



W.P.(MD).No.19227 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.08.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.19227 of 2021

and

W.M.P(MD)Nos.15951 & 15953 of 2021

C.Jebaraj Antony

... Petitioner

Vs.

1.The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution
Corporation Limited,
Administrative Branch,
No.144, Anna Salai,
Chennai – 600 002.

2.The Superintending Engineer (Personnel
and Administration),
Tuticorin Thermal Power Station,
Tuticorin.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order of the first respondent in Memo No.081702/265/G. 56/G.561/2020-2 dated 08.04.2021 and quash the same as illegal and consequently directing the respondents to appoint the petitioner for the post of Junior Assistant/Accounts by internal selection with effect



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from the date on which his juniors were given appointment to the post of Junior Assistant/Accounts and consequential promotion, service and all attendance and monetary benefits.

For Petitioner : Ms.V.Jeya Rani
For Respondents : Ms.M.Parameswari
Standing Counsel

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the first respondent dated 08.04.2021 and consequently to direct the respondents to appoint the petitioner for the post of Junior Assistant/Accounts by internal selection with effect from the date on which his juniors were given appointment to the post of Junior Assistant/Accounts and consequential promotion, service and all attendance and monetary benefits.

2.Heard Ms.V.Jeyarani, learned counsel appearing for the petitioner and Ms.M.Parameswari, learned standing counsel appearing for the respondents and perused the materials available on record.



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3.The petitioner was engaged as a Contract Labour by the respondents at Tuticorin Thermal Power Station in the year 1995. Subsequently, vide the second respondent's memo, dated 17.11.1999, the petitioner was absorbed in the service of Tuticorin Thermal Power Station and was permanently appointed as Helper in Regular Work Establishment Cadre of the respondent Board under Regulation 106 of the Tamil Nadu Electricity Board Service Regulation. Thereafter, on 30.12.2006, the first respondent issued a communication to all Superintending Engineers to fill up of vacancies of Junior Assistant/Accounts by internal selection and called for applications from the qualified employees in various categories of Regular Work Establishment Cadre and Provisional Cadre (Office Helper and Record Clerk), who have completed one year service in the regular timescale of pay and who possessed the minimum general education qualification of S.S.L.C/Matriculation or equivalent qualification for appointment to the post of Junior Assistant/Accounts by Internal Selection. The petitioner made an application for the post of Junior Assistant/Accounts by internal selection during the year 2006 within time. Thereafter, his name was recommended by the Administrative officer, Tuticorin Thermal Power Station on 24.01.2007.



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4.A total number of 64 persons were shortlisted and included in the statement showing the details of qualified employees of the Board in the regular work establishment cadre and Office Clerk and Record Clerk in provisional cadre for selection and appointment to the post of Junior Assistant/Accounts by internal selection during the year 2006, by the Additional Chief Engineer of Tuticorin Thermal Power Station. The petitioner's name was included in serial No.51 and another S.Mariappan's name was placed in serial No.46 and one D.Jeyakumar in serial No.60 of the aforesaid selection list. Though the minimum general educational qualification required for the said post is only SSLC, the petitioner had completed Higher Secondary Course and Data Preparation and Computer Software Trade Certificate at the relevant point of time. As far as the said S.Mariappan and D.Jeyakumar possessed S.S.L.C and NTC/NAC trade certificate qualification. Having required qualification and experience to get the post of Junior Assistant/Accounts, the petitioner eagerly awaited an appointment for the post of Junior Assistant/Accounts by internal selection. But to the shock and surprise of the petitioner, the petitioner's candidature was not considered for the appointment and no reason was assigned for non-consideration of the petitioner's candidature. Immediately, the petitioner approached the second respondent and ventilated his

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grievance, requesting to appoint him in the post of Junior Assistant/Accounts according to his qualifications with appropriate seniority. Subsequently, on 12.08.2009, 27.02.2012, 07.08.2013 and 08.08.2013, he made frequent representations through proper channels to the first respondent for the said purpose. While so, the said S.Mariappan and D.Jeyakumar, who possessed S.S.L.C and NTC/NAC trade certificate qualification, were appointed as Junior Assistant/Accounts on 20.07.2007 and 27.07.2007 respectively at Tuticorin Thermal Power Station. Thereafter, on 29.12.2009, the first respondent issued a memo deferring the selection of six persons as Junior Assistant/Typist/Steno Typist/Accounts including the said S.Mariappan and D.Jeyakumar for the reason that they possessed I.T.I qualification. But, subsequently on 23.07.2013, vide the proceeding in the letter, dated 23.07.2013 of the first respondent, the above said S.Mariappan and D.Jeyakumar were appointed as Junior Assistant. By order of the first respondent dated 05.09.2013, the said S.Mariappan and D.Jeyakumar along with 5 others, who possessed I.T.I qualification were allowed to continue as Junior Assistants in their respective circles. But the petitioner's candidature was not considered though he had Higher Secondary Course qualification.



