



W.A.Nos.2093, 2094, 2095, 2685, 2686 of 2010
& 1443 & 1444 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 28.03.2024	PRONOUNCED ON 06.09.2024
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CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

W.A.Nos.2093, 2094, 2095, 2685, 2686 of 2010
& 1443 & 1444 of 2018
and
C.M.P.Nos.11438 & 11439 of 2018

W.A.No.2093 of 2010

- 1.Rajan
- 2.K.S.Meenakshi sundaram
- 3.S.P.Phoobalan
- 4.M.Dhakshina Moorthy
- 5.M.Selvaraj
- 6.N.R.Nagarajan
- 7.A.Dhananjayan
- 8.K.Shanmuganatha Boopathi
- 9.S.Venkateswaran
- 10.P.Arumugasamy
- 11.K.A.Murugan
- 12.S.Babu
- 13.V.Krishnasamy
- 14.N.Mathavaraj
- 15.C.Ganesan
- 16.K.Santhana Raj
- 17.P.Kumaresapandian
- 18.M.Ravichandran
- 19.V.Sridhar

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20.A.Selvam
21.T.K.S.Balakannaian
22.A.Kumaran

... Petitioners

Vs

- 1.Tamil Nadu Electricity Board,
Represented by its Secretary,
144, Anna Salai Chennai – 2.
- 2.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai Chennai – 2.
- 3.The Chief Engineer,
Administrative Branch,
Tamil Nadu Electricity Board,
144, Anna Salai Chennai – 2.
- 4.The Chief Engineer/ Distribution/ Chennai,
Tamil Nadu Electricity Board,
144, Anna Salai Chennai – 2.
- 5.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Villupuram.
- 6.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Vellore.
- 7.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Trichy.
- 8.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,



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- 9.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Coimbatore.
- 10.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Erode.
- 12.The chief Engineer/ North Chennai,
Thermal Power Station, Chennai.
- 13.The Chief Engineer,
Ennore Thermal Power Station,
Chennai.
- 14.The Chief Engineer,
Mettur Thermal Power Station,
Mettur Dam.
- 15.The Chief Engineer,
Tuticorin Thermal Power Station,
Harbour Estate, Thoothukudi.
- 16.The Chief Engineer/ Hydro
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai – 2.
- 17.S.Balasubramaniam
- 18.V.S.Arul Saranka Rawyar
- 19.Tamil Nadu Electricity Board Engineer's
Association, represented by its General Secretary,
793, Anna Salai, Chennai – 2.



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20.R.Shankar
21.R.Annadurai
22.V.K.Ashok Prasanna
23.K.Nandakumar
24.A.Saravanan

25.Tamil Nadu Electricity Board Engineer's Union,
Regd.No.481/KPM,
Represented by its General Secretary, R.Govindharajan,
Mathananthapuram,
Chennai – 600 125.

26.N.Mohan ... Respondents

(R25 & 26 are implemented as party respondents vide order of this Court dated 14.06.2018 made in C.M.P.No.9916/2018 in W.A.No.2093/2010)

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 31.08.2010 made in W.P.No.22990 of 2008 and pass such further order.

W.A.No.2093 of 2010

For Appellants :Mr.M.Ajmal Khan Sr., counsel for
Mr.V.Ajoy Khose

For Respondents :Mr.K.Rajkumar Standing counsel
for TANGEDCO for RR1 to 6
Mr.S.Elamurugan for R17
Mr.Vijay Narayan Sr., Counsel for



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Ms.C.R.Akshaya for RR18 to 24

Ms.D.Nagasaila for RR25 to 26

W.A.No.2094 of 2010 & 2095 of 2010

For Appellants :Mr.M.Ajmal Khan Sr., counsel for
Mr.V.Ajoy Khose

For Respondents :Mr.K.Rajkumar Standing counsel for
TANGEDCO for RR1 to 3
R4 – No Appearance

W.A.Nos.2685 & 2686 of 2010

For Appellants :Mr.L.Chandrakumar in both W.As.,
For Respondents :Mr.K.Rajkumar Standing counsel for
TANGEDCO for RR1 & 2

W.A.Nos.1443 & 1444 of 2018

For Appellants :Mr.Sundar Narayan for
R.Sunilkumar in both W.As.

