
(2014) 08 MAD CK 0205
In the Madras High Court
Case No : W.P. (MD) No. 1821 of 2009

A. Raja

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0205

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—The case of the petitioners is that they were appointed as NMRs in the Madurai Corporation, during the year 1992 to 1994. The petitioners had been dealing with the works relating to the maintenance of street lights. During the year 1995, the Electrical Section of the Corporation of Madurai was taken over by the Tamil Nadu Electricity Board. Subsequently, in the year 1998, the Tamil Nadu Electricity Board handed over the powers, relating to the maintenance of street lights and electrical wiring to the second respondent herein. When the matter stood thus, the first respondent issued G.O.Ms. No. 151, Municipal Administration and Water Supply Department, dated 10.06.1997, thereby creating various posts, viz., Line Inspector, Electrician, Wiremen, Helper and Daily Wagers, to deal with the maintenance of street lights. Even though the petitioners had been working both under the second respondent as well as the Tamil Nadu Electricity Board for maintaining street lights, continuously from the year 1992, their services were not regularized. The petitioners, therefore, filed W.P. No. 10337 of 1997.

2. Upon hearing both the parties, this Court, by order, dated 29.11.2002, directed the first respondent to consider the resolution passed by the second respondent, as expeditiously as possible, preferably, within a period of four months. As the said order passed by this Court, dated 29.11.2002, was not complied with by the respondents, the petitioners were constrained to file Contempt Petition No. 423 of 2004, which was, by order, dated 21.04.2006,

disposed of, directing the second respondent to send a proposal within a period eight weeks, and thereafter, the said proposal was directed to be considered by the first respondent within a period of eight weeks.

3. Contending that the order of this Court, dated 21.04.2006, was not complied with, again, the petitioners filed Contempt Petition No. 732 of 2007. In the said Contempt Petition, recording the submission that a fresh direction was given by the first respondent herein for appointment of the petitioners herein in the second respondent corporation, the above Contempt Petition was closed. Finally, the second respondent, by the impugned proceedings, dated 21.11.2007, relying upon the Government Letter No. 2(D)/153, Municipal Administration and Water Supply Department, dated 10.09.2007, appointed the petitioners as unskilled labourers on temporary basis. In the above circumstances, the petitioners have come up with the present Writ Petition.

4. The learned counsel appearing for the petitioners submits that there is no qualification prescribed in the Rules applicable to the second respondent corporation, and hence, the appointment of the petitioners as Unskilled Labourers, by the impugned proceedings, on the ground that they did not possess required educational qualification for being appointed as Helper cannot be sustained. The learned counsel also submits that the petitioners were discharging the functions of the Wiremen and Helpers, ever since the date of their original appointments and the works done by the petitioners were one and the same to that of Wiremen and Helpers. Hence, the learned counsel contended that the impugned proceedings cannot be sustained in the eye of law.

5. The learned Standing Counsel, on the other hand, reiterating the averments made in the counter affidavit filed by the second respondent, submits that the petitioners were not qualified to seek the post of Wiremen/Helpers, as prayed for by them. Further, it is contended that the petitioners do not possess any technical qualifications to hold the post of Wiremen/Helper. As per the Corporation Service Rules, framed in the year 1996, vide G.O.Ms. No. 237, Municipal Administration and Water Supply Department, dated 26.09.1996, the category of Unskilled Workers comes under the Tamil Nadu Municipal Corporations Basic Service Rules. Thereafter, the Government under G.O.Ms. No. 151, Municipal Administration and Water Supply Department, dated 10.06.1997, permitted the Corporation to create 84 additional posts to maintain street light section of Madurai Corporation and the Government specifically directed the Corporation to meet out the establishment expenses for the above said posts from the general fund of the Corporation. Thus, the learned Standing Counsel contended that the petitioners, who do not have educational qualification as well as technical qualification, cannot claim, as a matter of right, that they should be appointed as Wiremen/Helpers with continuity of service, and therefore, the Writ Petition is liable to be dismissed.

6. I have considered the above submissions and perused the records carefully.

7. Upon perusal of the impugned orders, the plea of the petitioners to be appointed as Wireman/Helper had been turned down holding them as unqualified and orders had been passed appointing them as unskilled labourers. It is not in dispute that no educational qualifications have been prescribed to be appointed as Wireman/Helper. The respondents have claimed to have plagiarized the qualifications prescribed under the Tamil Nadu Electricity Board Regulations.

8. The qualifications for the post of Wireman/Helper are specified in Annexure III of the Regulations of the Board. Upon perusal of the Regulations at page 200, the qualifications that required to be appointed as Wireman, are as under:

Wireman/ Wireman Meter Reader

Certificate in Electrical wiring issued by the Polytechnics or equivalent qualification as approved by the Chief Engineer (Personnel); or

Pass in IV Standard with practical experience in Electrical Operation and Maintenance for a period of not less than two years; or

Craftsmanship Certificate in the trade of Lineman and Wireman issued by the Ministry of Labour and Employment, Government of India for appointment as Wireman; or

The Industrial School Certificate of 3 to 5 years duration awarded by the Industries and Commerce Department.

Qualifications for appointment as Helper, (at page 204), are as follows:

Helper

Must possess National Trade Certificate/National Apprenticeship Certificate

awarded by the National Council for Training and Vocational Trade in any one of the following Trades:

1. Fitter
2. Turner
3. Machinist
4. Welder
5. Wireman
6. Building Constructor
7. Blacksmith
8. Carpenter
9. Plumber
10. Electrician

11. Instrument Mechanic

12. Draughtsman (Civil)

13. Surveyor.

Provided that the Chairman shall have the power to order the selection from any of the Trades referred to above and to such numbers as may be decided by him.