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5. In a similar way, one R. Natarajan, who was working as Helper at Tuticorin Thermal Power Station was also selected to the post of Junior Assistant/Administration through internal selection, whose selection was cancelled due to possessing ITI qualification on 16.03.2009 by the first respondent and subsequently the said cancellation was dropped by the order of the first respondent on 08.10.2013 and he was retained in the post of Junior Assistant in his circle. In the meantime, the petitioner was transferred to Central Office for Administration Work (Field Work - Salary) on 11.12.2006 by the Additional Chief Engineer, Purchase and Administration, Tuticorin Thermal Power Station. On 07.03.2013, the second respondent transferred the petitioner from Salary Section to Account Section. Thereafter, he was transferred from Account Section-I to Account Section II on 02.03.2015. Following which, the second respondent vide proceedings dated 07.04.2015 promoted the petitioner from the post of Field Assistant to Fitter Grade - II and now, as on date, the petitioner is working as Fitter Grade - II at Tuticorin Thermal Power Station.



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6.In the meanwhile, on 15.09.2011, the petitioner passed the Departmental Examination conducted by the Tamil Nadu Public Service Commission. Subsequently, in the month of August 2014, he passed Accountancy (Junior Grade) Technical Examination in the month of August 2017, he passed Accountancy (Senior Grade) Technical Examination and also passed the Department Test of Accounts Officer Papers I & II examination conducted by the first respondent on 06.01.2019. From December 2006 to March 2013, the petitioner worked on the administrative side and thereafter from the year 2013 to 2015 in the Account Wing - I and after 2016 to till date, he has been working in Account Wing - II. Thus, the petitioner has passed all the Account Tests and he is eligible to the post of Accounts Officer and also has the required field experience in the Accounts wing. While so, the petitioner's batch mates are working as Account Supervisor and are earning higher salary and service benefits, while the petitioner is deprived of his candidature for the post of Junior Assistant/Accounts in a discriminatory manner. The petitioner's bona fide request to consider his candidature for the post of Junior Assistant was belatedly considered by the second respondent by sending his proposal to the first respondent vide letter dated 19.06.2018. Even

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then, the first respondent did not act upon the same. Hence, on 27.08.2020 the petitioner made a detailed representation to the first respondent requesting him to appoint the petitioner for the post of Account Supervisor in par with his batch mates on the basis of his qualifications and field experience. Since the same was not yet considered by the first respondent, he filed a Writ Petition before this Court in W.P(MD)No.15103 of 2020 and this Court by order dated 02.11.2020, directed the first respondent to consider the petitioner's representation and pass appropriate orders based on the recommendation made by the second respondent dated 19.06.2018 within a period of eight weeks from the date of receipt of a copy of that order. However, the same was not complied with. Hence, the petitioner filed a contempt petition in Cont.P(MD)No.526 of 2021 before this Court on 11.03.2021. Pursuant to the same, the first respondent passed the impugned order dated 08.04.2021 refusing to consider the petitioner's candidature for the post of Junior Assistant/Accounts and subsequent service benefits. Assailing the same, this Writ Petition came to be filed.



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7.The first respondent filed a counter-affidavit and the learned standing counsel appearing for the respondents submitted that S.Mariappan, D.Jeyakumar and R.Natarajan were selected as Junior Assistant by internal selection during the year 2007. The aforesaid persons have applied for the post of Junior Assistant by hiding their qualification of I.T.I and they were selected as Junior Assistant. Later, on finding out the I.T.I qualification of the aforesaid persons, they were reverted to the post of Helper during the year 2009. Aggrieved by the same, the said R.Natarajan has filed a writ petition in W.P(MD)No. 13275 of 2009 before the Court. This Court, by order dated 26.11.2010, dismissed the said case. Following which, R.Natarajan was reverted as Helper and posted to Tuticorin Thermal Power Station vide memo, dated 05.11.2011. In furtherance to the same, the said employee filed a writ appeal in W.A(MD)No.1484 of 2011 and obtained an interim stay. On 16.12.2011, on the basis of the said order, requested to continue as Junior Assistant. In view of the interim stay, the cancellation order issued to the employee R.Natarajan was dropped during the year 2013 and was retained as Junior Assistant in the same circle with an undertaking that they would not seek for any Promotion or Transfer to Regular Work Establishment cadre ie., any technical post in that cadre in the future. On similar lines, S.Mariappan