For Respondents :Mr.K.Rajkumar Standing counsel for
TANGEDCO for RR1 & 3 in both W.As.,

Mr.Naveen Kumar Murthi for Ms.Varsha
for RR4 to 6, 8 to 15, 18 to 24, 26, 28 to 30,
34 to 36, 39 to 45, 47, 48, 50, 51, 53 and
55 to 65 in W.A.No.1443 of 2018

Mr.S.Elamurugan for RR66



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*W.A.Nos.2093, 2094, 2095, 2685, 2686 of 2010
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in W.A.No.1443 of 2018

Mr.N.L.Rajah Sr. Counsel for

Mr.G.V.Mohankumar for RR5,6, 8to15,
18 to24, 26, 28to30, 34, 37, 39 to 45, 47,
50,51, 53, 55, 56, 58 to 62, 64to66
in W.A.No.1444 of 2018

COMMON JUDGMENT

These Intra-Court Appeals arise out of a common order passed by the learned Single Judge, wherein the employees challenged the B.P.No.9 issued by the Department reducing the period of training in respect of the directly recruited candidates and had been negatived. The appellants, in all the Writ Petitions had challenged B.P.No.9, dated 23.04.2002 with a consequential relief to regularise the services of the directly recruited Assistant Engineer (Trainee) only on completion of 2 years from the date of their initial appointment and to fix the seniority of the appellants above the directly recruited Assistant Engineer (Trainees). Further Writ Petitions have also been filed challenging the further promotion to the post of Assistant Executive Engineer (Electrical).

2. There are three categories of employees who had been appointed as



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Assistant Engineer (Electrical). They are:-

- (a) Internally selected candidates.
- (b) Directly recruited candidates.
- (c) Compassionate appointees.

For better appreciation, we shall hereafter proceed to refer them by the above categorisation.

3.Heard Mr.M.Ajmal Khan, Mr.R.Sunil Kumar and Ms.D.Nagasaila, learned counsels had represented the case of the internally selected candidates. Mr.Vijaya Narayan, N.L.Raja, learned Senior counsels and Mr.Naveen Kumar Murthi, learned counsel appearing for Ms.Varsha, learned counsel had represented the case of the direct recruitees, Mr.S.Elamurugan learned counsel represented the case of compassionate appointees and Mr.K.Rajkumar, learned Standing Counsel represented the case of the TANGEDCO.

4.The common contention of the learned counsels appearing on behalf



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of the internally selected candidates is as follows:-

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They would submit that the post of Assistant Engineers were only filled up through Internal Selection Process from among the employees working in various Departments, who had passed B.E. (Electrical) or equivalent that is Section (a) and (b) of AMIE Examinations. In the year 1977, the Board by its Proceedings also contemplated direct recruitment to the said post, if there were no suitable candidates available for selection through Internal Selection. Thereafter, by the Board Proceedings in the year 1982, the Board had decided to make appointment to the post of Assistant Engineer in the ratio of 2:1 through Internal Selection and direct recruitment. The said ratio had been modified from time to time and finally, the ratio was fixed at 1:1. The seniority between the direct recruitees and the internal selected candidates was put in the ratio of 1:1 and the quota rota had also been followed by placing the directly recruited candidates and the internal selectees alternatively if their appointments had been made in the same calendar year.

5. When the selections were sought to be made in the year 2000 for the



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post of Assistant Engineer (Electrical) (hereinafter referred to as AE(E)), it was proposed to conduct a written examination for both the direct recruits as well as the internal selectees. The same had been challenged before this Court. Pending the said challenge, by Board Proceedings in B.P.No.31, dated 04.12.2000 mandated a written examination for recruitment to the post of AE(E) for internal selection. The same was also challenged before this Court and this Court by order dated 06.12.2000 had granted an injunction in respect of the selection process. The said injunction came to be modified by safeguarding the interest of the candidates aspiring for internal selection and had permitted the Board to proceed with the process for direct recruitment. Pending the said Writ Petitions, the Board by Proceedings dated 13.11.2001 in B.P.No.59 had dispensed with for conducting of written examination as envisaged under B.P.No.31.

6.The learned counsels had contended that the successful candidates who were directly recruited had been originally recruited as Assistant Engineer (Trainee) and that on successful completion of 2 year training period they would be placed on probation. Therefore, they would submit that



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all the direct recruitees who were recruited in the year 2000-2001 could not be placed above them in the seniority as they would have become only a probationer only in the year 2002 and 2003 respectively. The appellants being recruited through internal selection should have to be placed above them.

