IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 24667 of 2018
and W.M.P.Nos.9849 of 2022 & 28707 of 2018

1. S.P.Chandra,
D/o.S.K.Perumal, Auditor, Chennai South Region, Auditing Branch, Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO) Chennai-2.

Petitioner(s)

Vs

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), Rep. by its Chairman and Managing Director, No.144, Anna Salai, Chennai-600 002.

2.The Secretary,
Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), No.144, Anna Salai, Chennai-600 002.

3.The Chief Internal Audit Officer, Audit Branch, Tamil Nadu Generation and Distribution Corporation Ltd., NPKRR Maligai, 1st Floor, No.144, Anna Salai, Chennai-600 002.

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issue by the 2nd respondent in Memo No.052461/ 2069/ F.1/ F.12/ 2018 dated 10.01.2018 and to quash the same and consequently direct the respondents to promote the petitioner to the post of Assistant Audit Officer on inclusion of her name in 2010 panel on par with her junior with all consequential and other attendant benefits including arrears of salary within a time frame to be fixed by this Honourable Court.

For Petitioner(s): S.Nedunchezhiyan

For Respondent(s): Mr.Rajkumar, Sc
For The Respondents

ORDER

The writ petition has been filed to call for the records relating to the impugned proceedings issue by the 2nd respondent in Memo No.052461/ 2069/ F.1/ F.12/ 2018 dated 10.01.2018 and to quash the same and consequently direct the respondents to promote the petitioner to the post of Assistant Audit Officer and inclusion of her name in 2010 panel on par with her junior with all consequential and other attendant benefits including arrears of salary.

2. The petitioner who was initially appointed as a Helper in the consolidated pay got her services regularized in the post of Junior Assistant in the year 1995 based on internal selection. She got her selection grade in the post of Junior Assistant on completion of 10 years of service. Thereafter, she was posted as Junior Auditor in the audit branch in the year 2005 and subsequently she was promoted as Auditor in the year 2006. Despite the petitioner is entitled to be included in the panel for promotion to the post of Assistant Audit Officer in the year 2010, her name was not included by citing the reason that she did not study B.Com degree by following 10+2+3 pattern of studying.

3. Mr.S.Nedunchezhiyan, the learned counsel for the petitioner, submitted that the Rules insisting 10+2+3 pattern of study has come into force only from the year 2011 and hence for the petitioner the 10+2+3 pattern cannot be insisted.

4. Mr.K.Rajkumar, the learned Standing Counsel for the respondents, submitted that as per the Board Proceedings dated 09.04.2015, the Government Order in G.O.Ms.No.107 P & AR (M) Department dated 18.08.2009 and G.O.Ms.No.116 P & AR (M) Department dated 18.08.2010 which gave validation to the open University degree under non-regular stream cannot be

considered for appointment / promotion in Government service. Subsequently, Tamil Nadu State and Subordinate Services have also been amended and all these changes have been adopted by the respondent TANGEDCO by issuing appropriate Board proceedings.

5. The petitioner's appointment to the post of Junior Assistant relates back to the year 1995 and her promotion to the post of Junior Assistant was in the year 2005 and she had obtained B.Com degree through a Open University system. What is clear is that at the time when the petitioner was posted as Junior Auditor in the year 2005, there was no bar to take into consideration of the Bachelor Degree obtained through Open University system. The petitioner was given with the further promotion to the post of Auditor also in the year 2006 by considering the same qualification. A Government Order has been issued in G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 by stating that the foundational course cannot be equated to a higher secondary course. When this issue was surfaced before the Division Bench, in the case of ***P. Thavam and Others Vs. The State of Tamilnadu, reported in 2022 SCC OnLine Mad 6177,*** it is held that the Government Orders issued in G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, will operate prospectively.

6. In the instant case the petitioner does not come under the purview of G.O.Ms.No.107 P & AR (M) Department dated 18.08.2009 nor under the other

G.O.Ms. No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017. The petitioner's appointment in the audit branch was accepted in the year 2005 itself during which time the petitioner ought to have governed under the Government Order issued in G.O.Ms.No.528 dated 18.05.1985. Since the Government Orders will operate prospectively it is wrong on the respondents to give retrospective effects to the petitioner and deny her the entitlement of promotion to the next level of Assistant Audit Officer.

7. In the Government Order in G.O.Ms.No.528 Personnel & Administrative Reforms Department dated 18.05.1985 it is held that the pre-foundational course done in Madurai Kamaraj University is valid and equivalent to S.S.L.C. of the Tamil Nadu Government for the purpose of entering into the public service in Tamil Nadu. In the subsequent Government Order in G.O.Ms.No.107 P & AR (M) Department dated 18.08.2009 a cut off date was fixed as 18.08.2009 to get the above benefit. So those who have completed the pre-foundational course before 18.08.2009 alone can get the benefit of G.O.Ms.No.528 Personnel & Administrative Reforms Department dated 18.05.1985.

