

(2010) 01 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No"s. 13715 and 13728 of 2009 and M.P. No"s. 2 and 2 of 2009

M. Rajiv Suresh

APPELLANT

Vs

The Tamil Nadu Electricity Board and E. Govindasamy

B. Krishnakumar Vs The Tamil Nadu Electricity Board
and S. Elango

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Tamil Nadu Electricity Board Services Regulations — Regulation 94

Citation : (2010) 01 MAD CK 0069

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; M. Vaidyanathan, for RR1 and 2 and L. Chandrakumar, for implead parties, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. In W.P. No. 13715 of 2009, the petitioner, who was working as a Commercial Inspector in the respondent TNEB has filed the writ petition,

seeking to challenge the order of the second respondent dated 1.7.2009 and after setting aside para 2 of the said order, he seeks for a further

direction to select him for further promotion to the post of Assistant Engineer (Electrical) as he was in possession of a Post Graduate Degree

recognized by the Government of Tamil Nadu and the University Grants Commission. The said qualification also satisfies Regulation 94 of the

Tamil Nadu Electricity Board Service Regulations.

3. The impugned order, dated 1.7.2009, is a circular sent by the second respondent to all Superintending Engineers to keep in mind before

recommending the candidates for recruitment by internal selection for Class II services (including Assistant Engineer (Electrical) and the

qualification has also been prescribed. Paragraphs 1 and 2 of the order reads as follows:

It is proposed to call for application from the qualified employees of Board, who have passed B.E.(Electrical) (only part time (or) Regular) or

equivalent or Section A and B of AMIE Examination as referred to in Regulation 94 Annexure-III for consideration and appointment to the post of

Assistant Engineer/Electrical by Internal Selection.

2) The employees working in Regular work establishment and Provincial Cadres who are in possession of the above said qualification are eligible

for consideration for this selection and appointment as Assistant Engineer/ Electrical and acquiring B.E. Degree through Distance Education from

any Universities and acquiring M.E./M.Tech. degree without basic qualification of B.E. Degree employees are not eligible for consideration and

appointment to the post of Assistant Engineer/Electrical by Internal Selection.

4. In the second writ petition, i.e. W.P. No. 13728 of 2009, the petitioner, who was working as a Junior Engineer (Electrical, Grade II), had also

prayed for a similar relief.

5. The two writ petitions were admitted on 21.7.2009. Pending the writ petitions, an interim stay was granted. Subsequently, two applications

were taken out by two individuals, seeking for impleading them as party respondents. They were also impleaded by this Court as third respondents

vide order, dated 1.12.2009. They had also filed applications to vacate the stay order, which are yet to be numbered. However, since the counsels

have expressed some urgency, the matters were taken up with the consent of both sides. On behalf of the respondent Board, a counter affidavit

has also been filed.

6. According to the petitioners, Regulation 94 had prescribed qualification for entering into the service of the Board, which reads as follows:

94. Qualifications:

(a) No person shall be eligible for appointment to the post and by the method mentioned in Annexure-III, unless he possesses the qualification

specified therein.

Note 1: In cases where the Regulations prescribe a degree or diploma as a qualification, then a degree or diploma granted by any of the

Universities or Institutions recognised by the University Grants Commission for purpose of its grants or any of the Universities recognised by the

Government of Tamil Nadu, shall be recognised as the qualification.

Note 2: In cases where the Regulations prescribe a Diploma in a particular subject as a qualification, then a Degree in that subject should be

deemed to be a higher qualification, and where a lower qualification or its equivalent is prescribed for appointment to any category, a person

possessing a higher qualification will be eligible for appointment.

7. The post of Assistant Engineer (Electrical) comes under category 3. Annexure 1 for internal selection and direct recruitment for the post of

Assistant Engineer (Electrical) 1:1 ratio will have to be followed, which reads as follows:

Category 3 Assistant Engineer Internal Selection and Direct

(Electrical) Recruitment in the ratio of 1:1

For the purpose of appointment

by Internal selection, the

selection shall be made on the

basis of service rendered after

acquiring the B.E. Degree or

equivalent qualification.

