



WEB COPY



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.08.2023

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU
Writ Appeal No.1736 of 2014
and W.P.No.19204 of 2018

W.A.No.1736 of 2014

Tamil Nadu Electricity Board Accounts
and Executive Staff Union,
Rep. By General Secretary,
R.Chandrasekaran,
S/o.D.Rathinasabapathy,
No.7, M.L.D.C. Building (1st Floor),
TNEB Complex, 144, Anna Salai,
Chennai – 600 002..

... Appellant

Vs

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. By its Secretary,
144, Anna Salai,
Chennai – 600 002.
2. The Chief Engineer (Personnel),
TNEB (TANGEDCO),
144, Anna Salai,
Chennai – 600 002.
3. P.Maria Michaelyuvraj
4. N.Devi
5. July Daniel
6. K.Anandhi



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

7. T.Poornima
8. A.Asmini
9. P.Barani Devi
10. M.Ramadevi

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 23.11.2017 made in W.P.No.19516 of 2015 and allow the writ appeal.

W.P.No.19204 of 2018

Tamil Nadu Electricity Board Accounts
and Executive Staff Union,
Rep. By General Secretary,
R.Chandrasekaran,
S/o.D.Rathinasabapathy,
TNEB Complex, 144, Anna Salai,
Chennai – 600 002..

... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. By its Principal Secretary to Government,
Energy (B2) Department,
Fort St.George,
Chennai – 600 009.
2. Tamil Nadu Generation and
Distribution Corporation Ltd.,
rep. By its Secretary,
144, Anna Salai, (TNEB Complex),
Chennai – 600 002.
3. The Chief Engineer / Personnel,
Tamil Nadu Electricity Board,
(TANGEDCO),
144, Anna Salai, (TNEB Complex),
Chennai – 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Declaration, declaring the part of clause 6(13) namely the “the transferee shall be entitled to modify or frame new



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

regulations governing the conditions of service of personnel transferred to the transferee under this scheme under the TAMIL NADU ELECTRICITY (REORGANIZATION AND REFORMS) TRANSFER SCHEME 2010 issued in G.O.(Ms).No.100 (Energy B2) dated 19.10.2010 as published in Tamil Nadu Government Gazette Extraordinary dated 19.10.2010 is beyond the scope of Section 133 proviso and self contradictory of clause 6(13) of the scheme and is liable to be struck down and consequently prescribing the higher qualification for appointment to the post of Junior Assistant (Administration) and Junior Assistant (Accounts) issued in TANGEDCO proceedings No.25 dated 24.05.2014 is illegal.

For Appellant/Petitioner : Mr.S.Elamurugan

For Respondents : Mr.Anand Gopalan
for T.S.Gopalan & Co.
[R1 and R2 in W.A.No.1736 of 2017
and R2 and R3 in W.P.No.19204/
2018]

Mr.R.Kumaravel
Additional Government Pleader
[R1 in W.P.No.19204 of 2018]
R3 to R10 – No appearance
[in W.A.No.1736 of 2017]

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

Since the issue raised in both the writ appeal as well as the writ petition is interconnected, with the consent of learned counsel appearing for both sides, these writ petition as well as the writ appeal since have been directed to be heard by this Bench as per the administrative order of the Hon'ble Chief Justice, were heard together and are disposed of by this



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

common order.

WEB COPY

2. The members of the appellant's union viz., Tamil Nadu Electricity Board Accounts and Executive Staff Union, who is also the petitioner in the writ petition in W.P.No.19204 of 2018 had been working in the feeder categories at respondent TANGEDCO and their next avenue of promotion is Junior Assistant/Administration and Junior Assistant/Accounts as the case may be.

3. The educational qualification that has been prescribed under the service regulations for such promotion is SSLC.

4. However, the said qualification has been enhanced by making an amendment to the regulation by issuing FB TANGEDCO proceedings No.25, dated 24.05.2014, under which, now the qualification prescribed is that, those in the feeder category must have a UG qualification in any degree to have the promotion as Junior Assistant/Administration and B.Com degree for having promotion to Junior Assistant/Accounts.

