



W.A.(MD) No.907 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.907 of 2023
and
C.M.P.(MD) No.7161 of 2023**

1.Tamil Nadu Cement Corporation Ltd.,
L.L.A.Building, 735 Anna Salai
Chennai-600 002
Now shifted to Aavin Illam, 5th Floor
Nandanam, Chennai-35
represented by its Deputy General Manager
presently by Senior Manager (P&A)-FAC

2.Tamil Nadu Cement Corporation Factory
Alankulam, Virudhunagar District
represented by its Deputy General Manager
presently by Unit Head

... Appellants

-vs-

1.Thiruvengidaraj

2.The Special Deputy Collector
and Land Acquisition Officer
Government Factory
Sivakasi, Virudhunagar District

3.The State Government
represented by its Secretary
Fort St.George, Chennai
[Cause title is accepted vide Court Order dated
16.06.2023 made in C.M.P.(MD) No.6932 of 2023]

... Respondents



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 14.11.2022, passed in W.P.(MD) No.5839 of 2013, on the file of this Court.

For Appellants : Mr.A.Sivaji

For Respondents : Ms.N.Krishnaveni, Senior Counsel
for Ms.Chamundi Bose for R1
Mr.N.Satheesh Kumar
Additional Government Pleader for R2 & R3

J U D G M E N T

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

The intra-court appeal on hand has been instituted challenging the order of the learned Single Judge, dated 14.11.2022, passed in W.P.(MD) No.5839 of 2013.

2. The writ petition filed by the first respondent / writ petitioner questioning the validity of the rejection order, dated 23.03.2011, passed by the first appellant herein, was partly allowed on the ground that the first respondent is the legal heir of the land loser and therefore, he is entitled for appointment to the post of Technical Executive (Electrical).



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3. Learned counsel appearing for the appellants mainly contended that the first respondent has not produced relevant documents to establish that he is the legal heir of the land loser and more so, he is not possessing the requisite qualification of three years experience as per the notification issued by the appellant – Cements Corporation, dated 04.08.2010.

4. Learned counsel for the appellants reiterated that the case of the first respondent was considered under the land losers priority category and the authorities competent found that the first respondent was not possessing the requisite experience as contemplated under the notification and the said facts were not disputed by the first respondent. Thus, there is no infirmity in the order of rejection impugned in the writ petition.

5. Learned Senior Counsel appearing for the first respondent mainly contended that the ancestral lands belonging to the family of the first respondent were acquired and acquisition was made from the father of the first respondent and therefore, the first respondent being a legal heir is entitled for an appointment in the appellant – Cements Corporation under the priority category. That apart, the first respondent has submitted all relevant



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certificates, including educational qualification certificates and he was possessing two years experience during the relevant point of time and thus, the appellant – Cements Corporation ought to have considered the case of the first respondent to appoint him as apprenticeship trainee for one year and thereafter, induct him as a permanent employee.

6. We have considered the rival submissions and perused the materials available on record.

7. Admittedly, the lands belonged to the family of the first respondent were acquired for public purpose. It is not in dispute that compensation due to the erstwhile land owners were settled. Priority in employment has been provided by way of concession by the appellant – Cements Corporation. Pursuant to the decision taken to grant priority in the matter of appointment in favour of the land losers, a notification dated 04.08.2010 was issued. Accordingly, applications were invited from the eligible candidates of land given cases to fill up one vacant post of Technical Executive (Electrical) at Alangulam Cement Works under the following conditions and the post was to be filled under open competition qualification, experience and age.



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- “1.B.E. Electrical,*
- 2. A minimum of 3 years of Experience*
- 3. Age maximum of 35 years (Relaxible in deserving case) as on 01.07.2010.*

8. As far as the basic eligibility of the first respondent under the land losers priority category is concerned, we have no doubt that the first respondent is directly falling under the losers priority category. Lands were acquired from the father of the first respondent and the name of the first respondent's father is found in the acquisition proceedings. Thus, the first respondent being the legal heir, is eligible to submit application seeking employment pursuant to the notification dated 04.08.2010. Though the first respondent has satisfied the requirements for submitting application, admittedly, he was not possessing the minimum experience of three years, which is prescribed under the said notification.

9. Prescription of educational qualification, age, experience, are the prerogative of the employer and part of the Service Rules. High Court exercising the power of judicial review cannot issue a direction to alter the educational qualifications or to dispense with the experience qualifications



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contemplated for appointment to a particular cadre or post. Such conditions being prerogative of the employer and within the domain of the Service Rules, judicial interference is uncalled for and more so, the qualifications etc., are all prescribed on certain basis. Therefore, we are not inclined to consider the case of the first respondent, on the ground that he did not possess the requisite experience of three years during the relevant point of time, when the notification was issued and the application was submitted by him.

10. Even then, this Court has shown some leniency to the first respondent and directed the appellants to reconsider the case of the first respondent based on the documents produced by him. In compliance with the order passed by this Court dated 18.08.2023, the appellants – Cements Corporation has passed a detailed order *vide* proceedings dated 14.09.2023, wherein, the eligibility of the first respondent was elaborately considered as under:

S.No	<i>Certificates / Documentary proof required for the appointment for the post of Technical Executive (Elecl) under Land Given category as per Circular dated 4.8.2010.</i>	<i>Certificates / documentary proof produced by the individual on 12.09.2023</i>	<i>Discrepancies and Lapses identified</i>
1	<i>Qualification : B.E(EEE)</i>	<i>Yes. Produced</i>	<i>Nil</i>



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2	Certificate for possessing minimum of 3 years experience.	The Petitioner has produced certificate for having experience after the date of circular (i.e.) 4.8.2010	Writ has He was not having 3 years experience at the time of Circular dated 4.8.2010. He has passed the B.E. (EEE) only on April 2010. hence, he could not produce 3 years experience certificate. (21.11.11, 31.01.18 & 24.08.2023)
3	Age	Yes. Produced	- NIL-
4	Certificate from Revenue Authority not below the rank of Tahsildar to the effect that his family was displaced on account of acquisition of land and the said land is the only source of income of sustenance for family	The Petitioner has produced only a self declaration attested by a Notary Public	Certificate from the competent authority (i.e) from Tahsildar was not submitted.
5	No Objection Certificate from other legal heirs duly attested by Notary Public / Magistrate / 1 st class Magistrate to the effect they have no objection in providing employment in TANCEM and they will not claim / raise any dispute in future in this regard. <u>Land Owners as per Award</u> 1) Bodi Perumal Naicker 2) Perumalsamy Naicker 3) Seethalakshmi 4) Sethuraj	1) Bodi Perumal Naicker – Heirship Certificate produced. 4) Sethuraj & sons No Objection Certificate produced.	2) Perumalsamy Naicker (Sl.No.2 in the Award) – No Objection Certificate Not produced. 3) Tmt.Seethalakshmi – Sl.No.3) Death Certificate & Heirship certificate Not produced so as to verify the heirs.



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Finally, the Authorities found that the first respondent is disqualified for providing appointment as Technical Executive (Electrical) under the land given category.

11. As far as the eligibility criteria is concerned, the first respondent has not fulfilled the requirement as per the notification dated 04.08.2010. Therefore, we are of the view that the order of the learned Single Judge is infirm.

12. Accordingly, the writ appeal is allowed and the order dated 14.11.2022, passed in W.P.(MD) No.5839 of 2013, by the learned Single Judge is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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and Land Acquisition Officer,
Government Factory,
Sivakasi, Virudhunagar District.
- 2.The Secretary,
State Government,
Fort St.George, Chennai.



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