Note 1: Those who have been recruited as Assistant Engineers (Telecommunication) shall be merged in the cadre of Assistant Engineers

(Electrical) and their seniority fixed with reference to the date of their appointment as Assistant Engineer (Telecommunication).

Note 2: Every batch of recruits to the category of Assistant Engineer (Electrical) shall consist of persons possessing the prescribed qualifications

for appointment as Electrical Engineers, Telecommunication Engineers, and Instrumentation Engineers and Computer Engineers in the following

percentage ratio:

Electrical Engineers 91%

Telecommunication Engineers 5%

Instrumentation Engineers 2%

Computer Engineers 2%

8. The qualification prescribed in the annexure for the post of Assistant Engineer (Electrical) is as follows:

Post Method of Recruitment Qualification

(1) (2) (3)

Assistant Internal selection or (a) Must not have completed or
Engineer Direct recruitment will not complete 30 years
(Electrical) of age on the first day of
July of the year in which
the selection for
appointment is made, if
recruited direct.

(b)(i) A Degree in Electrical
Engineering or Electronics
and Communication Engi-
neering or Instrumentation
Engineering or Computer
Engineering of the Chennai
or Annamalai University or
Equivalent qualification.

Or

(ii) A Diploma in Electrical Engineering of the College of Engineering Guindy obtained before 1944;

Or

(iii) Subject to the following conditions, a pass in Sections A and B of the A.M.I.E. (Ind.)

Examination, with

Electrical Engineering

(General) and any two of

the following subjects

u/s B as optional

or additional subjects:

(i) Electrical Supply and

Power Distributions.

(ii) Electrical Machinery.

(iii) Electrical Installation

(iv) Electrical Measurements.

(v) Thermodynamics and Heat

Engines (Steam and Internal Combustion)

(vi) Hydro Electricity.

(vii) Hydraulics or Hydraulic Machinery.

(a) Should furnish evidence

of having undergone

practical training in

Surveying"" for at least
one year, or hold the Upper
Subordinate or L.C.E.

Diploma of the College of
Engineering, Guindy or any
other qualification
recognised as equivalent
thereto; and

(b) Should have had practical
experience for a period of
not less than four years
after passing Section A
and B of the A.M.E.I.(Ind.)
Examination, which should
include practical
experience for a period
not less than one year in
erection, maintenance or
construction works.

Provided that no candidate
possessing the Diploma in
Electrical Engineering or
a pass in Sections A and B
of the A.M.I.E.(Ind.)
Examination, shall be
eligible for appointment as
Assistant Engineer
(Electrical) if a suitable
candidate possessing the
Degree in Electrical

Engineering is available
for such appointment.

9. It is the claim of the petitioners that the petitioner in W.P. No. 13715 of 2009 has the following qualification and service:

Qualification Details: (M. Rajiv Suresh)

Sl.No. Name of the Degree Duration Month/Year of completion Name of the University/Institution

1 B.Sc. 3. years April 2000 University of Madras

(Computer Science) Regular Course

Sri Sankara Arts & Science

College, Kancheepuram

2 M.S., 2. years April, 2003 Bharathidasan University, Trichy.

(Information Technology) Regular Stream (Distance Education)

3 M. Phil., 1. year May, 2005 Bharathidasan University, Trichy

(Computer Science) Regular

Stream (Distance Education)

4 M. Tech., 3. years May, 2007 Dr. M.G.R. Educational &

(Computer Science Research Institute/Chennai.

and Engineering) Dr. M.G.R. Deemed University,

Part Time

5 GRADUATE Member - April, 2008 The Institution of Engineers
(India), Kolkatta.

Given exemption from writing
Section A & B of
A.M.I.E. Examinations in Computer
Engineering Division.

6 Equivalency Certificate - 2005 Dr. M.G.R. Deemed University,
Chennai.

Recognizing my qualification as
Credit Equivalent to B. Tech
degree course conducted by that
university.

