



W.A.No.96 of 2017 and W.P.No.32656 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.96 of 2017 and W.P.No.32656 of 2019
And C.M.P.No.1642 of 2017**

N.Chitra Devi

... Appellant in W.A.96/2017 &
Petitioner in W.P.32656/2019

-Vs-

- 1.Tamil Nadu Generation and Distribution Corporation Rep.by its Chairman and Managing Director, No.144, Anna Salai Chennai 600 002.
- 2.The Chief Engineer (Personnel) Tamil Nadu Generation and Distribution Corporation, No.144, Anna Salai Chennai 600 002.
- 3.The Chief Engineer Coimbatore Region Tamil Nadu Generation and Distribution Corporation, TATABAD, Coimbatore.
- 4.The Superintending Engineer Udumalai Electricity Distribution Circle Udumalai Region, Udumalpet.
- 5.K.Kalpana Assistant Engineer, GIS O/o Superintending Engineer (North) Tatabad, Coimbatore-12. (Sl.No.248 in the impugned list and consequential allotment orders viz., Memo No.017429/G.13/G.131/2016-1 dated 22.02.2016 for the post of



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Assistant Engineer representing the class of people
who are juniors to the petitioner)

R5 impleaded in W.A.No.96 of 2017 vide order of
Court dated 12.12.2022, made in CMP No.7503 of
2019 in W.A.No.96 of 2017)

... Respondents in both
Writ Appeal and
Writ Petition

Prayer in W.A.No.96 of 2017: Writ Appeal under Clause 15 of the Letters Patent
against the order in W.P.No.9583 of 2016 dated 08.12.2016.

Prayer in W.P.No.32656 of 2019 : Writ Petition under Article 226 of the
Constitution of India calling for the records in connection with the impugned internal
selection and allotment order Memo No.017429/G.13/G.131/2016-1 dated
22.02.2016 for the post of Assistant Engineer insofar as including 5th respondent
and the juniors without considering the petitioner and quash the same.

In both W.A & W.P.

For Appellant : Mr.K.Krishnamoorthy
For Respondents : Mr.K.Rajkumar, Standing Counsel
for RR 1 to 4
No appearance - for R5

J U D G M E N T

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

Since the writ appeal as well as the writ petition arise out of the same issue,
with the consent of the learned counsel for both sides, both the cases were taken up
together for hearing and are disposed of by this common judgment.



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2. The writ appeal has been directed against the order passed by the writ court dated 08.12.2016 made in W.P.No.9583 of 2016.

3. The appellant was the writ petitioner, who is a B.E. graduate and was appointed on compassionate ground as Field Assistant Trainee in the respondent organization TANGEDCO in the place of her husband, who was discharged on medical grounds and subsequently died in October 2013.

4. The petitioner has joined the service on 23.07.2013 and was posted as Field Assistant Trainee and she claims that she belongs to BC community and the petitioner/appellant was brought to regular time scale of pay, commenced probation on 24.07.2014 and her probation was successfully declared on 03.02.2015.

5. When that being so, the respondent TANGEDCO issued a notification dated 26.05.2015, inviting applications from qualified employees of TANGEDCO to fill up 336 vacant posts of Assistant Engineer (Electrical) by internal selection as per ratio 1:1. Certain eligibility conditions also were prescribed in the said notification. Therefore, since it is an internal selection, all those employees who had been working in various capacities like the petitioner / appellant, who acquired the qualification of B.E. Degree (Electrical) can make an application and accordingly, the petitioner / appellant also had made an application in prescribed format.



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6. Pursuant to the said application filed by the petitioner/appellant, the respondent TANGEDCO having considered all those applications, which were made by various eligible candidates like the petitioner/appellant, prepared a merit list. For the preparation of the merit list, criterion that has been fixed by the respondent TANGEDCO was to take into account the total length of service that has been put in by such eligible candidate after becoming the permanent employee of TANGEDCO.

7. Accordingly, the respondent TANGEDCO made the selection and selection list was published, wherein the name of the petitioner/appellant was not found. Therefore, the petitioner/appellant had moved the said writ petition in W.P.No.9583 of 2016 seeking for a writ of Mandamus to include the name of the petitioner/appellant in the selection list by considering her entire length of service, which she rendered from the date of her initial appointment as Trainee till the date of notification.

