



W.P.No.21994 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.21994 of 2021
and WMP.Nos.23210 & 23211 of 2021

B. Seenivasan

... Petitioner

Vs.

1. The Industries Commissioner and
Director of Industries and Commerce,
SIDCO Corporate Office Building,
Guindy, Chennai 600 032.
2. The Joint Director (Indl.Coops) (Tea)
/District Registrar of Industrial Co-operative
INDCOSERVE Campus
Coonoor 643 101.
3. The Managing Director,
Kundha Industrial Co-operative Tea Factory Ltd.,
Edakkadu, The Nilgiris – 643 209.
Yedakadu.
4. Additional Commissioner of Industries and
Commerce / Registrar of Industrial Co-operative
Societies (incharge), SIDCO Corporate Office
Building, Guindy, Chennai – 600 032.

... Respondents



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(R4 impleaded vide order dated 14.08.2023
made in WMP.No.22249/2023
in W.P.No.21994/2021 by JSNPJ)

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records relating to the impugned proceeding in R.C.No.7/2017-18 dated 24.11.2020 of the 3rd respondent and call for records relating to the proceedings in Na.Ka.No.4549/ICA3/2021 dated 08.02.2022 of the 4th respondent and quash the same as null and void and consequently direct the respondents to give effect to the appointment order passed by the 3rd respondent vide his proceedings in R.C.No.7/2017-18 dated 11.11.2020

(Prayer amended vide order dated 14.08.2023 made in WMP.No.22250/2023 in WP.No.21994 of 2021 by JSNPJ)

For Petitioner : Mr.C.T.Mohan
Senior Counsel for
Mr.K.Lavan

For Respondents : Mr.D.Gopal
Government Advocate for R1 & R2
Mr.N.R.R.Arun Natarajan for R3



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ORDER

The petitioner has filed the above writ petition praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceeding in R.C.No.7/2017-18 dated 24.11.2020 of the 3rd respondent and call for records relating to the proceedings in Na.Ka.No.4549/ICA3/2021 dated 08.02.2022 of the 4th respondent and quash the same as null and void and consequently direct the respondents to give effect to the appointment order passed by the 3rd respondent vide his proceedings in R.C.No.7/2017-18 dated 11.11.2020.

2. The learned senior counsel appearing for the petitioner submitted that the petitioner was working as Electrician 'C' at Kundah Industrial Co-operative Tea Factory from 21.07.2011 on consolidated pay of Rs.14,000/- per month. On production side (Factory) in the 3rd respondent factory, there is a sanctioned post called Electrician 'C' and the post of Electrician 'C' is vacant for the last 12 years. Electrician 'C' post can be filled up by promotion or by direct recruitment. The qualification for Electrician 'C' post is Diploma in Electrical and Electronics with 'C' certificate and previous experience not less than 2 years in any reputed industry having high Tension supply. The petitioner has



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passed Diploma in Electricals and Electronics with 'C' Certificate and has been working as Electrician in the 3rd respondent factory for the last 10 years on consolidated pay of Rs.14,000/- per month. Thiru.R.Ganapathy, the then Deputy Director/ Managing Director of the 3rd respondent Tea Factory has issued a certificate dated 21.09.2020 stating that the petitioner is employed as Electrical Supervisor in Kundah Industrial Co-operative Tea Factory Yedakad from July 2011 to August 2020 and during the above period his work was satisfactory.

3. The learned senior counsel would further submit that the petitioner as per Tamil Nadu Electricity Act, an Electrician 'C' must be appointed in the 3rd respondent Tea Factory and as such the petitioner is qualified for the post of Electrician 'C'. The appointing authority for the post of Electrician 'C' is Chief Executive i.e., Managing Director, the 3rd respondent herein. By proceeding in RC.No.7/2017-18 dated 11.09.2020, the 3rd respondent constituted a selection committee with the following members to fill up the Assistant Tea Maker and Electrician 'C' posts by direct recruitment.



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1. Chairman of Kundah Industrial Co-operative Tea Factory
2. Vice Chairman of Kundah Industrial Co-operative Tea Factory
3. Managing Director of Kundah Industrial Co-operative Tea Factory
4. Representative from Indcoserve
5. Representative from Joint Director (Tea)
6. Three other Boards of Directors.

