

(2015) 01 MAD CK 0132

In the Madras High Court

Case No : Writ Petition Nos. 15936, 33258, 33594, 33787, 33853 to 33855, 33930, 34979 of 2013, 2654, 2909, 3529, 3626, 3739, 4531, 5029, 5646, 6037, 6115, 6116, 6421 to 6423, 6547 to 6549, 6676 to 6678, 6688, 6780, 6781, 7176, 7177, 7200, 7216 to 7228, 7503, 7523, 7

S. Bharani

APPELLANT

Vs

The Tamil Nadu Generation and Distribution Corporation Limited

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(4), 46

Citation : (2015) 01 MAD CK 0132

Hon'ble Judges : M.M. Sundresh, J.

Bench : Single Bench

Advocate : A. Mohamed Ismail, for the Appellant; A.L. Somayaj, Advocate General Asst. by R. Varalakshmi, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—All the writ petitioners herein except the petitioner in W.P. No. 12348 of 2014 are the unsuccessful candidates, who could not be selected in pursuant to the interview conducted by the respondents. As the issues are common, with respect to the selection made and in view of the submissions made in general by all the counsels, they have been taken up together and disposed of by a common order.

Brief facts;-

2. A recruitment notification was issued by the respondent Board for the purpose of filling up of 950 Technical Assistants (Electrical) and 50 Technical Assistants (Mechanical) posts. Similarly, a notification was issued asking the Diploma holders in Electrical and Mechanical Engineering with one year on apprenticeship training with the respondent to register themselves, being the apprenticeship

holders. The posts are sought to be filled upon by following the communal roster. 3 Backlog vacancies were also sought to be filled up consisting of MBC/Denotified Community (woman)/MBC/Denotified Community (Ex-servicemen (Tamil Medium) and Backward Community (Muslim), apart from 21 vacancies meant for Scheduled Castes and Scheduled Tribes.

3. Taking note of the judgment rendered by the Supreme Court in Civil Appeal No. 5285-5328 of 1996 dated 3.10.1996 in which the official respondents are parties, a Government Order was passed in G.O. Ms. No. 3142 Labour and Employment Department dated 10.11.1998. The following paragraph of the said Government Order is apposite:

"3. In pursuance of the above orders of Supreme Court of India, dated 3.10.1996 in Civil Appeal Nos. 5285-5328/1996 filed by Tamil Nadu Electricity Board and in supersession of orders issued in Paragraph 6 of G.O. Ms. No. 1151, Labour and Employment Department, dated 18.7.79 read with Government Letter No. 35631 dated 6.12.90 the Government direct that the following shall be substituted to paragraph 6 of G.O. Ms. No. 1151 Labour and Employment Department, dated 18.7.79 namely.

1. Other things being equal, a trained apprentice should be given preference over direct recruit;

2. A trained apprentice would not be required to get his name sponsored by any Employment Exchange.

3. If age bar would come in the way of trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the Service Rules concerned. If the Service Rule is silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

4. The Training Institute concerned would maintain a list of the persons trained year-wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices preference shall be given to those who are seniors.

5. The Apprentices/Trainees shall have to go through the process of Selection provided under the Service Rules/Regulation and that since 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.

6. The Rule of Reservations should be followed while absorbing the apprentices."

4. A ratio has been fixed at 1:5 for sponsoring candidates from the Employment Exchange as per G.O. Ms. No. 18 Labour and Employment (N2) Department dated 25.2.2008. Following is the operative portion of the said order:

"2. In supersession of the Government orders and guidelines read above and all other instructions issued on the subject, the Government, after careful

consideration issue order as follows:-

For filling up of all categories of posts coming under the purview of Government Departments, Local Bodies (Urban and Rural), Cooperative Institutions, Public Sector Undertakings, all Government Aided Education Institutions and Government aided Engineering Colleges and Polytechnics, all other private organizations and institutions etc. Employment Exchanges shall sponsor candidates in the ratio of 1:5."

5. In compliance with the said Government Order, the list of qualified candidates who registered themselves with the Employment Exchange with the ratio of 1:5 with the requisite qualification were sent by the Special Commissioner and Commissioner, Employment Training, Guindy, Chennai--600 034 in and by letter dated 27.5.2013. The selection process was by way of qualifying marks--85% and interview--15%. This has been fixed as per the Board proceedings No. 8 dated 29.4.2013. For computing 85%, the consolidated marks of the 3rd to 6th semesters secured in Diploma Course are to be taken into consideration, as followed in the selection process during the year 2009. The petitioners were not selected as they scored lesser marks than the selected candidates. The selection was made following the communal rotation. Challenging the selection made, and being aggrieved against their non-selection, raising various grounds, all these writ petitions have been filed.

