and 16 of the Constitution of India and to direct the first and second respondents /the Chairman cum Managing Director and the Chief Engineer/Personnel, both of Tamil Nadu Generation & Distribution Corporation Ltd., at Chennai, to publish the seniority list of Junior Assistants/Accounts recruited through selection conducted consequent to notification No.02/2016 dated 29.02.2016 in accordance with Regulation 97 aforementioned. The petitioners seek that they should be considered for



W.P No.18664 of 2019

promotion to the post of Assistant on the basis of a representation given by them dated 12.06.2019.

3. Even before entering into any further discussion either on facts or on the arguments, let me make it very clear that since the issue involved in the Writ Petition can be examined only on the basis of Regulation 97 of the Tamil Nadu Electricity Board Service Regulations alone, the Court is not examining Board Proceedings Ms.No. 733 dated 16.06.1975.

4. Arguments advanced on behalf of the petitioner was to place reliance on the same more on the aspect that it is not applicable to the petitioners herein. No arguments were advanced that is violative of any rules or regulations. The petitioners place reliance on Regulation 97 aforementioned and this Court has answered the issues raised in the Writ Petition based only on Regulation 97 and not on Board Proceedings Ms.No.733 dated 16.06.1975.

5. Both the writ petitioners have been selected on direct recruitment to the post of Junior Assistant / Accounts consequent to an



W.P No.18664 of 2019

WEB COPY

examination conducted under the aegis of the respondents in the year 2016-2018. The selection process was by a written examination for a period of two hours for 85 marks out of 100 marks and the balance 15 marks was to be awarded for an interview to be conducted. Both the petitioners along with others had appeared for the examination. Totally 250 candidates had been declared successful. There were yet another 13 candidates, who have been placed in the waiting list. The list has been filed as a document to the Writ Petition. The list contains serial Nos. 1 to 250, who were actually given posting orders and of-course, the remaining 251-263, who had been categorised in the waiting list. No arguments were advanced with respect to the candidates in the waiting list.

6. In so far as the list of 1 to 250 candidates, the first petitioner was ranked 56, having secured a total of 45.65 marks. The second petitioner was ranked 13 having secured a total of 54.73 marks. The petitioners seek this rank should be maintained at all times in so far as the 250 candidates who had been so selected are concerned. This is the primary scope of the writ petition and the relief sought.



W.P No.18664 of 2019

WEB COPY

7. I am confident that the respondents would also, even without a Mandamus or direction from this Court maintain the rank list. The respondents also have various other cadres and they will have to cater their interests also. But this rank list of 1 to 250 candidates is based on the marks obtained both in the written examination and in the via-voice must always be maintained in so far as these 250 candidates alone are concerned.

8. I do not see any scope for an adversial lis in this particular aspect.

9. A candidates writes an exam and secure particular marks and then attends interview and is assessed and the total marks are given. On the basis of that total mark, their rank and seniority is prepared and maintained.

10. The petitioners probably were a little agitated that their promotions were not given in time. They should have waited for their turn. The promotion can be given only as and when vacancies arise. They had



W.P No.18664 of 2019

given a representation seeking a direction that this particular list should also be maintained so far as seniority is concerned.

11. At the time of filing of the Writ Petition, apprehending that this particular rank list would not be adhered to, they had also sought a stay of all further promotions to be granted by the respondents. An interim stay was also granted.

12. At that juncture, the fourth respondent had filed an application seeking to implead himself as a further respondent in the Writ Petition in W.M.P.No. 35944 of 2019 and accordingly, an order has also been passed on 07.02.2020 by a learned Single Judge of this Court. The fourth respondent had raised an apprehension, that the fourth respondent though not a candidate out of the 1 to 250 candidates, and belonging to another cadre of service, who is also eligible for promotion, consequent to stay being granted would never be considered for promotion and therefore filed an application that promotion should not be stayed in entirety.



W.P No.18664 of 2019

WEB COPY

13. The learned counsel for the first respondent had stated that a promotion list had been drawn up and that the petitioners would also be promoted. The issue was thus resolved and the petitioners and the 4th respondent were thereafter promoted to whatever posts they were eligible to be promoted. Again that is not an issue to be examined by this Court.