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and D.Jeyakumar were also retained as Junior Assistant/Accounts during the same year 2013 after getting an undertaking in a similar way from them as well. As on date, all three of them are working in the Supervisor cadre in the same line of promotion.

8.The petitioner is now working as Fitter Grade II and the persons who were selected as Junior Assistant/Accounts during the year 2007 are now working as Accounts Supervisor. If at all, the petitioner who has been working in a technical post as a Fitter Grade - II for more than 20 years has to be considered for the Junior Assistant/Accounts post, the petitioner will have to be notionally selected for the post of Accounts Supervisor as on date. Without much experience in the initial cadre of Junior Assistants and Assistants in the Accounts wing, it would not be practically possible to carry out the work in the Accounts Branch. Further, the minimum educational qualification for the post of Junior Assistant/Accounts has also been modified from S.S.L.C to B.Com for the post of Junior Assistant/Accounts as per Board proceedings dated 24.05.2014 in order to improve the efficiency of administration. The petitioner does not have the qualification of B.Com, to be considered for the post of Junior Assistant/Accounts. The employees who joined in the Board

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service were promoted to the next higher post within a short period of time. As a result of which, they never had the opportunity to learn the rules/regulations and basic fundamentals.

9.Considering the same, vide Board proceedings No.18, dated 02.06.2020, it was mandated that no employee belonging to the post of Junior Assistant shall be eligible for the first promotion and subsequently to the second promotion unless he/she has put in a minimum service period for 3 years in each category. Thus, as per the recent advancements, the petitioner himself would not properly discharge his duty as Junior Assistant/ Accounts. Further, all the employees were not selected only on the basis of the recommendation of the Chief Engineers/Superintending Engineers, but satisfying all other eligibility criteria and also by following the communal roster. Even though the educational qualification for the post of Junior Assistant/Accounts was SSLC during the year 2006, as on date, as per Board proceedings No.25, dated 24.05.2014, the educational qualification for the said post has been modified as B.Com Degree and admittedly the petitioner does not possess the same and hence, he is not entitled to be appointed as Junior Assistant/Accounts and on that basis, the learned counsel pressed for dismissal of the Writ Petition.



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10.A perusal of the documents available on record would reveal that on 30.12.2006, the Chief Engineer/Personnel of the Tamil Nadu Electricity Board, Administrative Branch circulated a letter No. 144295/953/G.56/G.561/2006-1, to all Superintending Engineers to call for applications from the qualified employees in various categories of Regular Work Establishment Cadre and Provincial Cadre (Office Helper and Record Clerk), who have completed one year service in the regular timescale of pay and who possess the minimum general qualification ie., S.S.L.C/Matriculation or equivalent qualification for appointment to the post of Junior Assistant/Accounts by Internal Selection in the scale of pay of Rs.3370-100-6370. However, it was specifically mentioned in the said letter in Clause (2) that the I.T.I holders with technical qualifications of NTC/NAC initially appointed to the post in Regular Work Establishment as Helpers will not be eligible for the post of Junior Assistant/Accounts. Similarly, Ex-servicemen appointed as Watchman will also not be eligible for internal selection. When a statement showing the details of qualified employees of the Board in Regular Work Establishment Cadre and Provincial Cadre (Office Helper and Record Clerk) for selection and appointment to the post of Junior Assistant/Accounts by internal selection during the year 2006 was arrived at by the Administrative Officer cum Additional Chief

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Engineer, Tuticorin Thermal Power Station, the petitioner who was qualified in Higher Secondary Course and S.Mariappan and D.Jeyakumar, who have passed SSLC, were also shortlisted and placed in serial No.51, 46 and 60 respectively.