4. The learned senior counsel would further submit that the Chief Executive Officer, Indcoserve, Coonoor by his letter RC.No.2411/E1/2020 dated 10.09.2020 had appointed Thiru.Jack Thomas Victor, Quality Assurance Officer as its nominee and the 2nd respondent vide his proceedings in RC.No.1352/C1/2020-2 dated 14.09.2020 has appointed the Assistant Director PA to J.D (Tea) as representative of Joint Director (Tea) to constitute a selection Committee to fill up the Assistant Tea Maker and Electrician 'C' post by direct recruitment. The respondents 1 & 2 participated in the selection process for the posts of Assistant Tea Maker & Electrician 'C'. As per clause 6 of Special bye-law, advertisement dated 14.09.2020 was made in daily newspapers calling for list of candidates. On seeing the newspaper advertisement, the petitioner applied for the post of Electrician 'C' and attended interview and written test held on 21.09.2020 by the Selection Committee constituted for the purpose and he was selected for the post of Electrician. The Board Resolution No.4 was passed on 05.10.2020 and the 3rd respondent sent



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proposals on 05.10.2020 & 10.11.2020 to the 2nd respondent the District Registrar of Industrial Co-operatives. As ordered by the Principal Secretary/Chief Executive Officer, the petitioner was appointed as an Electrician by the 3rd respondent vide his proceedings RC.No.7/2017-18 dated 11.11.2020. The appointment order was issued on consultation with Board of the Management and the petitioner was instructed to join duty immediately on receipt of the appointment order. As per the appointment order, he joined duty on 11.11.2020 forenoon and worked as such till 24.11.2020. While so, to the petitioner's shock and surprise, due to administrative reasons, the 3rd respondent, without hearing the petitioner and without assigning any specific reason, cancelled the petitioner's appointment order vide his proceedings in RC.No.7/2017-18 dated 24.11.2020. Against the impugned proceeding, on 11.01.2021, the petitioner filed an appeal before the 1st respondent and the same was rejected by the 1st respondent vide proceeding dated 29.01.2021. Again on 02.02.2021 the petitioner filed an appeal under Section 152 of the Tamil Nadu Co-operative Societies Act by paying appeal fees of Rs.1,000/-and the same was rejected on the ground of delay vide proceeding dated 17.03.2021 without giving any opportunity to him. On 02.02.2021, he filed a Revision petition under Section 153 of Tamil Nadu Societies Act before the 1st respondent. The



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1st respondent vide his reply dated 01.04.2021 informed the petitioner that his revision petition was received and the same will be considered and suitable reply would be given and during the pendency of the writ petition the Revision petition was rejected by the fourth respondent on 08.02.2022.

5. The learned senior counsel further submitted that the petitioner has been working as Electrician 'C' at Kundah Industrial Co-operative Tea Factory from 21.07.2011. The petitioner has got 10 years of experience and according to the notification, the required experience is only 2 years whereas the petitioner possesses experience of 10 years and he is eligible for the post of Electrician.

6. The learned senior counsel drew the attention of this Court to the resolution dated 22.06.2019 passed by the Executive Officer, Kundah Industrial Co-operative Tea Factory Ltd., whereby it was resolved to fill up the posts of Assistant Tea Maker and Electrician 'C' by direct recruitment and the letter is extracted as below:-



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Fact : (0423) 2509724, Resi : 2509673
e-mail : kundahindco@gmail.com

THE KUNDAL INDUSTRIAL CO-OP. TEA FACTORY LTD., Ind. 259

Under the Control of Directorate of Industries and Commerce, Govt. of Tamilnadu

YEDAKAD - 643 209 ★ The Nilgiri Dist.

Thiru.S.Kumarakuruparan,
Deputy Director / Managing Director

Rc.No.7/2017-18

Date: 11-09-2020

To

The Joint Director (Tea),
O/o Indcoserve,
Coonoor.
Sir,

Sub: Kundah Industrial Cooperative Tea Factory Ltd.,-Filling the post of Assistant Tea Maker and Electrician 'C' by direct recruitment - constitution of selection committee-regarding.

