IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.03.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P Nos.8078, 8082 & 9491 of 2021
and
WMP.Nos.8629, 8632, 10091 & 10090 of 2021

T.Subash	...	Petitioner in WP.No.8078 of 2021
C.Vimal Prakash	...	Petitioner in WP.No.8082 of 2021
N.Geetha	...	Petitioner in WP.No.9491 of 2021

/vs/

1. Tamil Nadu Generation and Distribution Corporation Limited.,
Rep. by its Chairman cum Managing Director,
No. 144, Anna Salai,
Chennai 600 002

2. The Chief Internal Audit Officer a/c
Tamil Nadu Generation and Distribution
Corporation Limited, Audit Branch,
No. 144, Anna Salai,
Chennai 600 002. ... Respondents in all WPs.

Prayer in WP.No.8078/2021: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a WRIT OF Certiorarified Mandamus to call for the concerned records from the 1st and 2nd respondents, quash the order of the 1st respondent dated 17.02.2021 bearing memo (Per.)No.19287/A3/A32/2020-3 and the notice of the 2nd respondent dated 03.03.2021 bearing Memo.No.7103/257/F.1/F.12/2021-1 as illegal, arbitrary, discriminatory and contrary to law and consequently direct the respondents to retain the petitioner in the post of Assistant Audit Officer.

Prayer in WP.No.8082/2021: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a WRIT OF Certiorarified Mandamus to call for the concerned records from the 1st and 2nd respondents, quash the order of the 1st respondent dated 17.02.2021 bearing memo (Per.)No.19287/A3/A32/2020-3 and the notice of the 2nd respondent dated 03.03.2021 bearing Memo.No.7103/257/F.1/F.12/2021-5 as illegal, arbitrary, discriminatory and contrary to law and consequently direct the respondents to retain the petitioner in the post of Assistant Audit Officer.

Prayer in WP.No.9491/2021: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a WRIT OF Certiorarified Mandamus to call for the concerned records from the 1st and 2nd respondents, quash the order of the 1st respondent dated 17.02.2021 bearing memo (Per.)No.19287/A3/A32/2020-3 and the notice of the 2nd respondent dated 03.03.2021 bearing Memo.No.7103/257/F.1/F.12/2021-8 as illegal, arbitrary, discriminatory and contrary to law and consequently direct the respondents to retain the petitioner in the post of Assistant Audit Officer.

In All W.Ps.
For Petitioner : Mr.R.Kamathchi Sundaresan

For Respondents : Mr.K.Rajkumar,
Standing Counsel for TANEDCO

COMMON ORDER

Heard Mr.R.Kamathchi Sundaresan, learned counsel for the petitioners and Mr.K.Rajkumar, learned Standing Counsel for TANEDCO /respondents and perused the materials available on record.

2. These Writ Petitions have been filed for seeking a Writ of Certiorarified Mandamus to quash the orders of the 1st respondent dated 17.02.2021 bearing memo (Per.)No.19287/A3/A32/2020-3 and the notices of the 2nd respondent dated 03.03.2021 bearing Memo.Nos.7103/257/F.1/F.12/2021-1, 7103/257/F.1/F.12/2021-5 and 7103/257/F.1/F.12/2021-8 respectively and to direct the respondents to retain the petitioners in the post of Assistant Audit Officer.

3. The petitioners who have been appointed initially as Helper and later promoted as Assessors have got their promotion to the post of Junior Auditor by internal selection during the year 2000. The next year they have been promoted to the post of Auditor. In the year 2011 the petitioners have acquired the qualification of Higher Grade in Accountancy. The Panel of Auditors eligible for promotion to the post of Assistant Audit Officer was issued and the petitioners names have also been included against their respective seniority number. During the year 2011-2013, the petitioners have been promoted to the post of Assistant Audit Officer and continued in the said post. The Petitioner, T.Subash in W.P.No.8078 of 2021 has passed the Accountancy lower grade during February-2018; N.Geetha, the petitioner in WP.No.9491 of 2021 has got B.Com degree qualification and hence passing of Accountancy will not arise in her case and the other petitioner namely C.Vimal Prakash in WP.No.8082 of 2021 had passed the lower grade accountancy test after filing this Writ Petition. The impugned show cause notices have been given on 03.03.2021 stating that the petitioners who have joined in the year 2011 as Assistant Audit Officer have not passed the Accountancy Lower Grade/M.Com(BIM)/B.Com Degree on the date of their promotion to Assistant Audit Officer.