Service Details:

Date of joining in the Board Service Details Split up

9.5.01 09.05.2001 to 08.05.2003 as Helper (Trainee)
09.05.2003 to 31.10.2004 as Helper
01.11.2004 to 28.02.2007 as Wireman
01.03.2007 to 29.09.2008 as cadre converted to Commercial Assistant
30.9.2008 to till date as Commercial Inspector

10. The petitioner in W.P. No. 13728 of 2009 has the following qualification and
service:

Qualification Details: (B. Krishnakumar)

Sl.No. Name of Degree/Diploma Duration Month & Year Name of University/
Institution

of completion

1 Diploma in Computer Tech. 3. years April 1995 Central Polytechnic, Chennai
approved by

DOTe (Regular)

2 B.Sc (Maths) 3. Years April 2001 University of Madras,

Thro" correspondence Education

(On regular stream)

3 M.Sc. 2. years October, 2005 University of Madras, Thro"

(Information Technology) Correspondence Education

(On regular stream)

4 M.E. 2. years April, 2006 Sathyabama Institute of Science &

(Computer Science & Engg.) Technology, Deemed University,

Chennai (part time)

5 Graduate Member - Feb. 2007 By giving exemption from writing the

Examinations in Sections (A) & (B)

in Computer Science & Engg. Branch.

History of Service:

S.No. Date Post held

1 10.12.99 As Typist on compassionate grounds

2 1.8.03 As Technical Assistant/Electrical
thro" Internal Selection

3 9.1.09 As Junior Engineer/Electrical Grade-II
on promotion

11. It was submitted that since the petitioners have more qualifications than what was required, their cases for promotion will have to be considered. In the impugned circular, it was stated that the employees who were acquiring B.E. Degree through distance education from any Universities and acquiring M.E./M.Tech. Degree without basic qualification of B.E. Degree, are not eligible for consideration to the post of the Assistant Engineer (Electrical) by internal selection.

12. In the case of the petitioners, both the petitioners were not having any Engineering Degree at all. They are in possession of P.G. Degree in Computer Science and Engineering. Therefore, they wanted to contend that excluding candidates having Post Graduate degree qualification in Engineering even though they may not have basic degrees was illegal. Therefore, they should be considered for promotion.

13. However, such a plea was rejected by this Court vide its judgment in N. Viswanathan and Others Vs. Tamil Nadu Electricity Board and Others, . In that case, this Court held that the diploma obtained from the correspondence course cannot be considered to be a qualification recognized by Regulation 94. Rejecting the pleas of having Post Graduate degree qualification without minimum degree should be considered as equivalent qualification, this Court also referred to the judgment of the Supreme Court in Annamalai University rep. by Registrar Vs. Secy. to

Govt. Infn. and Tourism Dept. and Others, . In that case, such pleas were rejected by the Supreme Court.

14. Alternately, Mr. R. Singaravelan, learned Counsel for the petitioners referred to Regulation 94 read with its Annexure, wherein possession of a

pass in Sections A and B of the A.M.I.E. (Ind.) examinations was considered to be equivalent to a degree in Electrical Engineering. The petitioners

claim to be in possession of such qualification. Both the petitioners claimed that they were given exemption from writing the examination in Sections

A and B of A.M.I.E. Examination. Therefore, they are entitled to be considered as having possessed the qualification in A.M.I.E.

15. In the counter affidavit, the stand taken by the Board was that the petitioners did not have a graduation in engineering. Their Post Graduate

degree cannot be equated and they had not possessed the basic qualification of having four years B.E. Degree course. With reference to

alternative qualification regarding possession of AMIE, in respect of the petitioner in W.P. No. 13715 of 2009, in paragraph 7, it was averred as

follows:

7. I respectfully submit that the petitioner has informed that he has passed M.Tech. Course in Computer Science and Engineering from Dr. M.G.R.

Deemed University, Chennai and is exempted from Section A & B Examination from AMIE (India). The Board has requested the Institution of

Engineers (India), Kolkata to confirm whether the membership certificates of the Institution of the employee may be considered as AMIE

Certificate for the post of Assistant Engineer/Electrical by Internal Selection and the Deputy Director of Institute of Engineers (India) has replied

that since the Board employee did not pass Section A & B examination, he cannot be considered having AMIE Qualification. However, the

exemption granted from Section A & B examination would entitle him for Membership of the Institution only.