5. By virtue of this amendment made under the said proceedings



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

WEB COPY

dated 24.05.2014, the members of the petitioner's/appellant's association severely affected as they did not possess such qualification of degree, and suddenly such a qualification is prescribed and therefore they cannot earn the promotion till their superannuation. Therefore, that would be in the arbitrary nature, as literally it prevents the promotional avenue of these employees, therefore, aggrieved over the same, the Association on behalf of the member/employees decided to challenge the FB proceedings dated 24.05.2014 and filed writ petition in W.P.No.19516 of 2015. With similar prayers, some writ petitions were filed by the individual employees.

6. All these writ petitions were heard together and disposed by a common order of this Court dated 23.11.2017, whereby, the learned Judge dismissed all those writ petitions. Aggrieved over the same, the writ appeal has been filed by the employee's association.

7. Simultaneously, the employee's association had also filed a writ petition in W.P.No.19204 of 2018 challenging Clause 6(13) of G.O.Ms.No.100, Energy (B2) Department, dated 19.10.2010.



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

WEB COPY

8. The reason for challenging the said clause 6(13) of the said G.O is, under the said clause alone power is vested with the respondent TANGEDCO to make amendment to the existing regulation. Even though the 1948 Act, under which, the said regulations since have been made had been repealed, the regulation continue to hold the field till an alternative arrangement is made, therefore, if at all any amendment has to be made or modification has to be made in the said regulations governing the service conditions of the employees of the transferee i.e., the TANGEDCO, such a power is must, therefore, in order to give such a power which has also been enabled to be given by the State Government by exercising its power under Section 133 of the Electricity Act, 2003, such a G.O.Ms.No.100 was issued. Therefore, such offending clause according to the employee's Union is clause 6(13) which was put under challenge in the said writ petition, that is how both the writ appeal as well as the writ petition have come up before this Court for hearing.

9. We have heard the learned counsel appearing for the appellant/petitioner and Mr.Anand Gopalan, learned Standing Counsel



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

for TANGEDCO.

WEB COPY

10. The sum and substance of the argument that has been advanced by the learned counsel appearing for the appellant/petitioner is that, insofar as the regulations are concerned that is called Tamil Nadu Electricity Board Service Regulation (in short, 'the Regulation'), which has been made in exercise of the power conferred under Section 79(c) of the Electricity Supply Act, 1948. Though such a regulations have been made by exercising the regulation making power of the TANGEDCO, which was erstwhile TNEB under Section 79 of the 1948 Act, since the 1948 Act has been repealed under the repealing provisions of the Electricity Act, 2003 whether still the regulations can be pressed into service and if so, whether the power now vested with the Government through G.O.Ms.No.100 issued under Section 133 of the 2003 Act can be exercised by the TANGEDCO in making the amendment that is impugned in the writ petition was the question, which was rejected by the learned Judge in the impugned order.

11. In this context, the learned counsel also would canvass the point that, though it has been paved the way for having a tripartite talks



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

and ultimately reached a tripartite agreement, to that extent some negotiation went on and a draft agreement also had been placed for concurrence and major decision was taken, that has not been given effect to and the tripartite agreement has not been finalized and signed by the parties.

12. That apart, if at all any alteration of the service condition is to be undertaken by the employer that has to be made only after placing the employees under notice as contemplated under Section 9-A of the Industrial Disputes Act, 1947. In this case, no such notice had been given, FB.No.25 has been issued by the Board, unilaterally, without taking the employees into confidence by giving notice under Section 9-A of the 1947 Act therefore, that is also a violation.

13. Insofar as the challenge that has been made in the writ petition challenging clause 6(13) of G.O.Ms.No.100 is concerned, even though under Section 133 of the 2003 Act, power is vested with the State Government to frame a scheme for transfer from transferor to transferee with regard to properties, employees etc., the scheme cannot provide any



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

WEB COPY

such leverage to the transferee company to retain the existing regulations, which was framed under the 1948 Act, which itself has been repealed by the 2003 Act, therefore such a legal aid could not have been given by the State Government to the respondent TANGEDCO to tinker upon, by way of modification of the regulation itself, that too to the detrimental of the service condition of the existing employees. Hence, Clause 6(13) of the G.O.Ms.No.100 also is unlawful, arbitrary and therefore, on that ground, the said clause of the G.O.Ms.No.100 is to be declared as invalid.