4. Mr.R.Kamathchi Sundaresan, learned counsel for the petitioner submitted that the petitioners having got promoted after 11 years and functioning in the post of Assistant Audit Officer, has been issued with a reversion show cause notice dated 03.03.2021, in order to revert their position to lower post. Earlier on 17.02.2021 the respondent vide his warning proceedings memo (Per.)No.19287/A3/A32/2020-3 stated that the officers who have been promoted to the post of Assistant Audit Officer without passing the Accountancy Lower Grade during the period 2009-2013 shall be refixed taking into account of the date of passing the Accountancy Lower Grade/M.Com(BIM)/B.Com Degree till the date of issuance of the 2nd respondent's circular will be downgraded to the post suiting to their qualification.

5. The order dated 17.02.2021 was issued by the 1st respondent and the show cause notice was issued by the 2nd respondent. The learned counsel for the petitioner submitted that having allowed the petitioners to serve for 11 years in the cadre of Assistant Audit Officer, it is unfair on the part of the respondents to issue show cause with the object of downgrading their post on the ground that they have not passed the accountancy lower grade. So it is claimed that the show cause has been given without application of mind and contrary to the Regulations and hence, it is liable to be set aside.

6. Mr.K.Rajkumar, learned Standing Counsel for TANGEDCO /respondents submitted that the petitioners cannot challenge the very show cause notice without even giving any explanation and the writ petitions are prematured one.

7. As per the qualification criteria prescribed for the post of Assistant Audit Officer as per the Broad Regulations 94, a person should have the following qualification:

(i) Must hold the B.A., or B.Sc., or B.Com.. Degree of the Chennai or Annamalai University.

(ii) Must have passed the Government Technical Examination in Accountancy by the Lower and Higher Grade; and

(iii) Must have worked for at least two years as Auditor in the Audit Branch.

8. It would have been good if the respondents had scrutinised the qualification of the candidates before according them with promotion to the post of Assistant Audit Officer. Having allowed them to the promotion and permitted them to function as Assistant Audit Officer for 11 years; now the show cause has been given on the basis of the memo dated 17.02.2021 that all those persons who did not have the accountancy lower grade qualification between the year 2009-2013 will be downgraded. However, the memo adopted the words 'till date' and that would convey that the outer limit for acquisition for the above qualification is the date of the memo. It would have been ideal if any time limit is given to all those persons who have been promoted between the year 2009-2013 for acquiring the lower qualification so that they are not affected.

9. However, the petitioner did not choose to challenge the memo but they have challenged only the show cause. There will not be any harm in submitting a reply by the petitioners to the department by stating that they have acquired the qualification before the day on which the memo dated 17.02.2021 has been issued. Even for those candidates who did not have the lower grade in accountancy qualification can also request some time to acquire the qualification before passing any order of downgradation. The respondent department should also understand that it would be unfair on them to revert a person's position suddenly after 11 years by waking up from slumber and determing that they have given promotion to those persons who did not have the required qualification.

10. It is learnt that as on the date of this order, all the three petitioners have got their qualifications in lower grade in accountancy. The lack of lower grade accountancy did not appear to have affected their execution of the functions of the Assistant Audit Officer. As an employer the respondents have got the power to call upon the employees and produce the documents showing their eligible criteria. The said exercise could have been done at the time of considering them for promotion instead of calling upon those details after 11 years. So in all fairness, the respondents shall consider the predicament of the petitioners in an emphatic manner and pass orders accordingly by considering the representations of the petitioners, with in a period of four weeks from the date of receipt of copy of this order.

With the above observations, these Writ Petitions are **disposed**. No costs. Consequently,the connected miscellaneous petitions are closed.

21.03.2024

Index : Yes
Internet : Yes/No
Speaking: Non Speaking
Neutral: Yes/No
jrs

To

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   Rep. by its Chairman cum Managing Director,
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2. The Chief Internal Audit Officer a/c
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R.N.MANJULA, J.

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