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W.P.Nos.2081 of 2024, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2024

Pronounced on : 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.2081, 6631, 3413, 3573, 3703, 5923, 6235, 6589, 3586, 3687, 3557, 2106, 3863, 3866, 3568, 3569, 4868, 4895 & 4872 of 2024 and  
WMP.Nos.7358, 7360, 7365, 3673, 3675, 3846, 3847, 3848, 4010, 4013, 6567, 6568, 6569, 6922, 6923, 6924, 7318, 7319, 7320, 3858, 3861, 3985, 3987, 3817, 3820, 3826, 2236, 2237, 2255, 2256, 4174, 4510, 4178, 4503, 3839, 3840, 3843, 3835, 3841, 3845, 5320, 5321, 5322, 5362, 5363, 5364, 5330, 5332 & 5334 of 2024

WP.No.2081 of 2024

- 1.P.K.Vaikundhavasagan
- 2.S.Rajaboopathy
- 3.P.K.Ramesh
- 4.R.Kalvarayan
- 5.B.Sivachandran
- 6.R.Senthil
- 7.P.Balasubramanian
- 8.R.Tamilarasan
- 9.G.Elayaraja
- 10.G.Ramachandran
- 11.M.Anburaj
- 12.S.Sarathkumari
- 13.T.Mahadevan
- 14.M.Bamanathan
- 15.A.Selvakumar
- 16.R.Suritha
- 17.P.Kavitha
- 18.K.Chinnadurai
- 19.M.Gomathi Priya



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... Petitioners

Vs.

- 1.The Chief Engineer/Personnel,  
Tamilnadu Electricity Board/TANGEDCO,  
8<sup>th</sup> Floor, NPKRR Maaligai,  
No.144, Anna Salai, Chennai 600 002
- 2.The Chairman,  
Tamilnadu Electricity Board/TANGEDCO,  
8<sup>th</sup> Floor, NPKRR Maaligai,  
TNEB Complex, No.144, Anna Salai,  
Chennai 600 002

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in his proceedings dated 07.07.2022 in clause (i) of the impugned proceedings in (Per) FB TANGEDCO Proceedings No.5 and to quash the same and to direct the respondents to promote the petitioner to the post of Technical Assistant(Electrical) with all service and monetary benefits within the time limit fixed by this Court.

For Petitioners : Mr.Balan Haridoss  
for Mr.R.R.Mohanaraja

For Respondents : Mr.P.S.Raman,  
Advocate General  
Assisted by  
Mr.K.Rajkumar,  
Standing Counsel





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respondents issued Board Proceedings in BP.No.5 dated 07.07.2022 thereby ordered that the internal selection shall be allowed to continue with the existing eligible employees who have already acquired the qualification prior to 07.06.2022 only as per provisions of Service Regulations. Accordingly, the respondents made notification dated 24.01.2024 thereby inviting applications from the qualified employees of TANGEDCO / TANTRANSCO to fill up the vacant post of Assistant Engineer/Electrical by internal selection as per Service Regulations. The eligibility condition is that the employee should possess minimum qualification of Degree in Electrical and Electronics Engineering or Electronics and Communications Engineering or Instrumentation Engineering or Computer Science / Information Technology Engineering or equivalent thereto of any University recognised by the University Grants Commission.

3. Mr.V.Prakash, the learned Senior Counsel appearing for the petitioners in WP.Nos.3573, 3703, 6589, 3586, 3687 & 3557 of 2024 submitted that fixing of cut off date as 07.06.2022 for serving employees



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of the Board to make applications for internal selection is arbitrary and violative of Articles 14 and 16 of the Constitution of India. There is no nexus or rationale to fix the cut off date, when the notification for internal selection was issued only on 24.01.2024. Whereas as per the Board Proceedings dated 07.07.2022, the cut off date was fixed as 07.06.2022 for obtaining their qualification to apply for internal selection. No object is sought to be achieved by depriving the eligible candidates to apply for internal selection by fixing the cut off date except to fill up the Assistant Engineer/Electrical post by way of direct recruitment. The fixing of cut off date fails the test of reasonableness and arbitrariness thereby fail to pass the muster under Article 14 of the Constitution of India. Insofar as the post of Assistant Engineer - Electrical/ Mechanical / Civil, the Service Regulations provides for ratio of 1:1 for internal selection and direct recruitment. When the said regulation is still in force, the respondents have no authority, power and jurisdiction to fix the cut off date as 07.06.2022 for acquiring qualification.