Ref: Chief Executive Officer, Indcoserve, Coonoor letter Rc.No 2411/E1/2020 dated 10.09.2020.

I am to state that it has been decided to fill up the Assistant Tea maker and 'C' Electrician posts by Direct Recruitment and also it has been decided to constitute a 'selection committee' with the following members.

1. Chairman of Kundah Industrial Cooperative Tea Factory
2. Vice Chairman of Kundah Industrial Cooperative Tea Factory
3. Managing Director of Kundah Industrial Cooperative Tea Factory
4. Representative from Indcoserve
5. Representative from Joint Director (Tea)
6. Two other Boards of Directors.

In the reference cited, the Indcoserve had appointed Thiru. Jack Thomas Victor, Quality Assurance Officer as its nominee.

I therefore request the Joint Director (Tea) kindly to appoint one representative or behalf of Joint Director (Tea) to the above committee at an early date.
Please treat this as most urgent.

Managing Director



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Subsequently on 14.09.2020, an advertisement was given in the Newspaper by the Kundha Industrial Co-operative Tea Factory Ltd., for recruitment to the post of Electrician 'C' for which the educational qualification is Diploma in Electrical and Electronics with 'C' certificate and previous experience of not less than 2 years in any reputed industry having high Tension supply. The petitioner was called for interview on 21.09.2020 and subsequently interview was postponed to 29.08.2020 and thereafter to 14.09.2020.

7. The learned senior counsel further drew the attention of this Court to letter dated 14.09.2020 written by the Joint Director (Tea) (FAC), Office of the Joint Director (Tea), Indcoserve Campus, Coonoor to the Managing Director, Kundah Indco Tea Factory, Yedakkad that Thiru.K.Pandi, Assistant Director (Indl.Coops) / Personal Assistant to Joint Director (Tea) is appointed as representative of Joint Director (Tea) to constitute a selection committee to fill up the post of Electrician 'C' by direct recruitment. Then the appointment letter dated 11.11.2020 was issued by the Deputy Director/Managing Director (III Industrial Cooperatives) stating that this order is issued in consultation with the Board of Management and the above individuals are instructed to join duty, immediately on receipt of this order and the duties and responsibilities to the



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above individuals will be issued separately. Subsequently on 11.11.2020, that is on the same day forenoon, the petitioner has been appointed as Electrician and he joined duty, which is evident from the staff attendance register.

8. The learned senior counsel brought to the notice of this Court that a permanent worker viz., Thiru.S.Gangadharan was promoted to the post of cleaner by the Deputy Director/Managing Director Kundha. RC.No.3257/E/2020 dated 24.02.2021 without approval of the competent authority.

9. Further, the learned senior counsel drew the attention of this Court to the amendment of Chapter IX A of the conditions of the Kundha Industrial Factory limited, in which it is mentioned that for the post of Electrician 'C', the mode of appointment is by promotion/direct recruitment and it is also mentioned that there shall be no category of employees in the society which is not included in regulation No.1 above and the strength of employees in each category shall not exceed the number of posts against that category, provided that any vacancy existing or that may occur in any manner in any category of the post, shall be filled up by promotion or direct recruitment only with prior



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approval of the Registrar in writing.

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10. The learned senior counsel further drew the attention of this Court to the counter affidavit filed by the first respondent, in which it is stated that the petitioner's appointment is governed as per the Rule 149 of TNCS Rules 1988. It is pertinent to note that as per G.O.Ms.No.8, Industries (SID.1) 08.01.1992 all powers under Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 have been delegated to the Joint Director of Industries and Commerce [Industrial Co-operative (Tea)]. In this context, the learned senior counsel relied upon the judgment of this Court in W.P.No.7933 of 1995 dated 29.06.2001 in the case of ***S.A.Jhan Mohammed Vs. 1. The Chairman Tamil Nadu Electricity Board Anna salai Madras 600 002*** and another, in which, at para no.4, it is stated that:-

4. Law is fairly well settled that “public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.



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11. The authorities cannot subsequently change the reasonings given in the order and the order passed must stand or fall on the basis of the reasonings incorporated in the order.