14. On the other hand, Mr.Anand Gopalan, learned Standing Counsel appearing for the respondents has submitted that, insofar as the continuous application of the existing regulation is concerned, even though 1948 Act has been repealed under the provisions of the repealing Act i.e., 2003 Act, the saving clause saved all the existing procedures and based on which, what has been done already also is saved.

15. In any organization like the respondent TANGEDCO as thousands of employees are working, the service regulation is essential, therefore, the existing service regulation cannot be said to be scraped by virtue of the repealing of the 1948 Act, under which, only even though



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

the regulations have been made.

WEB COPY

16. Since the regulations are continuing in force, if at all any modification by way of amendment has to be made, since there has been no enabling provisions available in the 2003 Act empowering the TANGEDCO to make such amendment in the regulation, certainly it has to be fulfilled by providing such power by the Government i.e., the State Government under Section 133 of the Act, which empowers the State Government to frame the scheme that is what in fact they have done in issuing G.O.Ms.No.100.

17. The learned counsel appearing for the respondents would further submit that, insofar as the alleged violation of Section 9-A of the ID Act, 1947 is concerned, if at all any such violation is alleged by the employees side, for such violation in order to get their grievance redressed they have to approach the Labour Court or Industrial Tribunal, therefore, the remedy is elsewhere and not before this Court by invoking Article 226 of the Constitution, he contended.

18. He would also submit that the violation of Section 9-A would attract only if there is any violation as contemplated under the IV



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

schedule but insofar as the fixing the higher qualification for promotion for the in-service candidates is concerned, it is one of the service condition not covered under the IV schedule, even such an alleged Section 9-A violation would not come in this case.

19. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

20. Since the very power vested with the TANGEDCO to make the amendment to the regulation or modification of the regulation by virtue of G.O.No.100 clause 6(13) has been challenged in the writ petition, we feel that first we can take up and decide the said writ petition making such challenge.

21. If at all any part of the G.O is to be challenged mainly the ground of attack of the G.O must be that, lack of competence and secondly, the G.O cannot be in the nature of overriding the main provisions of the Act.



WEB COPY

22. Here in the case in hand, under Section 133 of 2003 Act such a power is vested with the State Government. The language used in Section 133 reads thus:

“133. Provisions relating to officers and employees._(1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under Section 131.

(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme;

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme.

Provided further that the transfer can be provisional for a stipulated period.

Explanation.- For the purpose of this section and the transfer scheme, the expression “Officers and employees” shall mean all officers and employees who on the date specified in the scheme are the officers and employees of the Board or transferor, as the case may be.”



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

WEB COPY

23. Therefore, a scheme has to be framed that is what they framed by issuing G.O.No.100, where the scheme is called Tamil Nadu Electricity(Reorganization and Reforms) transfer scheme 2010, it came into force from 01.11.2010, where the relevant clause is Clause 6(13), which reads thus:

“6...

(13) Subject to the provisions of the Act and this scheme, the personnel shall be governed by the Rules and Regulations framed by the Board existing on the date of Transfer. The Transferee shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred to the Transferee under this scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits including terminal benefits after the date of transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme.”

24.If we look at the said clause, it makes clear that subject to the provisions of the act and the scheme, the personnel shall be governed by the Rules and Regulations framed by the Board existing on the date of



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

transfer. The transferee shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred to the Transferee under the scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits including terminal benefits after the date of transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme.

25. Which means, the scheme provides for continuation of the existing regulations and also the scheme provides for the entitlement of the transferee to modify or frame the new regulations governing the service conditions.

26. It become essential because in such an organization like TANGEDCO, there must be an exhaustive service regulations, which has already been in force and has been framed under Section 79-C of the 1948 Act.

27. Merely because 1948 Act has been repealed what has been done under the 1948 Act cannot be said to be repealed on the very same date itself. Therefore, it is for the transferee company to have the very



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

same regulation or to frame new regulation or making some amendment in the existing regulations.

28. These kind of modifications or power to make modifications or to frame new regulations is an essential one by virtue of *doctrine* of necessity.

