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W.P.No.28791 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28791 of 2022
and W.M.P.No.28081 of 2022

L.James Kennady

... Petitioner

Vs.

1.The Chief Engineer / Personnel
Tamil Nadu Generation & Distribution
Corporation Limited
N.P.K.R.R.Maligai
No.144, Anna Salai
Chennai – 600 002.

2.The Chairman cum Managing Director
Tamil Nadu Electricity Board Limited
No.144, Anna Salai
Chennai – 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order in Memo No.039468/642/G31/G.312/2020 dated 18.08.2020 on the file of the 1st respondent, quash the same and further direct the respondents to appoint the petitioner for the post of Labour Welfare Officer, Tamil Nadu Generation & Distribution Corporation Limited.



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For the petitioner : Mr.R.Anbalagan
For the respondents : Mr.K.Rajkumar

ORDER

This Writ Petition is filed challenging the impugned order dated 18.08.2020, in and by which 5 candidates were selected to the post of Labour Welfare Officer in the 1st respondent Corporation, while the petitioner's name alone was left out.

2. The grievance of the petitioner is that the said 5 vacancies were to be filled up by way of internal selection. When the merit list was called for in respect of the present selection, the petitioner's name found place at Serial No.4. However, his name has been left out, while others are selected.

3. The respondents resisted the Writ Petition, by filing a counter affidavit.

4. As per the counter affidavit, the posts are to be filled up by way of



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internal selection. If more candidates are qualified to be appointed, first preference is to be given to those who are drawing higher scale of pay, if all of them are equal in that aspect, those who join earlier in the present post should be given second preference. Even if the date of joining in the present post is one and the same, then the earlier date of the first appointment in the post will be taken into account. Even if that be the same, date of birth will be taken into account and even if the date of birth is one and the same, the candidate's name in alphabetical order will be taken.

5. There are totally 5 vacancies, of which two posts are reserved for the General Turn category. Of the two GT category, one vacancy was reserved for the women category. Apart from the two GT category, one vacancy was reserved for MBC/DC and one vacancy was for SCA(W) and one vacancy was for BCO category. As far as the GT category is concerned, in respect of one vacancy to which the petitioner is eligible, one *S.Krishnan* has been selected and appointed. His date of appointment in the present post is 02.08.2012, whereas the petitioner was appointed in the present post only



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on 10.03.2016. Therefore, the said *Krishnan* has to be given preference and he has been accommodated as against the GT vacancy. Accordingly, the petitioner could not be placed against the GT category.

6. The next vacancy to which the petitioner can compete is BCO. As far as the BCO is concerned, there are two candidates, who belong to the same category, who are placed above the petitioner. Of that *A.Devadoss* was selected, because, he joined the present post on 20.11.2012 and therefore, as per the rule, he has been given preference. In view of the same, the petitioner has not been selected.

7. Heard the learned counsel for the petitioner and the petitioner, who is present in the Court.

8. The learned counsel for the petitioner as well as the petitioner who is present in the Court would firstly argue that the consideration of *Devadoss* in respect of the said post by the respondents is erroneous,



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because, he did not produce the degree certificate in time. When the respondents required the candidate to produce the degree certificate, the said *Devadoss* submitted the same at a belated time and therefore, the respondents ought not to have considered the *Devadoss* as against the BC vacancy.

9. The second contention made on behalf of the petitioner is that in any event, the rule of preference came into force only in the year 2018 and therefore, some of the vacancies which arose prior to 2018 are also being considered. Thus, the said rule cannot be applied in respect of the vacancies which arose prior to 2018.

10. Thirdly, it is the further contention that an earlier attempt was made to fill up the vacancies, in which the petitioner's name was very much available in the selection list. At that relevant point of time, many of the selected candidates are not qualified to be appointed to the post. However, the respondents withheld the selection process for the reasons best known to



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them and as such the petitioner lost the right of selection.

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11. Per contra, the learned counsel appearing on behalf of the respondents relying on paragraph Nos.3 to 7 of the counter affidavit would submit that the respondents have filled up the vacancies strictly in accordance with the merit and only because of the GT category and as per communal rotation, the petitioner did not come within the zone of consideration and he has not been appointed. As a matter of fact, there is one more BC candidate, who is above the petitioner, who is also not appointed.

12. This Court considered the rival submissions made on either side and perused the material records of the case.

13. On perusal of the counter affidavit, it can be clear that the petitioner can contest for one GT category vacancy first. As far as the GT category, one *Krishnan* was far more senior to the petitioner. When the said



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Krishnan, *Devadoss* and the petitioner, everybody is on the same scale of pay of Rs.39,800-1,26,500/-, the respondents have considered the date of joining in the present post and appointed the said *Krishnan*. The respondents have gone by the second rule of preference. When the said *Krishnan* joined on 02.08.2012, no exception can be drawn in respect of his selection. Then, the second vacancy to which the petitioner can compete is the BCO category. As far as the said vacancy is concerned one *Devadoss* is selected. It can be seen that the *Devadoss* was also drew the same scale of pay of Rs.39,800-1,26,500/- as that of the petitioner. But, as far as the joining date in the present post is concerned, he joined on 20.11.2012 and therefore comes above in the order of preference. Therefore, the respondents have rightly selected the said *Devadoss*.

14. The second contention made on behalf of the petitioner is that the present rule of preference came into force only in the year 2018 and the vacancies prior to 2018 cannot be filled up by the said rule of preference, can no longer be valid in view of the latest pronouncement of the Judgment



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by the Hon'ble Supreme Court of India in *State of Himachal Pradesh and Ors. Vs. Raj Kumar and Ors.*,¹ whereunder the law laid down in *Y.V.Rangaiah and Ors. Vs. J.Sreenivasa Rao and Ors.*,² has been clarified. In any event, once the new rule comes into force, in the year 2018, the respondents are bound to follow the new rules.

15. As far as the argument relating to eligibility is concerned, once the said candidate possesses the degree qualification, mere production of the degree certificate belatedly would only amount to procedural defect and when the respondents have obtained the said degree certificate and considered the said candidate for selection, it cannot be said to be illegal or violative of Articles 14 and 16 of the Constitution of India. Once the candidate is qualified, mere production of the certificate within time, at the discretion of the respondents can be condoned.

16. As far as the third contention is concerned, it may be true that at

1 (2023) 3 Supreme Court Cases 773

2 (1983) 3 Supreme Court Cases 284



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the relevant point of time, when an earlier selection was attempted, the petitioner had a better chance of success. However, for the reasons known to the respondents, they did not go through and finalise the selection. The petitioner also did not question the same and that cannot be a valid ground for challenging the present selection, though it can be termed that it may be unfortunate as far as the petitioner is concerned.

17. For all the above reasons, this Court is unable to see any legally justifiable ground to quash the present selection and the Writ Petition lacks merit. Accordingly, the Writ Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

10.06.2024

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Neutral citation : Yes



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D.BHARATHA CHAKRAVARTHY, J.,

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To

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