
(2016) 07 MAD CK 0078

In the Madras High Court

Case No : Writ Petition Nos. 8673 to 8676, W.P. Nos. 8880 to 8883 of 2016, W.P. Nos. 8544, 8553, 8560, 8603 of 2014, WP. Nos. 13794, 17438 of 2016, WMP. Nos. 7682 to 7685 of 2016, WMP. Nos. 7877 to 7880 of 2016, MP. Nos. 1 to 3, 1 to 3, 1 to 3, 1 to 3 of 2014, WMP.

K. Palanivel

APPELLANT

Vs

Chairman and Managing Director, TANGEDCO

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2016) 2 CWC 500 : (2016) 2 CWC 500 : (2016) 4 LLN 195

Hon'ble Judges : M.V. Muralidaran, J.

Bench : Single Bench

Advocate : Mr. K.S. Govindaprasad, Advocate, for the Petitioner in WP. Nos. 8673 to 8676 & 8880 to 8883 of 2016; Mr. P.R. Balasubramanian, Advocate, for the Petitioner in WP. Nos. 8544, 8553, 8560, 8603 of 2014 and WP. Nos. 13794 and 17438 of 2016; Mrs. R. Varalaksh

Final Decision : Allowed

Judgement

M.V. Muralidaran, J.—The case of the petitioners are that after completion of the SSLC i.e. 10th standard new pattern public examination, all the petitioners are undergone and completed the course of training at Government Industrial Training Institute at various places and passed the prescribed trade test in the trade of Wireman held in the month of July 1988 and subsequent years and awarded the certificate provisionally to them. They also issued National Trade Certificate by the Government of India.

2. The petitioners have further state that they have successfully completed the course of Apprenticeship Training under the Apprentices Act, 1961 in various places viz., Madras Port Trust and other places. They were also passed the trade test as a regular candidate in the trade of Wireman and was awarded the provisional certificate to them also. In fact, they were issued the certificate of experience in the various fields of works by the Companies, where the petitioners

were undergone. They also stated that the Electrical Contractor, where the petitioners were undergone the work have issued the certificates to the effect that all these petitioners were well versed in Domestic electrical wiring, Agri-Pumpset wiring and re-winding works, etc. As per the above certificates and the experience of the works they were eligible and qualified for appointment to the post of ITI Helper (Trainee) in the Respondents Board.

3. The petitioners further submit that the respondents Board invited applications from the eligible candidates for interview to the post of ITI Helper (Trainee) both during 2009 and 2013 and conducted the process of interview. As per the records, it is clearly shows that all the petitioners were attending both the interviews, but they were not selected by the Respondents Board and that the interview process was consisted as (i)Pole climbing (ii)cycling and (iii)oral interview.

4. The petitioners have come forward by saying that when they were expecting that they would be considered favourably by the Respondents Board through reliable sources but they were not appointed, where the other batch met, who attended the interview are selected and appointed as ITI Helper (Trainee) in the Respondents Board.

5. The petitioners further submit that in the above circumstances, nearly 84 candidates who were not selected in the selection process like the petitioners were approached this Court originally and filed the writ petitions. But some of the Writ Petitions were dismissed. Subsequently, they were filed Writ Appeals. Out of the 84, some of the writ petitions were dismissed and others while pendency of the writ petitions and the writ appeals were taken up for hearing. At that time, a compromise memo has been entered into between the 84 petitioners along with the respondents TANGEDCO.

6. As per the compromise memo, 84 persons were appointed in the post of ITI Helper (Trainee), thereafter, only the petitioners came to know about the orders of the Division Bench of this Court through Writ Appeals. When the respondents entered into a compromise memo about the 84 candidates and the same was accepted by this Court, these petitioners are also willing to enter into similar compromise with the respondents Board and accordingly they may be appointed in the post. Therefore, all these 14 petitioners were filed the above writ petitions with a prayer to issue a writ of Mandamus directing the respondents herein to appoint the petitioners to the post of ITI Helper (Trainee) in the Respondents Board with attendant, service and monetary benefits pursuant to the proceedings of the second respondent herein namely the Chief Engineer (Personnel), Chennai, TANGEDCO, bearing No.044771/201/G.57/G.572/2012-12, dated 28.10.2013. But all these petitioners in their affidavits stated that they were not made any request for seniority, service and other benefits as mentioned in the compromise memo in the above Writ Appeal No.81 of 2015.

7. Heard Mr. K.S. Govindaprasad, for Mr. P.R. Balasubramanian, learned counsel

appearing for the petitioners and Mrs. R. Varalakshmi, learned counsel appearing for the respondents TANGEDCO.