7.Taking into the above factual scenario, the direct recruitees had made a representation to the Department seeking to reduce the period of training to 3 months and the Board also considering their representations, by the impugned Board Proceedings in B.P.No.9, had reduced the period of training to a period of three months intensive training and that their probation were to commence from the date of joining the Board.

8.They would vehemently content that this had been specifically introduced to defeat the rights of the internally selected candidates with a malice to enbloc place the directly recruited candidates over and above the internally selected candidates thereby directly affecting the promotional avenues of the internally selected candidates and therefore, they would



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submit, firstly there was no rational behind the introduction of B.P.No.9 and even if, assuming the B.P.No.9 is a valid B.P., then the intensive training program which had been contemplated under the said proceedings would only commence from the date of issuance of the said Board Proceedings and therefore, only on completion of the said intensive programme, they would all be eligible to commence their probation, which would be later to the period on which the internally selected candidates were appointed and therefore, they would have a right to be placed in the seniority list above the directly recruited candidates.

9.They would heavily rely upon the notes that were submitted, which had led to the passing of B.P.No.9, wherein it had been specifically stated that if the training period is not reduced, they would lose their seniority to the internally selected candidates, apart from also noting that the training period cannot be counted for qualifying service for the purpose of terminal benefits and promotion. In that context, they would submit that the said B.P.No.9, which is impugned before this Court had been made with a malice to deny the benefits that is available to the internally selected candidates by trying to place them below in the seniority list.



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10.They would vehemently contend that the learned Single Judge had not properly appreciated the facts of the case, but, on the other hand, had held that the directly recruited candidates were not appointed as trainees and were appointed only as regular AE(E)'s and their appointment would relate back to the year 2000-2001 and they would be entitled to be placed above the internally selected candidates. They would submit that the learned Judge had erroneously held that the Regulations prescribing the recruitment of direct recruitees is only as trainees which is not supported by any Regulations and the Board Proceedings cannot over ride any Regulations. They would submit that such findings is wholly erroneous as the Regulation itself provides for issuance of Board Proceedings. Therefore, they would submit that this Court need to interfere with the order passed by the learned Single Judge by quashing the Board Proceedings No.9 and directing the fixation of seniority of the direct recruitees and the internally selected candidates based upon the Regulations.

11.Countering their arguments, Mr.K.Rajkumar, learned Standing



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counsel for the TANGEDCO had vehemently contended that the Board Proceedings under which the training was mandated to the directly recruited candidates have not been implemented by the Department in its true spirit. He would further submit that the candidates who have qualified to be selected through the internal selection had challenged the method of recruitment which had delayed the recruitment through internal selection. That being the case, they cannot seek to contend that they should be placed above the direct recruitees who were all appointed in the year 2000 and 2001. He would vehemently contend that even though the direct recruits were appointed originally as AE(E) trainee since, there was no nomenclature provided under the service Regulations of the Board, the appointment itself has to be treated as a regular appointment and their probation to have commenced from the said date. He would submit that for all purposes, the training that was introduced by B.P.No.33, was never given effect to by the Department and the same cannot be construed as a special Regulation for a Generation Wing.

12.He would submit that the appointments are only governed by the



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TNEB Service Regulations and the Board Proceedings issued are all executive instructions. Wherever there is no main provisions available in the service regulations, he would submit that even if such Board Proceedings were issued, would have to be followed up with amending the TNEB's Service Regulations which had not been amended and therefore, the nomenclature training would have to be read along with the Regulations and they should be treated as a regular AE and not AE (Trainee). He would further submit that the induction training that was given to the direct recruits itself was an intensive training and therefore the said Board Proceeding No.9 would hold good. He would submit that since, the Board Proceedings No.33 which came into being forming a Generation Wing has not been implemented and therefore, the training that is undergone by the direct recruits cannot be said to be enforced and therefore, there is no error in the Board Proceedings which had retrospectively given the benefits to the direct recruits. Therefore, he would submit that the learned Single Judge had rightly considered the facts and hence, there is no reason for this Court to interfere with the order passed by the learned Single Judge.