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3.1 He further submitted that the right provided under the Service Regulation cannot be taken away by way of executive order, that too without any amendment or modification to the Service Regulations in accordance with law. Only the circumstances where the rule is silent, the vacuum can be filled by way of an executive order and not otherwise. The Service Regulations explicitly and unequivocally provides for recruitment by way of internal selection in the ratio of 1:1. Therefore, there is absolutely no necessity for the second respondent to fix the cut off date for acquiring the qualification. It is the settled principles of law that an executive order cannot override the Service Regulations which is statutory in character. Therefore, the impugned Board Proceedings cannot annul the substantive legal right which is accrued to the petitioners by way of the Service Regulations. The in-service candidates have been permitted to apply for higher post if they possess or have acquired higher qualification during their services by internal selection from the year 1977. Therefore, the respondents cannot take away such right which employees have been enjoying for the past several years and thereby denied them the right and opportunity to make application for internal selection. The fixing of cut



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off date to acquire qualification would deprive the right to equality and equal protection in law to the serving employees of the Board. When the respondents granted permission to pursue higher studies, they cannot put a condition by fixing cut off date to acquire the said qualification. In fact, the said cut off date was fixed by the Board proceedings dated 07.07.2022 as 07.06.2022. Whereas the notification was issued on 24.01.2024. Though the petitioners had acquired their qualification even before the notification dated 24.01.2024, they are not able to apply for the internal selection. Even as per the Service Regulations, though stated to be recruitment by way of internal selection, it is nothing but selection through direct recruitment. Therefore, fixing of cut off date for acquiring the qualification for direct recruitment for internal selection is bad in law and violative of Articles 14 and 16 of the Constitution of India.

3.2 He further submitted that the Government of Tamilnadu issued order in GO.Ms.No.100 dated 19.10.2010 trifurcating the then Tamilnadu Electricity Board as (i) Tamilnadu Electricity Board Limited(TNEB), Tamilnadu Generation and Distribution Corporation



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Limited (TANGEDCO) and Tamilnadu Transmission Corporation Limited (TANTRANSCO). While so, the Board undertakes that till the trifurcation is completed, the Board will no way alter the service conditions of its existing employees including internal selection, promotion, pension and other service aspects. The trifurcation of TNEB is not yet completed and as such, fixing of cut off date for acquiring the qualification is against the undertaking given by the Board.

4. Mr.Balan Haridoss, the learned counsel appearing for the petitioners in WP.Nos.2081, 2106 & 3866 of 2024 submitted that by way of the impugned cut off date fixed for acquiring qualification, the respondents failed to appreciate that they have an obligation to treat all the employees equally based on their prescribed qualification as mandated by the respondents. The prevention of qualified candidates from participating in the internal selection / recruitment based on the educational qualification is completely of discrimination and cannot be sustained at any level of reservation of clause or proceedings to restrict the petitioners. Further after having been permitted the petitioners to do



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their diploma, fixing cut off date is arbitrary and illegal. In support of his contention, he relied upon the judgment rendered in the case of ***State of Orissa and Others Vs. Prasaa Kumar Sahoo*** reported in ***(2007) 15 SCC 129***, wherein it is held that *the State is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Articles 14 and 16 of the Constitution. Policy decision taken by the State in exercise of its jurisdiction under Article 162 would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or the proviso to Article 309. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.*

5. The writ petitions in WP.Nos.3863, 4868, 4872 & 4895 of 2024 have been filed challenging the proceedings of the first respondent in proceedings No.47 dated 19.02.2018 and the proceedings dated 01.02.2024 on the file of the second and third respondents thereby ordered that Typists are not eligible for internal selection to the post of



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Assistant Engineer. The petitioners were appointed in the post of Junior Assistant and Typist respectively. Thereafter, they were promoted to the post of Assistant. They are also qualified with 10<sup>th</sup> standard, 12<sup>th</sup> std and Bachelor of Engineering. While being so, the respondents issued notification dated 01.02.2024 calling for applications for appointment to the post of Assistant Engineer by internal selection thereby the petitioners are ineligible to apply to the post of Assistant Engineer by internal selection. The ineligibility has been extended only to the post of Junior Assistant and Typist, whereas all the other employees who have been recruited under the very same notification with BE degree or those who have acquired BE degree after joining in the post are made eligible for internal selection.