29. Since such a provision is not available explicitly in any of the provisions under 2003 Act, that is the reason why, under Section 133 of the 2003 Act, such a power is vested with the State Government concerned to frame a scheme with regard to the transfer.

30. When such a scheme is framed, the power to retain the regulation or to modify the regulation or to replace the regulation by bringing a new regulation can necessarily be vested with the transferee company, which has alone been done by the State Government under Clause 6(13) of the G.O.Ms.No.100.

31. Such kind of power since is vested with the State Government under Section 133 of Electricity Act, 2003 read with Article 162 of the



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

WEB COPY

Constitution, the State Government is fully empowered to make such a scheme and therefore, the issuance of G.O.Ms.No.100 in this regard including the clause 6(13) of the said G.O cannot be said to be unlawful one. Therefore the challenge can not be countenanced. If there is a power under clause 6(13) of the scheme to modify the regulation, absolutely TANGEDCO can very well modify the regulations and that has been done in the impugned proceedings i.e., FB TANGEDCO proceedings No.25 dated 24.05.2014, wherein the additional qualification or new qualification or higher qualification of having a degree for getting a promotion to the post of Junior Assistant/Administration and Junior Assistant/Accounts have been prescribed.

32. That has been under challenge in the writ petition, which was dismissed by the learned Judge in the impugned order is concerned, such kind of power since has been vested with the respondent TANGEDCO, in order to enhance the qualification to have a better administration of the TANGEDCO, it is for the employer TANGEDCO to prescribe higher qualification but what is the promotion already been earned that cannot be changed or modified, therefore, it cannot be stated that there is a



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

alteration of the service conditions.

WEB COPY

33. Assuming that, mere prescribing a higher qualification to get a further promotion by way of selection from the internal candidates amounts to changing or altering of the service conditions within the meaning of Section 9-A of the Industrial Disputes Act, 1947 that has to be agitated by the employee aggrieved, only before the appropriate forum and not before this Court under Article 226 of the Constitution.

34. Moreover, though it was argued by the learned Standing Counsel for the respondents TANGEDCO that the prescribing higher qualification for promotion does not fall in any of the categories mentioned in schedule IV to section 9-A of the ID Act, 1947 that matter altogether is a different issue, which has to be gone into only by the forum before whom such issue is agitated, therefore, we do not make any comment upon it.

35. However, the challenge made in the writ petition challenging the clause 6(13) of the scheme under G.O.No.100 and a consequential FB



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

proceedings No.25 dated 24.05.2014 in the other writ petition, which has been rejected by the learned Judge through the impugned order cannot be considered to be a effective challenge against the respective impugned communications or G.Os. or scheme covered. Therefore, in this context, the approach of the learned Judge in rejecting the plea raised by the appellant before the Writ Court in the impugned order cannot be found fault with or it cannot be treated as an erroneous approach, hence, the writ appeal also should fail.

36. Before parting with the case, we want to make an observation that, it was brought our notice by the learned counsel appearing for the appellant/petitioner that there is a provision available in the existing service regulation to relax any of the provisions of the regulations i.e., conditions of service in suitable cases by the respondent TANGEDCO. In this context, the employees i.e., few affected employees by virtue of this amendment by making a fresh qualification or additional qualification of degree for promotion to the two posts mentioned above wanted to make a representation to the respondent TANGEDCO and if any such representation is made by them, it is open to the respondent TANGEDCO



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

to consider the same sympathetically in view of the long service that they have rendered in the respondent TANGEDCO and it is purely at their discretion to decide the said issue on merits and in accordance with law.

With these observations and the aforesaid orders, both writ petition as well as writ appeal are dismissed. No costs.

(R.S.K.,J.)

(K.B., J.)

08.08.2023

Index: Yes
Speaking Order
Neutral Citation: Yes

mp



WEB COPY



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

To

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. By its Secretary,
144, Anna Salai,
Chennai – 600 002.
2. The Chief Engineer (Personnel),
TNEB (TANGEDCO),
144, Anna Salai,
Chennai – 600 002.
3. The Principal Secretary to Government,
Energy (B2) Department,
Fort St.George,
Chennai – 600 009.



WEB COPY



Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

mp

Writ Appeal No.1736 of 2017
and W.P.No.19204 of 2018

08.08.2023