

(2009) 11 MAD CK 0177

In the Madras High Court

Case No : Writ Petition No"s. 18352 to 18356 of 2009 and 19520 to 19528 of 2009 and MP. No"s. 2 and 3 of 2009

C. Jayakumar

APPELLANT

Vs

The Chairman, Tamil Nadu Electricity Board (TNEB) and
Others

RESPONDENT

Date of Decision : 02-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 11 MAD CK 0177

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; M. Vaidyanathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. L.Chandrakumar, learned Counsel appearing for the petitioners and Mr. M. Vaidyanathan, learned Counsel for the Tamil Nadu Electricity Board and perused the records.

2. In all these writ petitions, the challenge is to the non-selection of the petitioners to the posts of Technical Assistants. The petitioners having made applications to the said post, when they found that they were not selected, they challenged the selection process by filing the above writ petitions.

3. The main ground of attack by the petitioners was that the interview marks were manipulated by the selecting authority; inasmuch as there were marks ranging from 1 to 14 such wide latitudes were found in the results which was solely done on extraneous considerations.

4. The second ground of attack by the learned Counsel for the petitioners is that some of the non selected candidates were also trained apprentices and as much as they were treated as non-apprentices the selecting committee had committed

grave irregularities.

5. The learned Counsel for the petitioners produced a select list published by the respondents and showed that in some cases, though 14 marks were given in the interview and in some cases, only 1 mark was been given to candidates it is only candidates who got higher marks in terms of their academic performance alone were found selected.

6. In answer to these allegations, the respondent Board had produced a comparative statement of the petitioners and the contesting 5th respondents to show that there was neither any extraneous consideration nor any improper procedure was followed in the selection.

7. The comparative statement produced by the respondent Board clearly shows that some of the petitioners had also secured 13 and 14 marks in the interview. Therefore, the allegation in paragraph 15 of the affidavit that the interview marks were manipulated by granting one mark to certain candidates and 14 marks to some other candidates did not stood proved.

8. Mr. M. Vaidyanathan, learned Counsel for the respondent Board after showing the list of marks stated that most of the candidates who got 14 and 15 marks in the interview were not necessarily found selected. The objective criteria for grant marks in their academic performance guaranteed non-arbitrariness. Learned Counsel also submitted that once the Board laid down the standard for selection and interview marks confined only to 15% marks it is well within the fair procedure and cannot be attacked on the ground of violation of Article 14 of the Constitution. He further submitted that there is no arbitrariness. On the contrary, the respondent Board followed the dictums of the Supreme Court in the selection process by conducting oral interview/ viva voce. Therefore, the procedure adopted by the Board cannot be faulted.

9. Since 85% of marks were made available to the candidates based on their academic performance, there cannot be any speculations and it is based on an objective criteria. In so far as the candidates who had scored 14 and 15 marks in the interview are concerned, their selection was based on their academic performance. It proved to be the tilting factor in the selection. Some of the candidates who were selected by the Board and whose names were given by the petitioners, the respondent Board has produced their marks to show that in case of those candidates after adding the academic marks with the marks obtained in the interview, they were found to have higher marks compared to the other non selected candidates. The fifth respondent in each of the case were selected according to the dictum, that when everything is equal, preference must be given to candidates who were apprentices and specially trained by the respondent Board itself.

10. In this context, the respondent Board has brought to the attention of this Court a judgment of the Supreme Court in Tamil Nadu Electricity Board v. P. Arul and Ors. in Civil Appeal Nos. 5285 to 5328 of 1996 dated 03.10.1996. The

Supreme Court after reversing the judgment of the Division Bench of this Court has held as follows:

This Court has, therefore, clearly laid down that Apprentices/Trainees shall have, to go through the process of selection provided under the Service Regulations/Rules. Keeping in view that fact that the Apprentices acquire training under the same management, they are not required to sit in the written test but in a selection where viva-voce test is also provided, it would be necessary for the Apprentices to go through the process of viva-voce. This Court has specifically laid down that a trained apprentice should be given preference - other things being equal - over direct recruits. In a given case an Engineering graduate may be preferred to a diploma holder apprentice. It depends on the Selection Committee and also the Regulations/Rules governing the selection.

...

We are of the view that the High Court fall into patent error. After indicating the four benefits to which the apprentice-trainees would be entitled during the process of selection, this Court in para 13 has, in clear terms, stated that the trainees shall have to go through the process of selection provided under the Service Regulations/Rules. In the present case, the Board Regulations specifically provide that the post of Technical Assistant is to be filled by way of selection. All the applicants including the apprentices are, therefore, required to go through the process of selection provided under the Regulations. This has not been done in the present case and the Division Bench of the High Court has directed the Board to appoint the respondents on preferential basis and without going through the selection process.

Before parting with this order, we make it clear that this Court has, in U.P. State Road Transport's case (supra), interpreted the provisions of the Act. All instructions issued by the Central Government or by the State Government in this respect shall have to be read in conformity with the law laid down by this Court.

Mr. Parekh, learned Counsel for the Board, has informed us that the interviews in this case were held in September 1994. It is thus obvious that the interviews were held before this Court delivered the judgement in U.P. State Road Transport's case. Even otherwise, it would not be appropriate to make appointments based on an interview, which was held more than two years back. We therefore, direct the Board to readvertise the posts. The fresh applicants along with the old applicants including the apprentices shall be considered afresh by following the selection procedure envisaged under the Regulations. The Board shall complete the process of selection within four months.

11. If the selection done by the Board is based on the binding precedent of the Supreme Court, (which incidentally was filed by the Board) there is no impropriety. The selection process is very much in order in terms of the judgment of the Supreme Court and the rules have also been subsequently

amended in tune with the directions given by the supreme Court.

12. In the absence of the learned Counsel for the petitioner alleging specific irregularities against selection committee or against any member of the selection committee that there was extraneous considerations, the bald allegations regarding the marks given in the interview and based on the speculations, this Court is not inclined to upset the selection process gone through by the respondent Board. All the writ petitions will stand dismissed. No costs. Consequently all the connected M.P. Nos. 2 and 3 of 2009 are closed.