14. The writ petitioners are concerned only with the list published which gives them Rank Nos. 56 and 13 respectively. They will remain in that particular rank so far as the other candidates who had been similarly directly appointed along with them and whose names are found in this list.

15. The Court is also not examining any other issue but only retaining this particular selection list and the rank list. I am informed that subsequent to the statement made by the learned counsel for the first respondent the order of stay has also been vacated and the petitioners has also been promoted to whatever posts they were eligible to be promoted. The Seniority list can never be interfered with so far as the ranking of 1 to



W.P No.18664 of 2019

250 candidates are concerned.

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16. When the petitioners widened the scope of the Writ Petition by questioning promotions of every other eligible employee, the first respondent had raised an issue and insisted on notice being issued to all who would be affected. Therefore, an impleading application was filed to implead as the fifth respondent B.Rathi, who was Assistant / Accounts, Theni EDC and also to confer on her the honour to represent all those in the Electricity Department who had been recruited along with the petitioners in notification No. 2/ 2006 dated 29.02.2016. It has to be reiterated that the ranking of the candidates 1 to 250 must be retained. There would not be any circumstance to upset the rank list except for administrative reasons and for reasons which the respondents hold justified. That would be an exceptional case and not normal.

17. The learned counsel for the petitioner placed strong reliance on the judgment of a Division Bench of this Court in **W.A.No. 731 of 1999**



W.P No.18664 of 2019

[Arul Anand Vs. The Oil and Natural Gas Commission and two others].

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The Division Bench by its order dated 10.12.2003 also considered the rank list in accordance with merit even when a few selected candidates joined service on an earlier date and had observed as follows:-

“3. There is a document on record, dated 17th February, 1989, in which a policy decision is taken regarding counting of qualifying service for the purpose of promotion in respect of the direct inductees, like the petitioner. It is noted therein that sometime persons are given offer of appointment against direct recruitment around December of a particular year and asked to join duty within 45 days from the date of receipt of the order. Some persons joined immediately before the end of December and some others in the month of January or February but, within 45 days. Now, those persons who joined after 31st December of that particular year are not able to complete one year of service by the close of 31st December of next year, because they have jointed



W.P No.18664 of 2019

after 31st December in the previous year. A decision then taken that in case of the direct inductees, where such candidates are offered to post during the preceding year and if they joined within 45 days, as per the conditions of offer of appointment, relaxation in experience to the extent of maximum of 45 days may be allowed irrespective of the fact that they have joined in January/February of the next year. It is expressed in this communication as under.”

18. The Division Bench then proceeded to hold as follows:

9. When we see the earlier policy, dated 17.02.1989, it is obvious that there was a policy made for giving a relaxation to such persons who are not able to complete one year's experience because they have joined after 31st December; though they have been selected earlier. Such persons are within their rights to join after 31st December because in the order itself they are provided with 45 days time to join. If that be so, then there will be no question that



W.P No.18664 of 2019

they have violated any order. The policy was framed only because it was seen that some of the persons who are selected at the lower place in merit joined earlier to 31st December and therefore, they are capable of completing one year of service by the next 31st December, whereas, a more meritorious person, who has been selected at the higher place in merit list, merely because he has joined after 31st December, is not capable of complying that condition of one year service which entitles him to better pay or promotion. In order to allay this particular grievance, the policy was framed and in our opinion, correctly. Further, this policy, as we see, can be universally made applicable all over India in all the Regions, because such situation would be common in respect of all the services and all the posts.

10. On this backdrop, we see the policy, dated 19.04.1989. It is obvious that a fortuitous circumstance of a junior joining is introduced to deprive the otherwise eligible employee to have the benefit of relaxation. We take an example. In



W.P No.18664 of 2019

the same batch, ten persons might have been selected. Three out of them might have joined in Bombay and other three in Madras and remaining four in Gauhati merely because the junior persons have joined earlier and not to those persons joined in Madras, could they lose the advantage merely because juniors have not joined here. This is incongruous and this is fortuitous also.”