8. There is no counter filed by the respondents, but Mrs. R. Varalakshmi had put forth her arguments before this Court.

9. The case of the respondents is that it is admitted fact that the selection interview was held during 2013 and 2014 for the post of ITI Helper (Trainee). But, these petitioners were not selected on the valid grounds. The learned counsel appearing for the respondents admits that there was a compromise entered into between the respondents Board with the said 84 petitioners in the above said Writ Appeals and Writ Petitions. The compromise was entered as follows:-

"Memo of Compromise

The Appellants and petitioners filed writ petitions in W.P.Nos 9125, 9126, 9319, 9923, 9927, 10589, 10598, 11785, 12003, 12004, 15512, 15636 and 15873 of 2014 challenging the selection process to the post of 4000 ITI Helpers recruited by the TANGEDCO Per (Per.) FB (TANGEDCO) Proceedings No.14, dated 12.07.2012 and the same were dismissed by the learned single Judge by an order dated 04.12.2014. Aggrieved by the same the Appellants have filed the above Writ Appeals in W.A.Nos 81, 193, 194, 195, 196, 197, 1018, 1019, 1020, 1021, 1022, 1023 and 1301 of 2015. Further above said three writ petitions in W.P.No 22095, 33097 & 33098 of 2014, challenging the same selection of ITI Helper (Trainee) came up for admission and this Hon''ble court has directed the registry to post the same along with the batch of cases in W.P.No 9125 of 2014 etc., But the said writ petitions were not posted along with W.P.No.9125 of 2014 etc., batch cases during final hearing and the same are pending and now posted along with the above writ appeals.

The above first writ appeal came up for hearing before this Hon''ble court on several occasions and finally on 02.09.2015 and in view of the judgment of the Apex court, the respondents corporation accepted the proposals of the Appellants and Petitioners numbering 84 who have filed the Writ Appeals/Writ Petitions before this Hon''ble court challenging the ITI Helper (Trainee) and have stated that they will be accommodated in the post of ITI Helper (Trainee) in the 1st & 2nd respondents corporation under the following

Terms and Conditions

1. The respondent corporation and the appellants & petitioners mutually agreed that the respondent corporation shall appoint the Appellants and Petitioners in the post of ITI Helper (Trainee) in TANGEDCO Service within a time frame fixed by this Hon''ble court.

2. The respondent corporation and the appellants & petitioners mutually agreed that the appointment to the appellants and petitioners shall be given only after verification of the original certificates.

3. The respondent corporation and the appellants & petitioners mutually agreed that the Appellants and petitioners shall be appointed in the post of ITI Helper (Trainee) on production of original certified copy of the judgment of the Hon''ble court along with covering letter affixing the concerned appellant/Petitioner photograph from the counsel on record in order to avoid any impersonation and future litigation. No request for seniority, service & other benefits will be entertained.

4. As per the respondent corporation's request, this order will not apply to the persons, who did not approach this Hon''ble court in time challenging the selection process and that this compromise cannot be treated as a precedent as this order is binding as between the parties on the basis of the consensus reached.

5. The respondent corporation and the appellants & petitioners mutually agreed to bear their respective cost in the above cases."

10. The learned counsel appearing for the respondents also states that as per the above compromise memo in paragraph-4 of the terms and conditions of the compromise memo, it is stated that as per the respondents Board request, the said compromise memo will not apply to the persons, who did not approach this Court in time challenging the selection process and that this compromise cannot be treated as a precedent as the order is binding as between the parties on the basis of the consensus reached. Therefore, as per the above compromise under Clause-4, these petitioners are not entitled to adopt the compromise memo have entered into with the respondents Board. Therefore, the learned counsel appearing for the respondents vehemently argued that the petitioners were not make out any case and hence she sought for the dismissal of all the 14 Writ Petitions.

11. On the other hand, the learned counsel appearing for the petitioners submits that similar nature of candidates like these petitioners were entered into compromise memo, these petitioners also entitled for either entered into similar compromise with the respondents Board or appointing these petitioners based on the above compromise memo. During the course of arguments, the petitioners were filed an additional affidavit by stating that as per the above order of the Division Bench of this Court, they are willing to entered into the above compromise memo and accordingly they have given a compromise memo in the said additional affidavit. The said compromise memo also received by the learned counsel appearing for the respondents. But, she has not accepted the compromise memo with these 14 writ petitioners as alike the compromise memo entered with the above 84 petitioners in the above stated cases.

12. The learned counsel appearing for the petitioners states that all these petitioners are fully qualified and they were eligible for the appointment of the above said post as per the selection interview held in the year 2013. When the batch of Writ Appeals and Writ Petitions are numbering in 84 candidates entered

into compromise with the respondents Board and the same was accepted by the Hon'ble Division Bench of this Court and passed an order on 14.10.2015, based on the compromise memo and the order of this Court, the said 84 candidates were appointed and hence, the petitioners herein also ready and willing to entered into similar compromise with the respondents Board, since all these 14 writ petitioners are similarly situated like the above 84 candidates. Therefore, the denial of appointment to them, when the 84 candidates were given appointment pursuant to the order of this Court, would amounts to discrimination and be violative of the provisions of Article 14 of the Constitution of India.