6. Mrs.Dakshyani Reddy, the learned Senior Counsel appearing for the petitioners in WP.Nos.3863, 4868, 4872 & 4895 of 2024 submitted that the proceedings No.47 dated 19.12.2018 cannot override the Regulations which provide for the petitioners' participation in the internal selection vide Regulation 94 of the respondents Service



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Regulation . Further, it is violative of Article 14 of the Constitution of India. Even under the category of Typist, those who have been appointed prior to the petitioners and are holding BE degree are eligible to take part in the internal selection. But the petitioners are not eligible since they were appointed in a particular notification as Junior Assistant and Typist. Therefore, it is of discrimination among the persons who were appointed as Junior Assistant and Typist. The petitioners are being qualified with BE degree, they were of the expectation that they would be entitled to participate in the internal selection to the post of Assistant Engineer as and when qualified. Further, without any amendment to the Regulation by board proceedings, the respondents cannot take away the right of the petitioners to participate in the internal selection to the post of Assistant Engineer.

7. *Mr.P.S.Raman*, the learned Advocate General appearing for the respondents submitted that the Tamil Nadu Electricity Board Service Regulations was framed in exercise of the power conferred by Section 79(c) and (k) of the Electricity (Supply) Act, 1948 and by virtue of Tamil



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Nadu Electricity (Reorganization and Reforms) Transfers Scheme, 2010 in the Government order in GO.Ms.No.100 Energy (B2) Department dated 19.10.2010. These are all still in force and having statutory force of law. Each and every post in Tamilnadu Electricity Board is governed by Tamilnadu Electricity Board Service Regulations. Accordingly, the method of appointment and educational qualifications are prescribed for the post of Assistant Engineer / Electrical under Regulations 92 and 94. Accordingly, the posts of Assistant Engineer / Electrical have to be filled by internal selection and direct recruitment in the ratio of 1:1 . Under the head of internal selection, selection shall be made on the basis of the service rendered after acquiring BE degree or equivalent qualification. As and when direct recruitment is proposed, it is placed for approval and approval is obtained for the mode / method of recruitment to be followed as per the Service Regulations 89(5) (i) of Tamil Nadu Electricity Board Service Regulations. Further, the seniority of the candidates shall be made for the purpose of giving further promotion. As per Rule 97 of Tamil Nadu Electricity Board Service Regulations, seniority of Assistant Engineer(Electrical/Civil/Mechanical) recruited both by internal selection



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and direct recruitment has to be fixed in the ratio of 1:1 in a particular calendar year. Section 79(c ) and (k) of Electricity (Supply) Act, 1948 r/w Regulation 6(a) of Tamil Nadu Electricity Board Service Regulation enable the Board to evolve its own classification of service, re-arrangement of grades, re-fixation of responsibilities and prescribe a minimum educational, technical and other special qualifications as may be considered suitable for making selections and appointments to the posts in each class of service. Accordingly, a policy decision was taken and issued orders by proceedings No.5 dated 07.07.2022 thereby fixed the cut off date as 07.06.2022 for the existing staff to acquire qualification in order to participate in the internal selection.

7.1 He further submitted that there are totally 800 vacancies, in which 400 by internal selection and the other 400 by direct recruitment. As per the notification dated 24.01.2024, so far 1841 applications have been received from those who have acquired qualification before the cut off date i.e. 07.06.2022 through internal selection for 400 posts. Therefore, the petitioners have no right to challenge the policy decision of



the respondents.

7.2 He further submitted that entry through lowest post or entry level post and seeking Assistant Engineer post based on the their qualification is nothing but backdoor entry. In order to curb such action, without coming through the ladder of promotion from the feeder post to many levels, the respondents Board by its 102<sup>nd</sup> Board Meeting dated 29.10.2021, held that in other Government Departments of Tamilnadu, persons appointed through direct recruitment are not eligible for internal selection to higher post and in view of that, the Board directed to do an analysis of the internal selection policy followed in TANGEDCO. It was further directed that based on the analysis, a policy decision can be taken. Based on the policy decision with regards to internal selection, several procedures were considered in the Government Departments and it is under progress. But considering the time factor to amend rules, proposal was placed before the Board to fill up the vacancies as per the existing procedure followed for internal selection by policy decision made by the 107<sup>th</sup> Board Meeting dated 07.06.2022. Accordingly, it was decided that



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henceforth internal selection shall not be allowed for new recruits and the persons acquired qualification from this date. The cut off date for implementation of the policy shall be from 07.06.2022. Therefore, the internal selection shall be considered for existing staff who have already acquired qualifications as per the provisions of Service Regulations..