19. The learned counsel for the first respondent stated that the Division Bench had stated that their observations would apply prospectively alone and therefore, made a statement across the bar, that any order passed by this Court should also be applied only prospectively.

20. Let me clarify that this order is only with respect to the candidates 1 to 250, who had been selected along with the petitioners in that particular batch 2016-2018 as Junior Assistants / Accounts. No further clarifications are required on that particular aspect.



W.P No.18664 of 2019

WEB COPY

21. The learned counsel for the petitioner also placed reliance on a Judgment of the Hon'ble Supreme Court reported in **(1997) 1 SCC 60 [Radhey Shyam Singh and Others Vs. Union of India and Others]**. The principle that merit should be the seniority had been held in that particular Judgment. Let me extract paragraph Nos. 8 to 10:-

“8. It is needless to emphasis that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the other hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones would be deprived of their selection resulting into great injustice and consequent discrimination. Thus there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates. That



WEB COPY



W.P No.18664 of 2019

being so the process of selection as envisaged in paragraph 16 of the advertisement in question and reproduced in the earlier part of this judgment would lead to discriminatory results because by adopting the said process of zone-wise selection would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and consequently the rule of equal chance for equal marks would be violated. Such a process would not only be against the principles enunciated in Article 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country. The rule of equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in



W.P No.18664 of 2019

paragraph 16 of the advertisement in question is violative of Article 14 and 16 of the Constitution of India as it has been demonstrated from the marks st of the appellants placed before us at the Bar during the course of arguments that they had secured more marks than those secured by some of the selected candidates.

9. In the case of *Rajendran Vs. State of Madras & Ors.* (1968(2) SCR 786) this Court had struck down the districtwise distribution of seats for the medical admission as providing for unitwise allocation was held to be violative of Article 14 and 16 of the Constitution on the ground that it might result in candidates of inferior calibre being selected in one district and those of superior calibre not being selected in another district. Similarly in the case of *Peeriakaruppan Vs State of Tamil Nadu & Ors.* (1971 (2) SCR 430) unit-wise allocation of seats was also held to be void and was struck down as discriminatory. Again in the case of *Nidamarti Mahesh Kumar Vs. State of Maharashtra & Ors.*



W.P No.18664 of 2019

(1986 (2) SCC 534) region-wise scheme adopted by the State Government was held to be void and struck down by this Court by holding that it would result in denial of equal opportunity and was thus violative of Article 14 of the Constitution. The ratio of these decisions of this Court is fully attracted to the facts of the present case in which the process of selection on the zonal basis will also result in denial of equal opportunity and would be violative of Article 14 and we hold accordingly.

10. The argument advanced by the learned counsel for the respondents that this process of zone-wise selection is in vogue since 1975 and has stood the test of time can not be accepted for the simple reason that it was never challenged by anybody and was not subjected to judicial scrutiny at all. If on judicial scrutiny it cannot stand the test of reasonableness and constitutionality it cannot be allowed to continue and has to be struck down. But we make it clear that this judgment will have prospective application and whatever selections and appointments have so far been



WEB COPY



W.P No.18664 of 2019

made in accordance with the impugned process of selection shall not be disturbed on the basis of this judgment. But in future no such selection shall be made on the zonal basis. If the Government is keen to make zone-wise selection after allocating some posts for each zone it may make such scheme or rules or adopt such process of selection which may not clash with the provisions contained in Article 14 and 16 of the Constitution of India having regard to the guidelines laid down by this Court from time to time in various pronouncements. In the facts and circumstances of the case we make no order as to costs. The appeals and writ petitions are allowed as indicated above.”

22. In view of the reasons stated, the Writ Petition stands disposed of. Consequently, W.M.P.Nos. 6566 & 6565 of 2022, which have been filed only out of abundant caution are closed. No costs. Consequently, other connected Miscellaneous Petitions are also closed.

vsg

03.08.2023

Page 18 of 20



W.P No.18664 of 2019

Index: Yes/No

Neutral Citation: Yes/No

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WEB COPY



W.P No.18664 of 2019

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