13. The learned counsel appearing for the petitioners has also placed his arguments to the effect that the main reason for the compromise memo entered into by the respondents Board with the 84 candidates in the above said Writ Appeals and Writ Petitions is that because of various illegalities and infirmities taken place in the selection process, the Division Bench of this Court was of the view that the entire selection process needs to be set aside and that in order to avoid any undue hardship to the respondents Board and the compromise memo was arrived at between the Board and 84 petitioners and the same was appended in the above said judgment.

14. The learned counsel appearing for the petitioners also states that out of 14 writ petitions, 4 writ petitions are 2014 and the other 10 writ petitions are 2016 and all these 14 petitioners are ready and willing to enter into similar compromise with the respondents Board and accordingly, they may be appointed as ITI Helper (Trainee) in the Respondents Board.

15. During the course of arguments, the learned counsel appearing for the petitioners has placed reliance on the judgment of the Hon'ble Supreme Court referred in State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others reported in (2015) 1 SCC 347 is held as follows:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treat differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and

woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India*, 1997 (6) SCC 721). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

16. Therefore, the learned counsel appearing for the petitioners would vehemently contended that as per the above judgment cited supra in paragraph 22 to 22.3, these petitioners are entitled to succeed and they should be given appointment as per the orders made in W.A.No.81 of 2015 and batch dated 14.10.2015.

17. Considering both side arguments, I am of the considered view that admittedly the petitioners numbering 84 in the above Writ Appeals and Writ Petitions and these 14 petitioners were not selected during the course of their selection of interview. Subsequently, the said 84 persons were approached this Court challenging the non selection and seeking for appointment. During the course of the hearing in the above Writ Appeals and Writ Petitions, the respondents Board entered into a compromise with the above 84 petitioners in the above Writ Appeals and Writ Petitions. As per the compromise memo, the 84 petitioners and the respondents Board agreed that the appointment of 84 persons will be given to them. Both the respondents Board and 84 persons were agreed that there was no request for seniority, service and other benefits will be entertained. Apart from this in the said compromise memo in column No.4 that the said order as per the respondents Board requests will not apply the persons, who did not approach this Court in time challenging the selection process and the said compromise cannot be treated as a precedent as the order is binding as between the parties on the basis of the consensus reached. Thus being the case, once the non selection of the 84 petitioners challenging before this Court on various grounds, but the respondents Board entered into compromise with the 84 petitioners by accepting that they are ready to accept and willing to give

appointments to the said 84 petitioners without any service, seniority and hence the same compromise should be extended to these petitioners also. Merely because of the request made by the respondents/Board that compromise memo should not be give effect to the persons, who did not approach to this Court in time challenging the selection process is totally against the orders of the Hon"ble Supreme Court made in the above judgment cited in 2015 (1) SCC 347. The Hon"ble Supreme Court very categorically held that the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. The Hon"ble Supreme Court also states that the said principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Hon"ble Supreme Court from time to time postulates that all similarly situated persons should be treated similarly.

18. When the Hon"ble Supreme Court very categorically held that merely because of the other similarly situated persons did not approach this Court earlier, they are not be treated differently. Accordingly, Clause-4 of the compromise memo dated 14.10.2015 has entered into between 84 petitioners with the Respondents Board will not be applicable to the petitioners" case and they should be given appointment like the other 84 persons.

19. Hence, I fully agree with the arguments made by the learned counsel appearing for the petitioners and as per the above judgment rendered by the Hon"ble Supreme Court and accordingly, the petitioners are entitled to the benefit given in the other 84 persons as per the compromise memo dated 14.10.2015 and the orders of the Division Bench of this Court made in the Writ Appeal Nos.81, 193 of 2015 and batch dated 14.10.2015. Therefore, I am inclined to pass the following orders:

(a) these Writ Petitions are succeed and the respondents Board is directed to extend the benefit rendered in the above Writ Appeal Nos.81, 193 of 2015 and batch dated 14.10.2015 to all these 14 petitioners.

(b) the respondents Board is directed to appoint these 14 petitioners as ITI Helper (Trainee) in TANGEDCO service within a period of four weeks from the date of receipt of a copy of this order.

(c) the petitioners are not entitled any seniority, service and other benefits.

(d) the respondents Board is directed to complete the above exercise within a period of four weeks from the date of receipt of a copy of this order.

20. Accordingly, all the writ petitions are allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.