8. The said writ petition having been heard, was dismissed by the learned Judge through the order dated 08.12.2016. Aggrieved over the same, the writ appeal has been filed. During the pendency of the writ appeal, the petitioner also thought of challenging the very selection list itself. Accordingly, she filed W.P.No.32656 of 2019 seeking for a writ of Certiorarified Mandamus to call for the impugned internal selection and allotment order in Memo dated 22.02.2016 for the



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post of Assistant Engineer insofar as inclusion of the 5th respondent in the writ petition viz., one K.Kalpana and the juniors without considering the petitioner/appellant herein and quash the same.

9. The said writ petition also has been tagged along with the writ appeal. That is how the writ appeal as well as the writ petition came up for hearing before us.

10. We have heard Mr.K.Krishnamoorthy, learned counsel for the appellant / petitioner. He would submit that in the very notification dated 26.05.2015, there has been a criterion mentioned as to how such a selection is going to be made by the respondent TANGEDCO. He would also submit that, if at all the total length of service is the criteria that is to be taken by the the respondent TANGEDCO for selection, the total service rendered by the petitioner/appellant also should have been taken into account. In this context, in a clarification letter issued by the Chief Engineer (Personnel) to the Chief Engineer (Distribution) of the TANGEDCO dated 11.05.2015, the following has been stated:

" Clarification has been requested as to whether the service rendered as Helper (Trainee) may be taken into account for further promotion of Helpers as Wireman/Commercial Assistant (or) whether service rendered as helper in the time scale of pay alone may be taken.

(2) In the reference(1) cited above, it has been already clarified that the service rendered by Helpers during their training period Helper



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(Trainee) may be reckoned as experience for considering promotion to the higher post.

(3) Hence, in supersession of letter vide reference (2) above, it is reiterated that, the service rendered as Helper(Trainee) should also be taken into account for considering further promotion as Wireman / Commercial Assistant."

11. He would also submit that, since no specific criteria has been mentioned in the notification dated 26.05.2015 and after receipt of application, if at all the respondent TANGEDCO decided to adopt a method like the one now they have adopted, to take the total length of service rendered by every employee for the purpose of this selection as the only criterion, that is not based on any *intelligible differentia* and therefore, on that ground the very method adopted by the respondent TANGEDCO in completing the selection itself is a flaw and therefore, on that ground the learned counsel for the appellant / petitioner seeks the indulgence of this Court.

12. On the other hand, Mr.K.Rajkumar, learned Standing Counsel appearing for the respondent TANGEDCO would submit that, insofar as the post of Assistant Engineer (Electrical) is concerned, which is under Category 3, for which, according to the Tamil Nadu Electricity Service Regulations, the eligibility reads thus,

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Category 3</i>	<i>Assistant Engineer (Electrical)</i>	<i>\$\$ Internal Selection and Direct Recruitment shall be made in the ration of 1:1. Internal selection shall be made xxxxx based on a minimum length of service rendered after</i>



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(1)	(2)	(3)
		<i>acquiring B.E.Degree or equivalent qualification, as may be decided by the Board from time to time. \$\$ \$\$ Substituted vide (Per) B.P.(FB) No.23 (SB) dated 12.04.2001. xxxxx Expressions omitted vide (Per) (B.P.(FB) No.17 (SB) dated 06.03.2002.</i>

13. The learned Standing Counsel, by relying upon the said Regulations would submit that, internal selection and direct recruitment shall be the method for selection and appointment to the post of Assistant Engineer (Electrical) at the ratio of 1:1. That means, 50% of the posts would be filled up by direct recruitment and the remaining 50% of the posts would be filled up by internal selection.

14. Here, the present recruitment is only through internal selection. Therefore, internal candidates only would be eligible to apply. He would also submit that, insofar as the eligibility criteria is concerned, the minimum length of service rendered after completing B.E.Degree or equivalent qualification as may be decided by the Board from time to time would be the criteria.

15. In this context, when we specifically asked the learned Standing Counsel as to the decision taken earlier by the respondent Board as to such minimum eligibility criteria, he relied upon Board Proceedings No.26 dated 16.08.2005, where the Board has made the following decision.



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WEB COPY " **Proceedings:**

The Tamil Nadu Electricity Board hereby directs that the orders issued in the Board's Proceedings cited prescribing a minimum service of 6/12 years in the case of internal selection to the post of Assistant Engineer / Electrical, Mechanical and Civil be dispensed with effect from 13.11.2003.

The Tamil Nadu Electricity Board after careful and detailed examination supersedes the above orders and hereby directs to prescribe.