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13.The learned counsels appearing on behalf of the directly recruited candidates would submit that the Service Regulations of the Board does not prescribe any training program for the Assistant Engineers and that such training program had been only envisaged for the post of Accounts Officer and Assistant Accounts Officer under Regulation 104. When that being so, by the Board Proceedings, the Board cannot insist upon any training. They would submit that the fixation of seniority had to be fixed as per the recruitment made in a particular calendar year. In that context they would submit that the direct recruitees have all been appointed in the year 2000 and 2001 and therefore, their seniority can only be fixed in the calendar year 2000 and 2001. Since the internal selectees were all appointed in the year 2002 and their seniority can only be reckoned only in the year 2003.

14.The claim of the internal selectees would amount to seeking a retrospective seniority by placing them above the direct recruitees. Since the direct recruitees have been appointed in the year 2000-2001, their seniority had to be counted from the 2001 and the internal selectees being appointed only in the year 2002, cannot seek retrospective seniority in the post of AE(E), to which post they had not been appointed, when the direct recruitees



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were appointed. They further rely upon the Regulations 87 and 89 to drive home their contention. According to them, even the period of training would have to be counted for reckoning their date of appointment and when that being so, the directly recruited candidates have all been appointed much prior to the internally selected candidates and therefore they are entitled to be placed above all the internally selected candidates in the year 2002. They would further submit that the year of notification cannot be the basis for fixation of the seniority, since it was the making of the internally selected candidates for their delay in recruitment, as they did not want to take the route of written examination as prescribed under the Board Proceedings. They would further submit that all the direct recruitment had been made for the vacancy in the sanctioned post and since the direct recruitees have all taken their appointment in the sanctioned vacancies, they cannot be sought to be placed below the internally selected candidates, whose date of appointment was very much later than that of the directly recruited candidates.

15.They would further submit that any executive instructions issued in



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contravention of the Statutory Rules and Regulations cannot be put against a particular individual. When the Regulations have not mandated any training for the directly recruited persons, the Board by way of Board Proceedings cannot introduce the concept of training for appointment of AE(E)'s. Further the period of training had also been counted for the purpose of allowing the movement to the Selection Grade and therefore, it could be inferred that the intention of the Board is to count the period of training also for the purpose of reckoning the seniority. They would further submit that since there was no nomenclature of training for an Assistant Engineer, their appointment as Assistant Engineer (Trainee) cannot be put against them when the Service Regulations do not prescribe such training, since there cannot be any estoppel against the Statute.

16.They would further contend that the Service Regulations for the Generation Wing does not apply to the case of the directly recruited candidates, as the same had been contrary to the Service Regulations and that the said Board Proceedings forming the Generation Wing had not been relied upon by the appellants before the learned Single Judge. They would



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further point out that the Board itself had taken a stand that the said Board Proceedings No.33 forming the Generation Wing had not been given effect to. When that being the position, the appellants cannot be permitted to rely upon the said Board Proceedings. They would in unison contend that the learned Single Judge was right in holding that the Board Proceedings cannot supersede the Regulations by introducing any new clause or qualification and therefore would seek this Court not to interfere with the orders passed by the learned Single Judge.

17.Mr.S.Elamurugan, learned counsel appearing on behalf of the respondents who were appointed on compassionate grounds would submit that they fall on a different category and that they would not be governed by the *lis* between the direct recruitees and the internal selectees who were all admittedly appointed in the year 2000-01 and 2001-02 much after the date on which such respondents, who have been appointed on compassionate grounds and they have all joined the services of the Board as early as on 10.04.2000. They had been in the panel fit for promotion as Assistant Executive Engineers (Electrical) and in view of the *lis* between the direct



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recruitees and the internal selectees, they have been unnecessarily made as the parties in the Writ Petitions. Their right for promotion would not depend upon the disposal of the *lis* between them and therefore they would pray for a direction to the Board to consider their case for further promotions to the post of Assistant Executive Engineer, they being the senior to both the categories.

18.We have considered the rival submissions made by the respective counsels appearing on either side and perused the materials available on record before this Court.

19.The *lis* that has to be decided by us is as to how the seniority between the direct recruitees and the internally selected candidates pursuant to the notifications for filling up of the post of Assistant Engineer (E) made in the year 2000. Before we venture upon to decide the *lis* between the parties, we propose to analyse the Regulations and the Board Proceedings issued by the Board pursuant to the powers vested with it in the Regulations.



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20. The Board has framed Tamil Nadu Electricity Board Service Regulations for governing the various aspects of recruitment, promotion, seniority and other service conditions of its employees.