11.However, the qualification of I.T.I trade was not considered while short-listing the aforesaid statement. But for the reasons known to the respondents, the petitioner's candidature was not considered, but the said S.Mariappan and D.Jeyakumar, along with one R.Natarajan, who were just qualified in S.S.L.C were selected and appointed as Junior Assistant on 20.07.2007, 27.07.2007 and 04.12.2009 respectively. Subsequently, on 29.12.2009, a selection of six persons including S.Mariappan and B.Jeyakumar was deferred by the first respondent for the reason that they, in addition to S.S.L.C, possessed I.T.I qualification. The selection of S.Mariappan and D.Jeyakumar were further retained in the post of Junior Assistant on 05.09.2013. Further, the selection of R.Natarajan was also dropped on 08.10.2013 by a cancellation order passed by the first respondent. Though the petitioner was more qualified than those three persons who passed in +2, his candidature was rejected by the respondents without assigning any reasons.



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12.It is not in dispute that the authorities prepared a panel during the year 2006 containing a list of 64 short-listed candidates in the category of Helper in Regular Work Establishment Cadre and Provincial Cadre (Office Helper and Record Clerk) for selection to the post of Junior Assistant/Accounts in the respondent Board. Though the petitioner/C.Jebaraj Antony, S.Mariappan and D.Jeyakumar were qualified in I.T.I that was discarded and taking alone the petitioner's +2 qualification and S.S.L.C qualification of S.Mariappan and D.Jeyakumar they were included in the panel for the year 2006. Thus, the petitioner came within the zone of consideration for the selection to the post of Junior Assistant in the respondent Board, though the names of S.Mariappan, D.Jeyakumar and R.Natarajan were deferred for the reason that they had additional qualifications of NTC/NAC trade certificate in addition to SSLC, later they were accommodated for the post of Junior Assistant in the year 2013. However, all through the entire process for the reasons known to the respondents, without assigning any reason though the petitioner was better qualified than the similarly placed persons and had passed in +2 along with I.T.I qualification in Trade of Data preparation and Computer Software certificate having brought him within the zone of consideration his

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candidature was rejected. From the date of rejection, the petitioner continuously made representations and also filed W.P(MD)No.15103 of 2020 before this Court, in which, this Court on 02.11.2020 has passed favourable order to consider the petitioner's representation. However, the impugned order came to be passed on 08.04.2021 elaborating the reason for his rejection for the first time and the crux of the impugned order dated 08.04.2021 passed by the first respondent is as follows:-

(i) The petitioner who applied for the post of Junior Assistant/Accounts during the year 2006 by internal selection was not considered at that time, since he had I.T.I qualification.

(ii) The persons, who have been selected as Junior Assistant/Accounts during the year 2007 are now working as Accounts Supervisor as on date. If at all the petitioner who is working in technical post for more than 20 years is considered as Junior Assistant/Accounts, he will have to be notionally selected for the post of Accounts Supervisor as on date.



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(iii) Without much service in the initial cadre of Junior Assistants and Assistants in the Accounts wing, the petitioner will face difficulties in carrying out the work in the Accounts Branch.

(iv) The minimum educational qualification for the post of Junior Assistant has been modified from S.S.L.C to B.Com as per the Board proceedings No.25, dated 24.05.2014 so as to improve the efficiency of administration.

(v) Finally, TANGEDCO vide Board proceedings No.18, dated 02.06.2020 has mandated that no employee belonging to the post of Junior Assistant shall be eligible for the first promotion and subsequently to the second promotion unless he/she has put in a minimum service period of three years and accordingly, the employees would be eligible to the promotional post of Assistant from Junior Assistant only after completion of three years.

13.However, all the aforesaid reasons for rejecting the petitioner's claim for the post of Junior Assistant have evolved post-2007 after having appointed similar persons, namely

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S.Mariappan, D.Jeyakumar and R.Natarajan in the post of Junior Assistant. It is pertinent to mention here that the petitioner is a +2 pass with NTC/NAC I.T.I trade certificate and the other three similarly placed persons are S.S.L.C with NTC/NAC I.T.I trade certificate. The parameters stated in the impugned order would equally be applicable to the aforesaid similarly placed persons as well. However, those reasons did not stand in the way of selection to the similarly placed persons and only in the case of the petitioner, the respondents have discriminatively proceeded to reject his candidature. Once the petitioner's name along with other similarly placed persons were short-listed in the panel during the year 2006, the doctrine of legitimate expectation could automatically be invoked in favour of the petitioner when the similarly placed persons were given the appointment of Junior Assistant/Accounts in the respondent Board. Though the respondent Board lays out conditions of the certificate for recruitment of persons by resolving board proceeding after proceeding, the same has to be made applicable equally to all the employees and the same should not be applied discriminatively between the employees.