(i) A minimum period of one year regular service rendered after acquiring B.E.Degree or equivalent qualification for internal selection to the categories of Assistat Engineer/Electrical, Mechanical and Civil."

16. Therefore, a minimum period of one year of regular service rendered after acquiring B.E.Degree or equivalent qualification for internal selection has been prescribed as per B.P.No.26 dated 16.08.2005.

17. He would also rely upon subsequent Board Proceedings in B.P.No.15 dated 15.05.2008, where the following has been prescribed.

"The Tamil Nadu Electricity Board after careful and detailed examination supersedes the above orders and hereby directs to prescribe.

A minimum period of one year regular service rendered after acquiring B.E.Degree or equivalent qualification for internal selection to the categories of Assistat Engineer/Electrical, Mechanical and Civil is cancelled."



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18. The one year prescription that has been made under Board Proceedings B.P.No.26 dated 16.08.2005 has been cancelled by the subsequent Board Proceedings B.P.No.15 dated 15.05.2008. Thus, the qualification is, on acquiring the B.E.Degree, one can make an application if he / she is an internal candidate applying for the post of Assistant Engineer (Electrical) under the 50% internal selection quota.

19. Relying upon this communication, the learned Standing Counsel would further submit that, accordingly the selection had been made among all the applicants, who made applications based on the eligibility criteria including the petitioner/appellant herein and the only criteria that has been fixed by the Board to be adopted is to consider the total length of service of a permanent employee. Therefore, for the entire list of 786 candidates, who made applications, such a ranking list has been prepared based on the total length of service. Accordingly, the first candidate who entered into the regular service in the year 1983 had put in 1270 working days. The last candidate had put in only 25 working days.

20. Therefore, among the 768 candidates, 300 plus candidates have to be selected for the post of Assistant Engineer (Electrical). Accordingly, based on the ranking, the selection went on. Insofar as the appellant / petitioner is concerned, she had put in 302 days of service totally, after she became the permanent



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employee of TANGEDCO and her ranking was 401. Therefore, naturally she was out of the zone of consideration. Therefore, the question of selecting her does not arise.

21. Insofar as the plea raised on behalf of the petitioner/appellant, comparing with the candidate viz., Kalpana, who in fact was impleaded as 5th respondent herein, she had put in 450 days of total length of service and her ranking is 205.

22. That apart, one more candidate also has been referred by the respondent TANGEDCO viz., T.Ahila, who had put in 445 days of total length of service and her ranking is 263. The said Ahila, who stood as 263rd candidate under the B.C. Community qualified for the selection, beyond which no-one was selected in that category, to which the petitioner belongs.

23. Therefore, the learned Standing Counsel appearing for the TANGEDCO has submitted that the criteria that has been fixed by the Board ie., total length of service rendered by a permanent employee was taken into account, based on which the selection was made after preparing the ranking list. Admittedly, the petitioner/appellant has not put in enough number of days of service as permanent employee to reach the zone of consideration in the concerned communal category and therefore, she would not be entitled to get selected and it became natural that



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her candidature has to be put out of the purview of the selection.

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24. We have considered the detailed submissions made by the learned counsel for both sides and have perused the materials placed on record.

25. Insofar as the eligibility criteria for the post of Assistant Engineer (Electrical), is concerned, as we quoted herein above, based on the length of service rendered after acquiring B.E.Degree or equivalent qualification as may be decided by the Board from time to time. Therefore, he/she must be a permanent employee of TANGEDCO, acquiring a B.E. Degree is a must and he/she can make an application for internal selection.

26. However, insofar as the length of service after acquiring the B.E. Degree for even making the application is concerned, it is for the Board to make a fixation. In this regard, though the Board had already fixed a minimum service of 6/12 years in the case of internal selection for the post of Assistant Engineer, Electrical, Mechanical and Civil, that has been dispensed with with effect from 13.11.2003 and it was reduced into one year. This has been made by the decision of the Board by Board Proceedings in B.P.No.26 dated 16.08.2005, which we have quoted herein above. However, that one year length of service also has been completely scrapped or cancelled by the subsequent Board Proceedings in B.P.No.15 dated 15.05.2008, which we have already quoted.



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27. Therefore, as on the date of the notification that was issued by the respondent TANGEDCO, inviting applications from eligible candidates on 26.05.2015, the rule was, a person must have acquired B.E. Degree in Electrical and he need not have put in any length of service after acquiring B.E. Degree for the purpose of making an application.