21. Regulation 6, empowers the Board to classify the services, rearrange grades, re-fix responsibilities and prescribe the minimum educational, technical and other qualifications as may be considered suitable for making selections and appointments to the post of each of the class of service. For better appreciation, the aforesaid Regulation is extracted hereunder:-

“6.(a) The Board may adopt its own classification of service, re-arrange grades, re-fix responsibilities and prescribe minimum educational, Technical and other qualifications as may be considered suitable for making selections and appointments to posts in each class of service.

(b) Subject to any modifications that the Board may decide from time to time, the services in the Tamil Nadu Electricity Board shall be classified as mentioned in Regulation 88 of Tamil Nadu Electricity Board Service Regulations.”



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22.Regulation 11 provides that the appointment to the various posts in the Board shall be made by the Competent Authority in accordance to the powers vested in them by the Board from time to time. Further, Regulation 12 indicates that all appointments shall unless otherwise specified be on probation in the first instance for such period as may be prescribed.

23.Regulation 33 provides that an employee shall normally be eligible to a minimum time scale of pay of the post to which he is appointed as his initial pay.

24.Regulation 41 provides that a probationer and an approved probationer in any class of service shall draw pay subject to the provisions of Regulation 33(a) and Sub Regulation (2) of the said Regulation. Clause (i) to Regulation 41(1)(a) provides that if the probationer does not hold a permanent post, he would be entitled to the pay that is specified in the Regulation while undergoing a course of Instruction or training. For better appreciation, the said Regulation is extracted hereunder:-

“41.(1)(a) A probationer and an approved probationer in any class of service on duty shall draw pay subject to the provisions of Regulations 33 (a) and of sub-



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regulation (2) of this regulation:

Provided that a probationer who does not hold a permanent post shall draw:

(i) While undergoing a course of instruction or training, the pay specified in the regulations relating to the post; and

(ii) after completion of the course of Instruction or training or when there is no prescribed course of Instruction of training, the pay of the lowest grade or the minimum pay in the time-scale of pay, as the case may be, applicable to the class or category, subject to such orders as the Board may from time to time issue.”

25.Regulation 87 provides that the appointment to a class of service would be deemed from the date when the person discharges for the first time, the duties of the post borne on the cadre of such class of service or when he commences the probation, Instruction or training prescribed for members there of. For better appreciation, the relevant Regulation is extracted hereunder:-

“87. (1) Appointed to a Class of Service:



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A person is said to be “appointed to a class of service” when in accordance with these regulations or in accordance with the Regulations applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such class of service or commences probation, instruction or training prescribed for members thereof.

Explanation:

The appointment of person holding a post borne on the cadre of one category or class of service or a post in another category or class of service or to discharge the current duties thereof does not amount to appointment.

*(2) **Approved Candidate** means, a candidate whose name appears in an authoritative list of candidates approved for appointment to any class of service or post borne on the cadre of a class of service.”*

26.Regulation 89 prescribes the promotion or order of filling up of vacancies when the recruitment to a particular class of Service or category is both by direct recruitment and promotion. The term ‘probation’ had been explained in Regulation 95 for Assistant Engineer, as period of 2 years on duty within a continuous period of 3 years. Explanation to Regulation 95 indicates that the persons recruited directly, the period of taking over the



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charge on first appointment shall be treated as 'duty' for the purpose of the Regulation.

27.Regulation 97 deals with fixation of Seniority. For better appreciation the relevant Regulation is extracted hereunder:-

“97. SENIORITY:

(a) The seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Board or other appointing authority, as the case may be. The date of commencement of his probation shall be the date on which he joins duty irrespective of his Seniority.

Provided that the seniority of Assistant Engineers (Electrical)/ (Civil)/ Mechanical) recruited both by Internal Selection and direct recruitment in the ratio of 1:1 in a particular calendar year shall be fixed in the following cyclic order:

- (1) Internal Selection*
- (2) Direct Recruitment*



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(b) The transfer of a person from the category or grade in a class of service to another category or grade in the same class of service carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this sub-Regulation, seniority shall be determined by the appointing authority.

(c) Where a member of class of service, category or grade is reduced to a lower class of service, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower class of service, category or grade, next below any specified member thereof.

(d) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the Seniority, as the case



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may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.”

28.From a reading of the said Regulation, it is clear, for fixing seniority, the date of commencement of probation shall be the date on which a person joins duty irrespective of the seniority and not the appointment as postulated under Regulation 87 which includes starting of probation and training also. Therefore, for treating the date of appointment even the joining date of a trainee can be taken but, however, for seniority, it is only the date on which the trainee, after completion of training joins as a probationer as the crucial date.