12. Counter affidavit dated 21.06.2022 was filed by the first respondent and the same was received by the petitioner on 24.06.2022 and paragraph No.5 of the counter affidavit is extracted below:-

5. It is submitted that the averments made in paras 6 to 9 of the affidavit are admitted. The sequence of events culminating to the order appointing the petitioner to the sanctioned vacant post of Electrician "C" vide Proc.RC.No.7/2017-18, dated 11.11.2020 and subsequently cancelling the same vide Proc.RC.No.7/2017-18, dated 24.11.2020, which is being impugned.

(a) It is submitted that as per the said Regulations, inter-alia, there shall be one post in the category of Electrician 'C' and the said post shall be filled by direct appointment or by promotion from the feeder category or Factory Assistant. The said regulation further stipulates that any Vacancy existing or that may occur in any manner in any category of the post shall be filled up by promotion or direct recruitment only with the prior approval of the Industries Commissioner and Registrar of Industrial Co-operatives in writing,



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who is the 1st respondent in this case.

(b) It is submitted that the Kundha Industrial Co-operative Tea Factory is the first INDCO Tea Factory constituted in the Nilgiris District under the provisions of the Tamil Nadu Co-operative Societies Act on 26.09.1958 with the laudable object of procuring green leaves from its, members, who are Small Tea Growers from their fields at remunerative price and to uplift their standard of living. Without adequate employees on Production side, the Factory cannot utilise its plant and machineries to the optimum capacity. The sanctioned post of Assistant Tea maker and Electrician 'C' play paramount role in maintenance and utilisation of plant and machineries to the optimum and in achieving the production target.

13. It is also stated by the first respondent that according to Rule No.169 (3) (e) of the Tamil Nadu Co-operatives Societies Act, 1983 application for appeal under Section 153 Tamil Nadu Co-operatives Societies Act 1983 should accompany a receipt challan or record to evidence payment towards the fees specified in Schedule III. The said Revision order has not been challenged by the petitioner till date. It is also stated that the appointment order was issued without obtaining prior written permission of the State Registrar who is the 1st respondent in this case as per the Special bye law of the Kundah Industrial Cooperative Tea Factory.



14. Further pending the revision petition filed under Section 153 of the TNCS Act dated 23.03.2021 was rejected by the 1st respondent on 08.02.2022 based on the following reasons,

i. The petitioner's revision petition does not fulfil the conditions of TNCS Rules 1988, Rule No.169(3) (e).

ii. The applicant stated Revision petition under Section 153 in his application heading but in the subject it is stated as Section 152 (Review). On this basis the application dated 23.03.2021 is not accepted as a Review petition under Section 153 of TNCS Act 1983 and rejected on 08.02.2022. The said Revision order has not been challenged by the petitioner till date.

It is submitted that no statutory appeal or revision is pending before the 1st respondent. The Revision petition under Section 153 of TNCS Act 1983 was rejected by the 1st respondent and not by the 2nd respondent as stated by the petitioner in the affidavit.

15. A perusal of the Revision Petition filed by the petitioner shows that it has been filed under Section 153 in his application heading but in the subject it is stated as Section 152 (Review). On this basis the application dated 23.03.2021 was not accepted as a Review petition under Section 153 of TNCS Act 1983 and the same was rejected on 08.02.2022. The said Revision order has



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not been challenged by the petitioner till date and it is stated that no statutory appeal or revision is pending before the 1st respondent. The Revision petition under Section 153 of TNCS Act 1983 was rejected by the 1st respondent and not by the 2nd respondent as stated by the petitioner in the affidavit.

16. The learned Government Advocate appearing on behalf of the third respondent would further submit that the petitioner does not possess the required qualification and experience has only 6 years experience and not 8 years as required in the notification dated 14.09.2020. The learned Government Advocate appearing for the 3rd respondent further submitted that the order was passed on 11.11.2020 by the Deputy Managing Director. Based on the letter issued by the Principal Secretary/Chief Executive Officer dated 11.11.2020 directing the 3rd respondent to take necessary action to fill the post of Assistant Tea Maker and Electrician 'C' post. Pursuant to the above letter, the appointment order was issued on 11.11.2020 based on the letter issued by the CEO dated 11.11.2020.