7.3 He further submitted that qualifications obtained through Open Universities/ correspondence courses without studying 10<sup>th</sup>, +2 under regular stream as notified by the Universities Grants Commissions shall not be considered for appointment through internal selection. Accordingly, TANGEDCO issued proceedings No.5 dated 07.07.2022 and fixed the the cut off date as 07.06.2022 for acquiring qualification to participate in the internal selection. The line of promotion is Helper, Commercial Assistant, Commercial Inspector, Foreman, Special Grade Foreman and so on. The post of Assistant Engineer is not a promotional avenue for the petitioners. It is an internal selection process and they have no vested right to seek the said post. The appointment by internal selection is based on their fulfilling requisite qualification and criteria to



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be followed by Board from time to time according to the exigencies of services. The cut off date prescribed has been determined considering the needs for the respondents Corporation. In the absence of any vested right, the petitioners have no statutory right to compel the Board in having policy decision to restrict the zone of consideration.

7.4 In respect of the writ petitions in WP.Nos.3863, 4868, 4895 & 4872 of 2024, the learned Advocate General submitted that Tamilnadu Electricity Board Service Regulation enables the Board to evolve its own classification of service, re-arrangement of grades, refixation of responsibilities and prescribe a minimum educational, technical and other other specific qualifications as may be considered suitable for making selections and appointments to the posts in each class of service. Accordingly, proceedings No.47 dated 19.02.2018 was issued as per the approval of the Chairman cum Managing Director and thereby the Junior Assistant/Administration and Typists who were recruited with qualification of Bachelor of Engineering are not eligible for internal selection to the post of Assistant Engineer. As per the said proceedings,



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the respondents invited applications from eligible employees for internal selection to fill up the post of Assistant Engineer/Electrical by the notification dated 25.01.2024. The method of appointment and educational qualifications were prescribed for the post of Assistant Engineer /Mechanical as per Regulations 92 and 94.

7.5 He further submitted that for the post of Junior Assistant, Assistant/Administration, they have separate ladder of promotions namely Junior Assistant, Assistant, Administrative Supervisor / Superintendent / Section Officer, Assistant Administrative Officer/Assistant Personal Officer, Administrative Officer/ Personal Officer, Senior Administrative Officer/Senior Personal Officer. In fact, the petitioners were selected and appointed as Junior Assistant / Administration and in other posts with condition that they are not eligible for getting internal selection to the post of Assistant Engineer. Therefore, they are well aware of the fact that they are not eligible for internal selection to the post of Assistant Engineer even at the time of their appointment. Only after accepting the terms of appointment having



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acquainted with that conditions and accepted the same, therefore now they cannot challenge the recruitment. Therefore, their action is hit by principle of estoppel and against law. Further under Chapter I of the General conditions that all the employees joining the service of the Board shall be deemed to be new entrants into service of the Board. Any employment will depend on the result of the Board's review of the Staff requirements from time to time depending on the exigencies of works. Therefore, as per the service conditions, the petitioners who are new entrants into service of the respondents and as such, they will not be eligible for internal selection to the post of Assistant Engineer.

7.6 He further submitted that there are 100 posts of Junior Assistant / Administration during the year 2016 to 2018. There are about 43 Bachelor of Engineering degree holders got appointed to the said post in the year 2018. Therefore, there was specific condition in their service that they are not eligible for internal selection to technical cadre. They got failed in selection to the post of Assistant Engineer in the written examination. Further, if they are allowed to participate in the internal



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selection, it will create a huge vacancy in the said cadre and the main purpose of recruitment itself will become futile and sanctioned strength of Assistant Engineer will not accommodate new entrants.

8 In support of her contention, Mrs.Dakshiyani Reddy, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Dev Gupta Vs. PEC University of Technology and Ors.*** arising in SLP(Civil) No.15774 of 2023 dated 09.08.2023, wherein the Hon'ble Supreme Court of India cited the judgment rendered in the case of ***Roop Chand Adlakha Vs. Delhi Development Authority*** reported in ***1988 Supp (3) SCR 353***, wherein it is held that the process of qualification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality.