29. The Proviso to Clause (a) of Regulation 97 indicates that the seniority of persons holding the post of Assistant Engineers recruited both by internal selection and direct recruitment in the ratio of 1:1 in a particular calendar year shall be fixed in a cyclic order that is the first would be the internal selection and the second would be the direct recruitment and so on.



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30. Pursuant to the powers vested with the Board under Regulation 6, the Board has been issuing various Board Proceedings either by fixing the higher criteria or even diluting the criteria prescribed under the Regulations. Certain of the Board Proceedings that would be relevant are B.P.No.29, dated 27.11.2000, B.P.No.33 dated 08.12.2000, B.P.No.35 dated 13.12.2000, B.P.No.59, dated 13.11.2001.

31.B.P.No.29 was issued on 27.11.2000, wherein the Board has taken a conscious decision in exercise of its power under Regulation 6 to recruit AE(E) by direct recruitment through examinations to be conducted in future. It has also further directed the recruitment of such directly recruited persons would be on probation as Assistant Engineer on a consolidated emolument at Rs.7,500/- and that on successful completion of probation, they would be absorbed as regular Assistant Engineers in the regular scale of pay. The said Board Proceedings was amended by a further Board Proceedings in B.P.No.35 on 13.12.2000, that the directly recruited AE(E) should be on training for a period of 2 years including the induction training of 3 months



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with a consolidated pay of Rs.7,500/- per month. On completion of said training, they will be placed on probation for a period of 2 years in the time scale of pay which is applicable to the regular AE(E) in the Board. Similarly, by B.P.No.31, examination was also mandated for internal selection which came to be withdrawn by a further Board Proceedings in B.P.No.59, dated 13.11.2001. B.P.No.33 had been introduced for creation of a Generation Wing on 08.12.2000. The said B.P. also mandated a training for a period of 2 years for directly recruited Assistant Engineers, the same also mandated that only on completion of the said mandated training period, they would be taken as probationers. Even though, the said B.P. had been introduced, it is surprisingly the case of the Department that the said Board Proceedings had not been given effect to.

32.The first issue that arise for consideration before us is as to whether the Board Proceedings issued by the Board are *ultra vires* the Regulations, as they are repugnant.

33.Annexure-I to the Regulation prescribes the methods of



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appointment to the various classes. Category 3 of Division 2 of Clause (ii) is envisaged for recruitment of AE(E). The same envisages that the method of recruitment of AE(E) shall be through Internal Selection and direct recruitment in the ratio of 1:1. The Internal Selection shall be based on the minimum length of service rendered after acquiring the B.E. Degree or equivalent qualification, as may be prescribed by the Board from time to time.

34.Regulation 6, extracted supra envisages the power of the Board to prescribe minimum educational, technical and other qualification for making the selections and appointments to the post in each class of services.

35.It is to be noted that the Regulation 111, gives the power to the Board to deal with the case of any candidate for appointment to any class of service in such manner as may appear to it be just and equitable. This power is notwithstanding anything that has been contained in the Regulation, as the same opens up with a *non obstante* clause. For better appreciation, the said Regulation is extracted hereunder:-



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“111. Notwithstanding anything contained in these Regulations, the Board shall have power to deal with the case of any person serving under the Board or any candidate for appointment to any class of service in such manner as may appear to it to be just and equitable;

Provided that, where any such Regulation is applicable to the case of any person, the case shall not be dealt with any manner less favourable to him than that provided by that Regulation.”

36.From analysing the said Regulation 111, conjointly read with Regulation 6, we are of the considered view that the Regulation had vested with the Board, the power to prescribe qualifications for appointment to any post as prescribed under Annexure-I to these Regulations. As seen already, the Board has issued Regulations prescribing the period of training under B.P.No. 35, dated 13.12.2000. In view of the same, we have conclusively come to a conclusion that the contentions raised by the Department as well as the learned counsels appearing on behalf of the direct recruits that the Board Proceedings cannot expand the scope of Regulation by providing a training does not appeal to us and in that context, the findings rendered by the learned Single Judge that the Board Proceedings cannot over ride the



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Regulation and therefore, the direct recruitees who are originally appointed as AE (E) trainee would have to be treated as a regular appointment would also have to be interfered with.