8. As the petitioner had completed her B.Com degree even in the year 2005 and she was entitled to get posted as Junior Auditor in the Audit Branch, she will not come under the purview of denial of benefit post cut off date 18.08.2009 or the subsequent Government Order in G.O.Ms. No. 144,

Personnel and Administrative Reforms (M) Department, dated 20.11.2017 which withdrew the equivalence extended for pre-foundation courses. Even though the petitioner will not come under the purview of the above Government Orders, with abundant caution she have also cleared her Higher Secondary Exam in the year 2014 and that can only be taken as additional qualification and not fundamental qualification to qualify her to the post of Junior Auditor or to Auditor in the year 2005 and 2006 respectively.

9. As all the Government Orders have been passed consequently and they can operate only prospectively, the petitioner cannot be denied to be included in the promotional panel of the year 2010 for the post of Assistant Audit Officer by holding that she has not studied following 10+2+3 pattern of study.

10. In this regard I feel it is appropriate to refer the earlier judgment of the Madurai Bench of this Court held in ***Kottai Eswari V. The Principal Secretary to the Government and others in W.P.(MD)No.10514/25 dated 29.04.2024*** wherein a similar issue was dealt and this Court has passed the following order:

> *" 8. It is worthwhile to extract the portion of the order below for the purpose of better understanding.*
>
> *"7.The above letter has been issued on the heels of G.O.Ms.No.107 and, according to G.O.Ms.No.144, has been applied from the date of issue of G.O.(Ms) No.107 dated 18.08.2009. Thus, the position appears to be that,*

though a benefit was granted under G.O.Ms.No. 107 dated 18.08.2009, it was immediately withdrawn by issuance of letter dated 03.12.2010. It is unclear as to whether the aforesaid letter is unavailable in public domain.

8.The above paragraphs capture the background to the matter. The parties place before us two series of orders. In one series, that is 2011 SCC OnLine Mad 209 (Order dated 10.02.2011), CDJ 2019 MHC 2929 (Order dated 19.07.2019), CDJ 2021 MHC 3466 (Order dated 15.042021) and W.A.(MD)No.471 of 2021 (order dated 20.07.2021), Division Benches of this Court have taken a view that the benefit granted under G.O.(Ms).No.107 stands nullified by G.O.Ms.No.144 dated 20.11.2017 and a foundation course cannot be equated to High Secondary Course. Reference is made to letter dated 03.12.2010

9.In a recent decision of a Division Bench reported in 2022 SCC OnLine Mad 6177, a Division Bench has taken a view that G.O.Ms.No.144 dated 20.11.2017, would operate prospectively.

Thus, appointments made prior to 20.11.2017 have been held to be entitled to the benefit granted under G.O.Ms.No.107 dated 18.08.2009 and other similar Government Orders passed for earlier periods as well."

9. So far as this petition is concerned, the petitioner is neither affected by G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 nor by G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 because, this petitioner has been appointed even prior to the issuance of the above two Government Orders. Since the petitioner is covered under G.O.Ms.No. 528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985, there need not be any confusion in granting promotion to her without having any confusion as to the application of *subsequent Government Orders issued in the year 2009 and 2017 respectively. Since the petitioner's qualification was found to be fit at the time of her employment and all other Government Orders have been passed consequently, the petitioner's position is safely protected and she is entitled to be regularized without any conditions attached. To make it more clear, the above Government Orders issued in the years 2009 and 2017 have no application to the case of the petitioner.*

10. In view of the above stated reasons, the writ petition is allowed and the order of the first respondent in G.O[D]No.1464, Home [Police 15] Department dated 18.12.2018 and the consequential order of the second respondent in Rc.No.7011916/NGB II[1]/2024 dated 04.04.2024 are quashed and the first respondent is directed to pass fresh orders to regularize the petitioner's services without placing any bar to her further promotion / increment / or any other service benefits attached to her regularization and release monetary benefits if any withheld in view of the impugned orders, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed."

11. Since the petitioner is also similarly placed and she got her appointment well before the subsequent Government Orders withdrawing the benefit granted for the degree courses done through Open University, I feel the petitioner should also be given with the same benefit as granted in the above order.

12. Accordingly this writ petition is allowed and the order passed by the second respondent in Memo No.052461/ 2069/ F.1/ F.12/ 2018 dated 10.01.2018 is hereby quashed and the respondents are directed to give notional effect for the attendant benefits including promotion from the date of inclusion in the panel for the year 2010, as per the direction now given and the monetary benefit from the date on which the petitioner is actually promoted. No costs. Connected miscellaneous petitions are closed.

26-03-2025

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

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(TANGEDCO), No.144, Anna Salai,
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3.The Chief Internal Audit
Officer, Audit Branch, Tamil Nadu
Generation and Distribution
Corporation Ltd., NPKRR Maligai, 1st
Floor, No.144, Anna Salai, Chennai-
600 002.

R.N.MANJULA J.

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