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14.In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these Fundamental Rights, Article 309 provides that, subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services.

15.In the case in hand, the Board proceedings resolved by the respondent Board regulates the recruitment and conditions of service of the employees of the respondent Board. However, the same has to be implemented uniformly for all the employees. When the discrimination is so palpable in the case of the appointment of Junior Assistant by rejecting the petitioner and recruiting similarly placed persons namely S.Mariappan, D.Jeyakumar and R.Natarjan, the legitimate expectation of the petitioner has been concretely defeated by the arbitrary exercise of powers by the respondents.

16.No doubt an employee has a right to be considered for promotion though he cannot claim promotion as a matter of right, every employee has a right to be considered for promotion under

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Article 16 to a higher post subject to eligibility provided he is within the zone of consideration. But the question is as to the manner in which his case is to be considered. This aspect is a matter of considerable importance in service jurisprudence, as it deals with fairness "in the matter of consideration for promotion under Article 16". Under Article 16 of the Constitution, the right to be considered for promotion is a fundamental right. It is not the mere consideration for promotion that is important, but the consideration must be fair according to the established principles governing service jurisprudence. No doubt, the petitioner was well within the zone of consideration along with similarly placed persons, namely S.Mariappan, D.Jeyakumar and R.Natarjan, when his name was finalised in the list of candidates from among Regular Work Establishment Cadre and Provincial Cadre (Office Helper and Record Clerk) for selection and appointment to the post of Junior Assistant/Accounts by internal selection.

17.However, when the case of the promotion of the petitioner and the similarly placed persons were considered, the aspect of fairness has been put to question. The Courts will not normally interfere with the assessment made by the selection authorities unless the aggrieved employee establishes that the non-promotion was bad



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according to Wednesbury principles, or it was mala fide. It is needless to state in the case in hand, the entire selection process is blatantly and explicitly arbitrarily, discriminatory and the rejection of the petitioner's candidature to the post of Junior Assistant/Accounts in the year 2007 is vitiated by mala fide. The reasons put forth by the respondent authority after a period of 14 years ie., on 08.04.2021 vide impugned order is tainted with mala fides and the same establishes that non-promotion of the petitioner was bad. Hence, I have no hesitation in concluding that the petitioner's fundamental right to be considered for promotion has been badly defeated by the discriminatory and arbitrary exercise of power by the respondent Board. The continuous unfair treatment meted out to the petitioner by the respondent Board pre-eminently makes it fit, requiring, to quash the impugned order and issue appropriate orders.

18. That apart, the reasoning of the first respondent Board in the impugned order stating that the petitioner who has been working in a technical post for more than 20 years could not be considered for Junior Assistant/Accounts without much service in the initial cadre of Junior Assistant and Assistant in Accounts wing seems to be without application of mind. This Court is inclined to acknowledge

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that the petitioner has passed the departmental examination conducted by TNPSC in the month of May, 2011. That apart, he has passed Accountancy (Junior Grade) Technical Examination in the month of August, 2014, Accountancy (Senior Grade) Technical Examination in the month of August, 2017, passed department test of Accounts Officer Papers I and II examination conducted by the first respondent on 06.01.2019 and departmental tests in November, 2018. In furtherance to the same, from 2013 to 2015, he worked in Accounts Wing I and thereafter, from the year 2016 till date, he has been working in Accounts Wing II. Hence, I have no hesitation in holding that he is eligible for the post of Accounts Officer and also he has the required qualification in view of passing all the relevant examinations pointed out supra.

19. In the result, this Court hereby quashes the impugned order, dated 08.04.2021 and thereafter, remand the case of the petitioner back to the file of the first respondent/the Chief Engineer/Personnel, Tamil Nadu Generation and Distribution Corporation Limited, Chennai and consequently direct the first respondent to appoint the petitioner for the post of Junior Assistant/Accounts by internal selection with effect from 23.07.2013

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with all service benefits and consequential promotion, service and all attendance and monetary benefits thereof that is from the date on which S.Mariappan and D.Jeyakumar were appointed to the post of Junior Assistant.

20.Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

27.09.2023

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To

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L.VICTORIA GOWRI, J.

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