37.The contention of the direct recruitees and also the Board was that the training had been envisaged only under the B.P.No.33, dated 08.12.2000 and that since, the B.P has not been given effect, even though it has been notified by the Government, the direct recruitees cannot be treated as AE (Trainee), but only be treated as Assistant Engineer put on probation also cannot stand.

38. It is to be noted that by B.P.No.35, dated 13.12.2000, the Board had taken a conscious decision of only appointing the direct recruits as AE(E) trainees on a consolidated pay and that only on successful completion of the said training, they would be taken on probation. The said B.P. envisages that for a person to be appointed as an Assistant Engineer, even as a probationer they have to qualify themselves by completing the training successfully. This qualification of training had been made by taking into consideration that the degree alone obtained by them in the relevant subject would not be sufficient enough to perform the duties of AE (E). The said



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Board Proceedings had never been challenged by any of the direct recruits. In fact, they had accepted the order of appointment as Trainees and they had also undergone the training for nearly 18 months, only after which the B.P.No.9 came to be issued. The said B.P.No.9, also came into being only on the representation made by the direct recruits to reduce their period of training and not to treat them as probationers from the date of their initial appointment as Trainees as the Regulation do not provide so. This would mean that they cannot feign ignorance of the Regulation and the Board Proceedings.

39.A reading of the Board Proceeding No.9, would indicate that the same came to be issued only at the behest of the direct recruits, which means that they have acquiesced themselves of B.P.35, which mandated the necessary training period of 2 years. All they wanted is to reduce the period of training to 3 months.

40.A thorough reading of B.P.No.9 would indicate that the same has been made to amend the B.P.No.35 which mandated 2 years of training, therefore, their contention that B.P.No.33, which had introduced the concept



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of training, prior to probation which had not been given effect to by the Board, cannot be put against them is devoid of merits. The discussion for introducing B.P.No.9 would show that the direct recruitees should undergo an intensive training for a period of 3 months. The said direct recruitees were also not exercising the powers of the regular Assistant Engineers, which would only draw us to the conclusion that they had not been doing their regular duty as Assistant Engineers.

41.In that context, while analysing the Regulation 95, which deals with probation, the explanation appended to Regulation 95 envisages that the beginning of the probation would be the date of taking over the charge by the appointed candidate, since the B.P.No.9, in clear terms would indicate that the Assistant Engineers trainees were not exercising the powers of a regular Assistant Engineer at least as on 23.04.2002, that is the date of issue of Board Proceedings, they could utmost be considered to have started their probation in consonance with Regulation 95 only after the said date and not before any other date before the said date. Even though, an argument of malice had been made for issue of B.P.No.9, based upon the note prepared



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for issuing B.P.No.9, we do not want to go into the said issue, as the same had been raised before us for the first time. It cannot be disputed that the Board does not have power to modify the period of training. We have already held by conjointly reading the Regulations 6 & 111, the Board has the power to frame qualifications which includes the training for appointment to the post of Assistant Engineer.

42.B.P.No. 9 provides for a 3 months intensive training for the direct recruits to be undergone, no materials has been placed before us as to what would be the induction training program comprises of. It is the argument of the Board that the induction training given for 3 months to the direct recruits itself would be sufficient enough for the direct recruits to have sufficient knowledge of working with the TNEB and the responsibilities of the AE (E). We do not wish to subscribe to the argument made by the learned Standing Counsel for the Board.

43.B.P.No.35, envisaged the 2 years training including the induction training of 3 months. Further, B.P.No.9 only provides that on completion of



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the three months intensive training, the Assistant Engineer (Trainee) shall be tasking as Assistant Engineers with duties and responsibilities of a regular Assistant Engineer. They were also entitled for the time scale of pay only after completion of 3 months intensive training and that their probation shall commence from the date of joining the Board which would be for a period of 2 years within the continuous period of 3 years.

44.As we have already noted that no intensive training program, pursuant to B.P.No.9 which provided such intensive training had been placed before us and also of the finding that the probation could not have been commencement any date prior to 23.04.2002 that is the date of issue of B.P.No.9, since the Regulation 95 only prescribes that the probation shall commence from the date on which, they had been taken charge of the regular duty of the post to which they were appointed and admittedly from the reading of B.P.No.9, none of the direct recruitees had been appointed regularly as an Assistant Engineer, as it is in clear express terms had indicated that they could not exercise the power of an Assistant Engineer, due to the limitation of their designation trainee, we come to a conclusion that all the direct recruitees either appointed in the year 2000 or 2001 could



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only be considered to be on probation only on and after 23.04.2002 and not on any other earlier date.