16. In respect of the petitioner in W.P. No. 13728 of 2009, in the counter affidavit in paragraph 7, it was stated as follows:

7. I respectfully submit that the petitioner has informed that he has passed M.E. Course in Computer Science and Engineering from Sathyabama

Institute of Science and Technology Chennai and is exempted from Section A & B Examination from AMIE (India). He has also informed the

Board that he has already qualified for Section A & B in AMIE (India) under Computer Science & Engineering discipline and as such he is eligible

for appointment to the post of Assistant Engineer/Electrical. He has requested for appointment as Assistant Engineer/Electrical by taking the

certificate issued by the AMIE (India). Based on the representation given by the petitioner, the Board has requested the Institution of Engineers

(India), Kolkata to confirm whether the certificates of the petitioner may be considered as AMIE Certificate for the post of Assistant

Engineer/Electrical by Internal Selection and the Deputy Director of Institute of Engineers (India) has replied that since the petitioner did not pass

Section A & B examination, he cannot be considered having AMIE Qualification. However, the exemption granted from Section A & B

examination would entitle him for Membership of the Institution only.

17. Mr. M. Vaidyanathan, learned Counsel appearing for the TNEB also produced a copy of the letter received from the Institution of Engineers

(India), dated 4.11.2008 answering their queries regarding the qualification of B. Krishnakumar. The operative portion of the letter reads as

follows:

The Institution conducts examinations in Sections A & B in various disciplines of engineering for its members. After passing the same, the

candidates are awarded AMIE diploma which is equivalent to B.E. as approved by MHRD. The Institution also accepts certain educational

clarifications which are exempted from passing Sections A & B examinations for getting corporate membership of this Institution.

In the instant case, since Shri B. Krishnakumar did not pass Sections A & B examination, he cannot be considered having AMIE qualification.

However, he has the qualification which is an acceptable qualification as exempting from Sections A & B examination for membership of the

Institution only.

18. On the strength of the letter, it was contended that the petitioners though might have got exemptions from passing Sections A and B of AMIE

only for getting corporate memberships in their institution. In case, they did not pass Sections A and B examinations, they cannot be considered

having AMIE qualification and that exemption was granted only to have membership. The petitioners, therefore, cannot claim that they are in

possession of AMIE qualification as contained in Regulation 94 read with annexure. Therefore, the attempt by the petitioners to contend that they are having necessary qualification as prescribed in the service regulations cannot be countenanced by this Court.

19. In fact, in Viswanathan's case (cited supra), this Court had already dealt with extensively the scope of judicial review with reference interfering with the prescribed qualification for entering into any post and rejected the contentions made by similarly placed persons, who had obtained degrees through correspondence for the very same post. In paragraphs 36 and 37, it was observed as follows:

36. In W.P. No. 18988 of 2009, it is a case of Engineering graduates making similar claims. The nine petitioners in that W.P. have sought for selection to the posts of Assistant Engineer (Electrical). The petitioners" have got their degrees obtained from the Institute of Advanced Studies in Education University (IASE), Gandhi Vidya Mandir, Sardarshahr, Rajasthan, which was a deemed university, under the correspondence system.

Their claims were rejected and their degrees were considered not equivalent to the degree required for the very same reasons.

37. In addition, it was also stated that the respondents have given a posting order to one Vijay Sekar, G on 26.8.2007 on the basis of the degree obtained by him from IGNOU. The petitioners cannot cite an isolated example as the ground for getting their degrees recognized by the respondent TNEB. One illegality cannot be a ground to make the Board to commit further illegalities.

20. Being conscious of rejection of such contentions, the petitioners have come forward with an alternative plea of having the AMIE qualification.

But, the communication sent by the Institution of Engineers (India) as well as the records produced clearly shows that the petitioners did not pass

A and B Sections of AMIE. Their claim to have exemption from passing A and B Sections is purely a concession given by the Institution of

Engineers only to have corporate membership. That by itself cannot enable the petitioners to claim that they are in possession of the qualification

prescribed under Regulation 94 read with Annexure 1 of the TNEB Service Regulations.

21. In the light of the above, both the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions also stand

dismissed.