28. That is the reason why the candidate who have put in just 25 days of service after joining in service of the TANGEDCO was made eligible to make an application for internal selection.

29. In this context, rightly the petitioner/appellant since has become eligible to make an application, she has made an application. Her application was taken into consideration and a merit list was prepared including the petitioner/appellant. When such a merit list was prepared by the TANGEDCO, the only criteria that they have followed is total length of service put in by each of candidates. Accordingly, out of 768 candidates, ranking list was prepared, where the first candidate had put in 1270 days of service and the last candidate had put in only 25 days of service.

30. Insofar as the petitioner / appellant is concerned, her ranking is 401, as she has put in 302 working days, whereas the last person who was selected in that category was one T.Ahila, who stood as 263rd candidate having put in 445 working



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days of service. Therefore, naturally the said candidate including the 5th respondent in the writ petition herein, whose inclusion has been specifically challenged by the petitioner/appellant, stood as the 205th candidate and she had put in 450 working days of service. Therefore, these candidates are ahead of the petitioner / appellant by calculating the total length of service.

31. Now, let us see the arguments advanced by the learned counsel for the appellant / petitioner that, the total length of service should be calculated from the date of initial appointment of the petitioner / appellant as Field Assistant Trainee.

32. In this context, the learned counsel for the appellant / petitioner has relied upon the communication dated 11.05.2015, which also we have quoted herein above. The said communication was a clarification issued by the Chief Engineer (Personnel) with regard to the total length of service to be calculated for the purpose of promotion as Wireman and Commercial Assistant. Here, it is to be noted that the post of Assistant Engineer (Electrical) is not a promotion post as it is a selection post, for which there are two methods of selection; one through direct recruitment for 50% of the vacancies and the remaining 50% through internal selection in the ratio of 1:1.

33. The criteria to be followed while filling up the 50% of vacancies through internal selection is to be fixed by the Board from time to time. In this regard, the



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Board has fixed a criteria that one year experience should have been gained after acquiring the B.E.Degree and the same has been dispensed with by issuance of Board Proceedings No.15 dated 15.05.2008 with effect from 30.04.2008.

34. It is further to be noted that, in B.P.No.26, the earlier prescription of 6/12 years had been reduced to one year with effect from 13.11.2003, wherein the language used by the Board Proceedings is as follows:

" a minimum period of one year regular service rendered....."

35. Therefore, the period of one year has been prescribed earlier was **regular service.** The word "regular service" is the matter herein, which is to be taken into account. The regular service would start for any employee only from the date of regular appointment. This candidate (petitioner / appellant) has been appointed in regular service by declaring her probation on 24.07.2014 by issuance of declaration dated 03.02.2015.

36. Therefore, for all practical purposes, especially for the purpose of calculating the total length of service for the purpose of internal selection to the post of Assistant Engineer (Electrical), the total length of service to be calculated means, the total length of regular service, which in the case of the petitioner/ appellant herein, shall be calculated from the date of declaration of probation ie., 24.07.2014. This has been pointed out by the learned Judge in the impugned order



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dated 08.12.2016.

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37. Insofar as the 5th respondent who was junior, according to the petitioner / appellant and she also had been selected in the aforesaid selection is concerned, the answer has already been given, because she has put in more length of service comparing with the appellant / petitioner. Moreover, the ranking earned by a candidate called T.Ahila at 263rd position earned 445 working days as length of service and she was the last candidate in that category ie., B.C category, to which the petitioner/ appellant belongs, beyond which no one was selected. Therefore, the petitioner / appellant cannot have any grievance against the impugned selection that has been prepared by the respondent TANGEDCO.

38. In view of the above discussion, we do not find any error in the order passed by the learned Judge dated 08.12.2016. Therefore, this writ appeal fails and it is dismissed. Consequently, the writ petition also fails and it is also dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

(R.S.K.,J..) (K.B.,J.)

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KST



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- To
- 1.The Chairman and Managing Director
Tamil Nadu Generation and Distribution
Corporation, No.144, Anna Salai
Chennai 600 002.
 - 2.The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
Corporation, No.144, Anna Salai
Chennai 600 002.
 - 3.The Chief Engineer
Coimbatore Region
Tamil Nadu Generation and Distribution
Corporation, TATABAD, Coimbatore.
 - 4.The Superintending Engineer
Udumalai Electricity Distribution Circle
Udumalai Region, Udumalpet.



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