9. However, the learned Advocate General relied upon the



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judgment of this Court rendered in WP(MD).Nos.15799 to 15813 of 2012 dated 19.11.2019, wherein it is held as follows:

“18. That apart, whether a person can approbate and reprobate. The petitioners herein have taken the advantage of the order of Deputy Chief Inspector of Factories dated 05.07.1999 and secured their appointment as fresh entrants and for that purpose they have conscientiously foregone certain rights and accepted to join service as fresh entrants. Once they have taken conscientious decision, after giving a letter of undertaking for securing permanent job, they cannot claim themselves as similarly placed persons and that they are entitled the same benefits they are estopped by their conduct. In effect they are estopped by their conduct. As submitted by the learned counsel for the respondent, they were acting like fence sitters.”

10. Further, in respect of powers to modify or frame new regulations governing the conditions of service of personnel, the learned Advocate General relied upon the judgment of this Court rendered in WA.No.1736 of 2014 dated 08.08.2023, wherein it is held as follows:

23. Therefore, a scheme has to be framed that is



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what they framed COPY 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 transfer. The transferee shall be entitled to modify or frame new COPY regulations governing the conditions of service of



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



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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 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



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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.

11. Thus, it is clear that the issuance of GO.Ms.No.100 Energy (B2) Department dated 19.10.2010 to include clause 6 (13) cannot be said to be unlawful one. If there is a power under clause 6(13) of the scheme to modify the regulation, absolutely TANGEDCO can very well modify the regulations.

12. The learned Advocate General also relied upon the judgment of this Court rendered in WP.No.9328 of 2020 dated 22.09.2020, wherein it is held as follows:

“32.Thus, in our opinion also, the respondent Corporation had the authority to prescribe appropriate qualifications for promotion and there is no lack of competence to do so.



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33.The consideration for promotion after the amendment in the rule therefore would be justified as the rule does not appear to be invalid. The claim of the petitioner that it cannot be given retrospective effect stands legally answered as above. There was therefore no vested right accrued in favour of the petitioner so as to be affected by the introduction of the amendment in the rule. The question of retrospective application, therefore, does not arise at all. The petitioner was yet to be considered for promotion and the mere drawing of a suitability list does not confer any vested right that can be enforced even on the strength of a stated legitimate expectation. This is evident from the judgments which have been cited at the bar and are referred to herein above. There is no rule or prescription so as to give retrospective effect to promotion from the date of occurrence of vacancy. Consequently, the arguments raised on this count do not hold water.

34.One of the submissions raised is that the terms and conditions have been altered without complying with the provisions of Section 9A of the Industrial Disputes Act, 1947. Suffice it to say, to establish the same, the petitioner may have to raise a dispute before the appropriate forum, but, in our opinion, so long as the regulations statutorily framed exist and a challenged raised to it does not suffer from the vice of Article 14, we are not called upon to delve into the said issue, as we have found that the petitioner does not have a legally



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enforceable right of promotion from the date of availability of a vacancy on the strength of the suitability list drawn on 08.03.2019.

13. In respect of approbate and reprobate, the learned Advocate General relied upon the judgment of the Hon'ble Supreme Court of India rendered in Civil Appeal No.5764 of 2022 dated 23.08.2022, wherein it is held as follows:

8. Having noted the contention on the said aspect, we are of the opinion that the said issue would become relevant only if at the first instance the Court is satisfied that the ACP Scheme of 2003 is accepted to be applicable to employees of respondent No.1- Electricity Board w.e.f 09.08.1999 as was made applicable to the government servants, the benefit of which is being sought by the appellants herein. Hence, it is necessary to examine this aspect of the matter relating to the date on which the scheme will be applicable to employees of respondent No.1-Electricity Board.

9. In that regard, the fact which cannot be disputed is that even though at an earlier point in time the Electricity Board had adapted the Bihar Service Code of the State Government due to which all Service Conditions, Rules and notifications applicable to the employees of the State Government had become applicable to the employees of the respondent No.1-Electricity Board, the respondent No.1-



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Electricity Board had thereafter in exercise of the power conferred under [Section 79 \(C\)](#) of the Electricity (Supply) Act, 1948 had framed its own service regulations. The indisputable position is that, the appellants, therefore, were guided by the service regulations of respondent No.1-Electricity Board. Therefore, the notification relating to service conditions if any issued by the State of Bihar to regulate the service conditions of its employees was neither ipso facto nor mutatis mutandis applicable to the employees of the respondent No.1-Electricity Board unless the same was adapted by the respondent No.1-Electricity Board. Even if adapted, it would depend on the manner and to the extent adapted.