17. The learned Government Advocate would further submit that the



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Managing Director joined only on 07.11.2020 and the appointment order was issued on 11.11.2020 based on the letter issued by the Principal Secretary/ CEO which is within 4 days from the date of appointment of the third respondent and he was not aware of the rule that prior approval has to be obtained from the Registrar for appointment. Therefore, the impugned orders have been passed and the same do not call for interference.

18. Heard both sides and perused the materials available on record.

19. It can be seen in the instant case that a notice was issued on 14.09.2020 in the Daily News Paper for recruitment to the posts of Assistant Tea Maker and for Electrician 'C' in Kundha Industrial Co-operative Tea Factory under the Department of Industries and Commerce Kundah Industrial Cooperative Tea Factory. **The petitioner applied for the post of Electrician since he possesses the required qualification and 10 years experience. The petitioner has 10 years experience but as per notification only 2 years experience was required. Hence the petitioner has fulfilled all the eligibility requirement for the post of Electrician.** The petitioner was called for interview on 21.09.2020 and subsequently interview was postponed to



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29.08.2020 and thereafter to 14.09.2020. The appointing authority for the post of Electrician 'C' is Chief Executive i.e., Managing Director, the 3rd respondent herein. By proceeding in RC.No.7/2017-18 dated 11.09.2020, the 3rd respondent constituted a selection committee to fill up the Assistant Tea Maker and Electrician 'C' posts by direct recruitment. **The petitioner was selected vide proceedings of the Deputy Director/Managing Director (III Industrial Cooperative) in Proc.RC.No.7/2017-18 dated 11.11.2020. Then the third respondent/Managing Director, Kundha Industrial Co-operative Tea Factory Ltd., vide Proc.RC.No.7/2017-18 dated 24.11.2020 cancelled the appointment order issued by him dated 11.11.2020 stating due to administrative reasons vide letter issued by Joint Director (Tea) / Registrar of Industrial Cooperatives, Coonoor letter Rc.No.1352/ICI/2020 dated 21.11.2020. The reason stated by the first respondent is that permission was not obtained from the Registrar for appointment order and was issued without obtaining prior written permission of the State Registrar who is the 1st respondent in this case as per the Special bye- law of the Kundha Industrial Cooperative Tea Factory. Regarding cancellation of the appointment order dated 11.11.2020 is issued by the third respondent, it is also contended that Managing Director is a newly appointed person, who**



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took charge only on 07.11.2020 and the appointment order was issued on 11.11.2020 four days after his appointment to the office is unsustainable.

Even assuming that he has been newly appointed and he is not aware of the rules and regulations, he ought to have consulted with the officials who are well versed in the administration work in the third respondent Factory and should have perused the rules and regulations before the issuance of appointment order. In the instant case, all the process have been done as per the Rules of the selection committee appointed by the CEO, Indcoserve, Coonoor.

20. A resolution was also passed to fill up the post of Electrician by the Executive Officer, Kundha Industrial Cooperative Tea Factory Ltd., dated 22.06.2019. After completing all the process the appointment order was issued only after two years that is on 11.11.2020 and the same was cancelled vide order dated 24.11.2020. Against the impugned cancellation order dated 24.11.2020 the petitioner filed an appeal before the 1st respondent on 02.02.2021 under Section 152 of the Tamil Nadu Co-operative Societies Act 1983 by paying appeal fees of Rs.1000/- and the same was rejected on the ground of delay vide proceeding of the 1st respondent vide



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Na.Ka.No.4549/ICS/2021 dated 17.03.2021 without giving any opportunity. On 23.03.2021 he filed Revision petition under Section 153 of Tamil Nadu Societies Act before the 1st respondent. Acknowledgement letter vide Na.Ka.No.4549/ICS/2021 dated 01.04.2021 was sent to the petitioner that the Review Petition filed by the petitioner and the Review Petition will be perused and appropriate reply will be given to the petitioner.