45.The seniority of the direct recruitees and the internally selected candidates is governed by Regulation 97, which had been extracted supra. Even though the learned counsels appearing on behalf of the direct recruitees had relied upon the Regulation 87 to contend that their appointment will date back even to the starting of the training period, we are of the view that the Regulation 87 cannot be taken into consideration for fixation of seniority which is governed by Regulation 97. Regulation 87 may be considered by the Board for granting of Selection Grade or Special Grade. The period of training could be counted for arriving at the date of appointment but not for fixation of seniority. The Proviso to Regulation 97 clearly deals with the fixation of seniority of Assistant Engineers both by internal selection and direct recruitment. The ratio of 1:1 in a particular calendar year should be followed in a cyclic order placing internal selected candidate first and the direct recruitees second. The said Regulation recognises the service that had been rendered by the internally selected candidate and only for which reason



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they have been shown as first in the cyclic order.

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46.It is an admitted case that all the internally selected candidates were recruited in the year 2002. In view of our specific conclusion that the direct recruitees can only be deemed to have started their probation subsequent to B.P.No.9, that is after 23.04.2002. we are of the firm opinion that both the direct recruitees and the internal selectees would have to be treated as being recruited in the calendar year 2002 only and therefore in view of the Proviso to Regulation 97, their seniority should be fixed in a cyclic manner as indicated in Proviso to 97.

47.As contended by the learned counsel for the compassionate appointees, they may not be hit by the seniority *lis* that is required to be revisited by the Board, in view of our conclusion earlier, as they had been recruited as early as in the year 2000, which is a different recruitment calendar year.

48.For the foregoing reasons, we do not find any infirmity or illegality in issuing B.P.No.9, dated 23.04.2002, However, for the reasonings and



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findings that we have arrived at, the respondent Board is duty bound to revisit the seniority list of the direct recruitees and the internal selectees who had been recruited pursuant to the notification of the year 2000, on the basis of the observations made supra.

49. In fine, the Writ Appeal is allowed in part upholding the judgment of the learned Single Judge in so far as it relates to up holding the validity of B.P.No.9, however, for other reasons indicated by us. But, however there shall be a direction to the Official respondents to redraw the seniority list of the internal selectees and direct recruitees by treating them all to have been recruited either as probationer or in regular appointment, as the case may be for the calender year 2002 and redraw their seniority list in accordance with the law. However there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(R.S.K.,J.)

(K.B., J.)

06.09.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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To

1. Tamil Nadu Electricity Board,
Represented by its Secretary,
144, Anna Salai Chennai – 2.
2. The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai Chennai – 2.
3. The Chief Engineer,
Administrative Branch,
Tamil Nadu Electricity Board,
144, Anna Salai Chennai – 2.
4. The Chief Engineer/ Distribution/ Chennai,
Tamil Nadu Electricity Board,
144, Anna Salai Chennai – 2.
5. The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Villupuram.
6. The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Vellore.
7. The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,

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- 8.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Madurai.
- 9.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Coimbatore.
- 10.The Chief Engineer/ Distribution,
Tamil Nadu Electricity Board,
Erode.
- 12.The chief Engineer/ North Chennai,
Thermal Power Station, Chennai.
- 13.The Chief Engineer,
Ennore Thermal Power Station,
Chennai.
- 14.The Chief Engineer,
Mettur Thermal Power Station,
Mettur Dam.
- 15.The Chief Engineer,
Tuticorin Thermal Power Station,
Harbour Estate, Thoothukudi.
- 16.The Chief Engineer/ Hydro
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai – 2.
- 17.Tamil Nadu Electricity Board Engineer's
Association, represented by its General Secretary,
793, Anna Salai, Chennai – 2.



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18. Tamil Nadu Electricity Board Engineer's Union,
Regd.No.481/KPM,
Represented by its General Secretary, R.Govindharajan,
Mathananthapuram, Chennai – 600 125.



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

gba

A Pre-delivery order made in
W.A.Nos.2093, 2094, 2095, 2685, 2686 of 2010
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and
C.M.P.Nos.11438 & 11439 of 2018

06.09.2024