9. In the present case, all the petitioners had passed class IV and were working in the electrical department more specifically in the operation and maintenance of street lights from 1992 to 1994 onwards. Therefore, it cannot be said that the petitioners do not possess the necessary qualification for holding the post of a Wireman as per the board regulations.

10. Regulation 111, at page 131 of the Tamil Nadu Electricity Board Service Regulations, reads as under:

"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 in any manner less favourable to him than that provided by that Regulation."

11. It is clear from the above Regulation that the Board also has the power to exempt the application of any rule to any person for just and equitable clause.

12. From the impugned proceedings of the 1st respondent followed by the 2nd respondent, directions have been issued to relax the conditions regarding age and recruitment through employment exchange, then why not relax the condition regarding the educational qualification?

13. Now, let us examine whether the qualifications in Board Service Regulations can be followed for recruitment in the corporation.

14. Upon examining the Madurai Corporation Service Rules, which came into effect from 1st October 1996, there is provision for reading into the service rules of the Board as the Service Rules of the Madurai Corporation is exhaustive. Therefore, the regulations of the board need not be looked into. Further, there is no reference in the impugned orders to the Board regulations and as to why they were applied suddenly after several rounds of litigation. The relief sought for in W.P. 10337 of 1997 is as follows:

"For the reasons stated in the accompanying affidavit, it is prayed that this Hon"ble Court may be pleased to issue a WRIT OF MANDAMUS or any other appropriate writ or order of direction in the nature of the writ directing the respondent to absorb the petitioners as Wiremen and helper in the posts sanctioned by G.O.Ms. No. 151, MA & amp; WS. Department, dt. 10.6.97 and

pass such further or other orders and thus render justice."

15. Even this Court in the order dated 21.04.2006 in Contempt Petition No. 423 of 2004 has observed in paragraph 3 as under:

"3. During the pendency of the contempt petition, an order was passed by the third respondent rejecting the representation mainly on the ground that ban order was in operation and also on the assumption that there were no vacancies in the NMR Post. However, from the recommendation made by the Commissioner, it is apparent that vacancies are available in the posts of Wireman and Helper and the writ petitioners were working as such."

16. The respondent never took a stand earlier that the petitioners were not qualified as per the Board Service Regulations. The contention of the respondents that the petitioners are seeking appointment as Wireman/Helper for the first time is rejected. Irrefutably, the subject before this court has always been the appointment to the post of Wireman/Helper. Further, the respondents never took an objection regarding their educational qualification as no qualification was prescribed in the Corporation Service Rules to the post of Wireman/Helper. Even if the qualifications prescribed for the Skilled Assistant are considered to be the requirements for Wireman/Helper, the petitioners, still would be entitled to be appointed as per the following Rules of the Tamil Nadu Municipal Corporation Service Rules, 1996:

"Rule 32. Relinquishment of right by members.- Any person may, in writing, relinquish any right or privilege to which he may be entitled under these rules or the special rules. The Government shall have the power to relax any of these rules and the Special Rules in favour of any person or class of persons serving in the service or any candidate or class of candidates for appointment to the service in such manner as may appear to them to be just and equitable."

"Rule 39. Savings.- Nothing contained in this general rules shall adversely affect any person who was a member of this service on the date of coming into force of these rules."

17. It is also relevant to note that in the writ petition filed in W.P. No. 6635 of 1997 challenging the Tamil Nadu Municipal Corporation Service Rules, 1996, this Court, by order dated 28.01.2005, quashed the G.O.Ms. No. 237, Municipal Administration and Water Supply (Election) Department, dated 26.09.1996. Whereas the Division Bench of this Court in W.A. No. 1351 of 2005, by order dated 05.09.2007, had allowed the writ appeal and set aside the order passed in W.P. No. 6635 of 1997, dated 28.01.2005.

18. Upon reading of the aforesaid Service Rules, it is clear that the government has the power to exempt the application of any rules to any person or class of person for just and equitable cause and the rules shall not be applicable to any person who was a member of the service of the corporation as on the date of coming into effect of the rules. Admittedly, all the petitioners came into service of

the 2nd respondent corporation even before the rules came into effect. Therefore, the qualification prescribed for the appointment as Skilled Assistant cannot be made applicable for the petitioners.

19. To avail the shelter under service Rule 39, the petitioners must satisfy the following tests:

- (i) must have been appointed initially before 1st October 1996; and
- (ii) must be still in service.

20. All the petitioners satisfy the above two requirements. The petitioners have all been performing the works performed by Wireman/Helper ever since their appointment. The 2nd respondent has not placed any materials to hold otherwise. Therefore, merely just because the petitioners are designated as NMRs/Unskilled labourers, it would not disentitle them to receive the pay on par with the persons employed as Wireman/Helper. The earlier direction of this court was also to consider them for the post of Wireman/Helper only and in fact the 2nd respondent corporation itself had passed a resolution recommending their appointment. Under the above circumstances, the impugned proceedings can only be termed as arbitrary. Therefore, the impugned orders are set aside.

21. At this juncture, the learned Counsel for the petitioners submits that the petitioners are agreeable to forego the monetary benefits and all other benefits, except notional promotions. The said submission is placed on record.

22. In such circumstances, this Court directs the respondents to regularize the services of the petitioners in the posts of Wireman/Helper in the second respondent Corporation and give promotions to them notionally, within a period of eight weeks from the date of receipt of a copy of this order.

23. In the result, the writ petition is allowed as above. However, there shall be no orders as to costs.