10. With this position being clear, a perusal of the notification dated 25.06.2003 issued by the State of Bihar will indicate, the benefit of the same is being sought by the appellants is in relation to its applicability w.e.f 09.08.1999 as provided therein. However, the notification on the face of it indicates the category of employees to whom it would apply as also the category to which it does not apply. The relevant portion reads as hereunder:-

“It shall be extended to all the regular employees of Group 'B', 'C' and 'D' of the State Government of Bihar. This may also be made applicable, by a special order of the state Government, to holders of isolated posts of Group 'A'. This shall not be applicable to the teachers of nationalised schools and employees of the Public



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Undertakings or the autonomous institutions, assisted, partially or fully, by the State Government” (emphasis supplied)

11. A perusal of the same would indicate that, apart from the legal position relating to the applicability of its own service conditions to the employees of the respondent No.1-Electricity Board, the notification dated 25.06.2003 itself clarifies that it shall not be applicable to the employees of public sector undertakings or autonomous institutions. The undisputed position is that the respondent No.1 is a statutory Board which is therefore an autonomous public undertaking. If that be the position, the mere issue of the notification dated 25.06.2003 by the State of Bihar would not create any right in favour of the employees of the respondent no.1-Electricity Board for the benefits provided under such notification. It is in that light, the notifications dated 05.04.2005 and 07.10.2005 become relevant in the matter of granting benefit of the ACP Scheme to the employees of the respondent No.1-Electricity Board since there can be no claim until it is adapted. In that regard, a perusal of the notification dated 05.04.2005 (Annexure P3) indicates that the Committee constituted by the Board had submitted its recommendations which were considered by the Board and had thereupon taken a decision to replace the then existing system of ‘Selection Grade and Time-bound Promotion’ with ‘Assured Career Progression Scheme’. The pay-scale for the purpose of ACP Scheme was to be



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notified later. Though, the notification dated 05.04.2005 adapting the ACP Scheme was notified, immediately thereafter a notification dated 07.10.2005 (Annexure P4) was issued as hereunder:

“In pursuance of Board's Resolution no. 8165 dated 22.9.2005 the Board in exercise of power conferred upon the Board under [Section 79\(C\)](#) of the electricity supply Act, 1948 has decided to adapt Bihar State Employees Condition of Service (Assured Career Progression Scheme) Rules 2003 only for the staff appointed after issuance of Board's notification No. 25 dated 5.4.2005. Board's notification no. 25 dated 5.4.2005 stands modified to the above extent.”

12. A perusal of the notification dated 07.10.2005 indicates that the decision of the Board to adapt the ACP Scheme of 2003 was only for the staff appointed after the issuance of the Board's notification No.25 dated 05.04.2005. The same indicates that respondent No.1-Electricity Board did not adapt the ACP Scheme of 2003 retrospectively w.e.f 09.08.1999 as was done by the State government for its employees but had given prospective effect from the date the respondent no. 1-Electricity Board had adapted the same through the notification dated 05.04.2005.

13. If that be the position, the appellants, in any event, cannot contend that the Scheme should be applicable from the very same date on which it had been made applicable to the State Government employees when the respondent no.1-



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Electricity Board had the discretion to either adapt or not to adapt the Scheme. When the Board had decided to adapt, in such event it has also the discretion to alter the date of its applicability as against the date notified by the State Government. Any judicial review on the date chosen for applicability would arise only if such choice of date is demonstrated to be malafide or with ulterior motive. In the instant case, the date chosen is the date on which the scheme was adapted and the advantage or disadvantage thereof would befall on all employees across the board depending on which side of the fence they are as on such date.

14. Thus it is clear that any judicial review on the date chosen for applicability would arise only if such choice of date is demonstrated to be *malafide* or ulterior motive. Admittedly, it is not the case of the petitioners that the respondents fixed cut off date with *malafide* condition and with ulterior motive. Therefore, the judgments relied upon by the learned counsels appearing for the petitioners are not applicable to the case on hand.