21. The letter dated 14.06.2021 was also issued by the first respondent to the 2nd & 3rd respondents informing that the District Registrar are expected to exercise their power as per the power delegation already given as per the Tamil Nadu Cooperative Societies Act, 1983 and Tamil Nadu Cooperative Societies Rules 1988 and on no account by-passing the Statutory authorities file should be sent to the office of the first respondent Industries Commissioner and Director of Industries and Commerce, SIDCO Corporate Office Building, Guindy, Chennai.

22. On perusal of the Revision Petition filed by the petitioner it shows that it has been filed under Section 153 in his application heading but in the subject it is stated as Section 152 (Review). On this basis the application



dated 23.03.2021 was not accepted as a Review petition under Section 153 of TNCS Act 1983 and the same was rejected on 08.02.2022. The said Revision order has not been challenged by the petitioner till date and it is stated that no statutory appeal or revision is pending before the 1st respondent. The Revision petition under Section 153 of TNCS Act 1983 was rejected by the 4th respondent and not by the 2nd respondent as stated by the petitioner in the affidavit.

23. The learned senior counsel further submitted that he was not aware of the order passed in the Review Petition by the 4th respondent pending the writ petition and it was brought to his knowledge only when the copy of the order along with the counter affidavit was filed by the learned Government Advocate appearing for the respondents even though the impugned order copy was marked to the petitioner the same was not received by him and no acknowledgement card to prove that he has received the same was filed by the respondents. Even though the impugned order copy was marked to the petitioner the same was not received by him and no acknowledgement card to prove that he has received the same was filed by the respondent. Hence the petitioner could not file an appeal before the 1st respondent challenging the



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order passed by the 4th respondent in the Review Petition dated 08.02.2022 filed by the petitioner on 23.02.2021.

24. During the pendency of the writ petition the Review Petition which was filed by the petitioner on 23.03.2021 was rejected by the 4th respondent vide proceedings Na.Ka.No.4549/ICA3/2021 dated 08.02.2022 and since the 4th respondent has passed the order he was not a party to the writ petition. Accordingly this Court directed the petitioner to implead the 4th respondent and also to amend the prayer. The impleading petition WMP.No.22249 of 2023 and the amendment petition WMP.No.22250 of 2023 was filed and the same was ordered by this Court by order dated 14.08.2023.

25. The Registry was directed to carry out the necessary amendment in the cause title and in the prayer portion in the writ petition.

26. In this case, the petitioner has fulfilled all the eligibility conditions and he was selected after interview conducted by the selection committee, finding him eligible for appointment to the post of Electrician and based on the recommendation of the selection committee as well as on



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the letter written by the Principal Secretary/Chief Executive Officer, the petitioner was appointed as Electrician by the 3rd respondent vide his proceedings RC.No.7/2017-18 dated 11.11.2020. The third respondent/Managing Director, Kundha Industrial Co-operative Tea Factory Ltd., Edakkadu, The Nilgiris, Yedakadu has issued the appointment order. The cancellation of the appointment order dated 11.11.2020 by the first respondent vide letter dated 24.11.2020 due to administrative reasons, is unsustainable in law. The above appointment process was as per rules and regulations of the third respondent. Hence the appointment made by the third respondent can be ratified by the first respondent at any point of time, since the recruitment is as per law and is valid as per law. It is the duty cast upon the third respondent/Managing Director to get prior approval from the 2nd respondent for appointment of the petitioner. Having failed to do, so the petitioner cannot be allowed to suffer because of the irresponsible and lethargic attitude and act of the third respondent.

27. In view of the above factual matrix of the case, this Court is of the



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considered view that the impugned proceeding in R.C.No.7/2017-18 dated 24.11.2020 of the 3rd respondent and the proceedings in Na.Ka.No.4549/ICA3/2021 dated 08.02.2022 of the 4th respondent are liable to be quashed and the same are hereby quashed.

28. In the result, this writ petition stands allowed and the third respondent is directed to give effect to the appointment order passed by the 3rd respondent vide his proceedings in R.C.No.7/2017-18 dated 11.11.2020 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

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Speaking/Non speaking order

To



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Guindy, Chennai 600 032.
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