15. At this juncture, it is relevant to extract the method of appointment and educational qualifications prescribed for the post of



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Assistant Engineer/Electrical under Regulations 92 and 94 hereunder:

**METHOD OF APPOINTMENT (Annexure-I r/w Regulations 92):**

|            |                                 |                                                                                                                                                                                                                                                                     |
|------------|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category 3 | Assistant Engineer (Electrical) | Internal Selection and Direct Recruitment shall be made in the ratio of 1:1. Internal Selection shall be made based on a minimum length of service rendered after acquiring B.E.Degree or equivalent qualification as may be decided by the Board from time to time |
|------------|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**EDUCATIONAL QUALIFICATIONS (Annexure-III r/w Regulations 94):**

|                                 |                                          |     |                                                                                                                                                                                                                                                                                    |
|---------------------------------|------------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Assistant Engineer (Electrical) | Internal Selection or Direct Recruitment | (a) | Must not have completed or will not complete 30 years of age on the first day of July of the year in which the selection for appointment is made, if recruited direct                                                                                                              |
|                                 |                                          | (b) | (i) A degree in Electrical and Electronics Engineering or Electronics and Communication Engineering or Instrumentation Engineering or Computer Science / Information Technology Engineering or equivalent thereto of any University recognised by the University Grants Commission |

15.1 Accordingly, the post of Assistant Engineer/Electrical have to be filled up by internal selection by directed recruitment in the ratio of 1:1. The internal selection shall be made on the basis of the service rendered after acquiring BE degree or equivalent qualification. Further, selection will be made on merit (length of service) in Tamil Nadu



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Electricity Board, TANGEDCO, TANTRANSCO after acquiring degree in the regular time scale of pay according to the rule of reservation ordered as per the Tamil Nadu Electricity Board Service Regulations. As stated supra, already 1841 applications have been received so far from the applicants who have acquired the qualification before the cut off date i.e. 07.06.2022.

16. There are 800 vacancies in the ratio of 1:1 by internal selection and direct recruitment. Therefore, 400 seats only are available for internal selection under the method of internal selection. Further, the policy decision was made by the respondents in 107<sup>th</sup> Boad Meeting dated 07.06.2022 and accordingly resulted that henceforth internal selection shall not be allowed for new recruits and persons acquiring qualification from this date. The cut off date for implementation of its policy shall be from 07.06.2022. The internal selection shall be considered for existing staff who have already acquired qualification as per the provisions of Service Regulations.

17. Further most of the Government departments do not have



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such internal selection as the mode of appointment as followed in respondents Board, but it follows the method of recruitment by transfer. Further, the prescribed period of experience is insisted for moving from one category to become eligible for consideration to higher post, that too by way of transfer method which is not followed in the respondents Board. In order to arrive at a policy decision to do away with the internal selection like other Government Departments is under progress. Therefore after arriving at a policy decision for internal selection, an appropriate decision will be taken for direct recruitment after placing the proposal before the Board. Considering the consumption of time in taking policy decision, a proposal was placed before the Board to fill up the vacancies as per the existing procedure for internal selection until a policy decision is made. Accordingly, the respondents in its 107<sup>th</sup> Board meeting, fixed the cut off date as 07.06.2022 for acquiring qualification for internal selection.

18. Further, though the petitioners were permitted to apply for internal selection in view of the interim orders passed by this Court, it



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does not vest with any right on the petitioners for selection process.

Further, if the petitioners are allowed to apply for internal selection to the post of Assistant Engineer, they may not have length of service after acquiring the degree in regular time scale of pay to compete with other persons who acquired qualification earlier to the petitioners.

19. Though the petitioners were permitted to apply for internal selection in view of the interim order passed by this Court, it does not vest with any right on the petitioners for selection process. Further, if the petitioners are allowed to apply for internal selection to the post of Assistant Engineer, they may not have length of service after acquiring degree in regular time scale of pay to compete with other persons who were qualification earlier to the petitioners.

20. In view of the above, this Court finds no infirmity or illegality in the impugned Board Proceedings. As such, all the writ petitions are liable to be dismissed. Accordingly, All the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed.



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There shall be no order as to costs.

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Neutral Citation: Yes/No  
Index: Yes/No  
Speaking/Non-speaking order  
lok

**G.K.ILANTHIRAIYAN, J.**



W.P.Nos.2081 of 2024, etc. batch

lok

WEB COPY

To

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No.144, Anna Salai, Chennai 600 002
2. The Chairman,  
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W.P.Nos.2081, 6631, 3413, 3573, 3703, 5923, 6235, 6589, 3586, 3687,  
3557, 2106, 3863, 3866, 3568, 3569, 4868, 4895 & 4872 of 2024

04.10.2024

(2/2)