6. Writ Petition No. 12348 of 2014 has been filed by the petitioner, who was not called for the viva-voce since there was no subsisting registration with the Employment Exchange.

Submissions of the petitioners:

7. Learned counsels appearing for the petitioners submitted that most of the petitioners have completed Diploma Course on or before 2000. Upto the year 2000, 5th and 6th semesters were alone pertaining to the relevant subjects. The respondents have taken into consideration the marks obtained from semesters 3 and 4 which is Justiciable only for those candidates who have completed their diploma after the year 2000 and not before 2000. After 2000, semesters 3 to 6 are subjects which are relevant. Therefore such a uniform methodology adopted by the respondents cannot be sustained in the eye of law. The notification issued is bereft of material particulars. Hence, for lack of transparency the same is liable to be set aside. The respondents have not followed the communal roster. In any case, they cannot carry forward the backlog vacancies for backward communities. The ratio of 1:5 has not been followed in accordance with the Government Order passed in G.O. Ms. No. 18 Labour and Employment (N2) Department dated 25.2.2008. The said ratio ought to have been followed by including the apprentice trainees also. In such a case, the petitioners would have got a better chance of being selected. In the selection process, the respondents have committed lot of irregularities. Candidates with lesser marks and who have not attained the age of 18 as on the last date of receipt of applications have been

selected. Most of the selected candidates were trainees. Therefore they have been selected on purpose. In the interview conducted, no yardstick has been adopted for awarding marks. The methodology adopted in the interview is arbitrary. There is no transparency involved. Therefore the writ petitions will have to be allowed. The respondents have not followed Regulation 89 of the TNEB Service Regulations properly, though it provides for any one of the modes prescribed thereunder. Calling candidates only through Employment Exchange as against the other eligible candidates is contrary to law. Therefore they submitted that the writ petitions will have to be allowed. In support of their contention, they relied on the following decisions:

- "(1) Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi and Others, ;
- (2) State of U.P. and Others Vs. Sangam Nath Pandey and Others, ;
- (3) C.M. Thri Vikrama Varma Vs. Avinash Mohanty and Others, ;
- (4) B. Amrutha Lakshmi Vs. State of Andhra Pradesh and Others,
- (5) Bedanga Talukdar Vs. Saifudaullah Khan and Others, ;
- (6) Dr. Puneet Gulati and Others Vs. State of Kerala and Others etc. etc., ;
- (7) State of Madhya Pradesh and Others Vs. Ku. Sandhya Tomar and Another, ;
- (8) P. Arul and Others Vs. Tamil Nadu State Electricity Board and Others, ;
- (9) M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others, ;
- (10) Union of India (UOI) and Others Vs. N. Hargopal and Others, ;
- (11) P.M. Malathi Vs. State of Tamil Nadu, ((2012) 3 MLJ 669 (Madras High Court))
- (12) K.R. Shanthi Vs. The Secretary to Government, Education Department, Fort St. George, Chennai 9 and The Chairman, Teachers Recruitment Board, 4th Floor, E.V.K. Sampath Maaligai, DPI Compound, College Road, Chennai 6, ;
- (13) K. Nehru Vs. The State of Tamil Nadu and The Management of Tamil Nadu Pollution Control Board--> ;
- (14) Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, and
- (15) V. Gopalasamy VS. The Registrar, Madurai Kamaraj University, (Division Bench judgment of the Madurai Bench of this Court in W.P.(MD) No. 1997 of 2006)."

Submissions of the Respondents:-

8. Learned Advocate General as well as the learned counsel appearing for the private respondents made the following submissions:

There is no arbitrariness involved in the selection process. In the absence of any element of unreasonableness and selective discrimination, the selection made cannot be set aside. The petitioners are aware of the selection process. Even for the year 2009, semesters 3 to 6 alone were taken into consideration. As per the Government Order passed in G.O. Ms. No. 18 Labour and Employment (N2) Department dated 25.2.2008 the ratio of 1:5 will have to be fixed only for the candidates, who have registered through the Employment Exchange alone. As the apprentice trainees came from a different channel, which has been recognised by the Supreme Court, they cannot be included in the ratio of 1:5. In the selection process, 85% has been earmarked for the marks obtained in the academic qualification. Since uniform procedure has been adopted the petitioners cannot have any grievance over the same to contend that the apprentice trainees have not been preferred. The relative merits of the candidates were taken note of in the interview while awarding marks. The respondents have followed communal rotation in filling the posts. Carry forward of the backlog vacancies was made in accordance with the Government Orders passed in G.O. Ms. No. 1352, Adi-Draidar and Tribal Welfare Department, dated 27.7.89, G.O. Ms. No. 731, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Department, dated 21.8.89, G.O. Ms. No. 34, Backward Classes, Most Backward Classes and Minorities Welfare (Bcc) Department dated 2.5.2000 is meant for the direct recruitment appointments. Even as per G.O. Ms. No. 731 dated 21.8.1989 carry forward of the backlog vacancies are allowed to M.B.C. Only 3 posts were carried forward. Of the three, two were most backward class (denotified community), out of which one is for Ex. Servicemen and Tamil Medium. The remaining one is with respect to Backward Class (Muslim). The petitioners have not raised any specific plea on this issue. In any case, the real grievance must have been raised by the unsuccessful candidates in the earlier round of selection. As even assuming the contentions of the petitioners are accepted, then the remaining 3 posts ought to have been filled up in the next turn. The petitioners are not within the zone of consideration even for being considered for the said three posts. As the interview was conducted in pursuant to the list sent by the Special Commissioner and Commissioner of Employment Training, Guindy, Chennai--600 034, age of the candidates was not verified. Insofar as the candidates by name E. Gayatri and Mani Megalai, are concerned, their cases will be looked into and appropriate decision would be made in accordance with law. So far as the candidate by name R. Karthik Nivas is concerned, the selection was made based upon the Check list given by him. The marks have been awarded by reducing it to 80% with respect to the total marks obtained in the qualifying examination. In any case, that cannot be a ground to set aside the entire selection. Therefore it is submitted that no interference is required.

9. Discussion:

9.1. Criteria for qualifying examination marks:

Admittedly, all the petitioners except the petitioner in W.P. No. 12348 of 2012

have taken part in the selection process. Now the main grievance of the petitioners is that the respondents committed error in taking into consideration of the marks obtained from Semesters 3 to 6. This Court is of the considered view that the said contention cannot be countenanced for the simple reason that it was followed in the year 2009 as well. The petitioners wrote the examination in the year 2009 by undergoing the very same process. This would only show that they were aware of the procedure adopted by the respondents. The petitioners who made the contention have completed their diploma on or before 2000. The respondents have simply adopted the procedure which was adopted earlier. Hence this Court is of the considered view that the petitioners are barred from raising the plea on the principle of acquiescence and estoppel. Even otherwise the petitioners have not demonstrated before this Court that by adopting the said methodology they are at a disadvantage. It is also not the case of the petitioners that all those candidates who have completed the Diploma course on or before 2000 were not selected.

9.2. Ratio of 1:5:-

Coming to the ratio of 1:5, as rightly submitted by the learned Advocate General, the Supreme Court has recognised the entitlement of the apprentice trainees for being considered for the posts. The entitlement of the petitioners is based upon G.O. Ms. No. 18 Labour and Employment (N2) Department dated 25.2.2008. The said Government Order is very specific that the employment Exchange shall sponsor candidates in the ratio of 1:5. Therefore, in the light of the decision of the Supreme Court referred supra, as well as the Government Order, this Court is of the considered view that the contention of the petitioners cannot be countenanced. Moreover, the petitioners have not challenged the Government Order passed in G.O. Ms. No. 18 Labour and Employment (N2) Department dated 25.2.2008.

9.3. Transparency:-

With respect to the lack of particulars and transparency, though the notification does not give adequate particulars, this Court is of the considered view that the petitioners having participated in the selection process are not persons aggrieved. In other words, the petitioners have not shown any prejudice due to the lack of particulars in the notification. Hence, this contention is also rejected.

9.4. Communal reservation:-

Coming to the communal rotation, the list given by the respondents with reference to selected candidates would show that communal reservation has been followed. The communal reservation has been followed for the total posts. The petitioners have not demonstrated that there is either a case of excessive reservation or rule of reservation having been not followed. Hence, the contention raised in this regard is also rejected.

9.5. Backlog vacancies:-

From the documents filed by the respondents it is seen that 24 vacancies were taken as backlog vacancies. Of the 24, 21 are meant for Scheduled Castes and Scheduled Tribes with its horizontal reservations. 3 posts were carried forward and out of which 2 are from MBC/denotified community and 1 from BC. As rightly submitted by the learned Advocate General, no specific plea has been raised in this regard. Furthermore, the petitioners have not shown that they would have got the posting but for the wrong carry forward of the three posts. Even assuming the contention of the petitioners is accepted, then those posts ought to have been filled up in the next turn. The policy decision of the Government of Tamil Nadu with respect to the vacancies of MBC and BC is with respect to direct recruitment as well as recruitment by transfer. Insofar as the direct recruitment is concerned, reservation has also been provided for Most Backward Classes/Denotified communities. By the subsequent Government Order in G.O. Ms. No. 34 Backward Classes, Most Backward Classes and Minorities Welfare (BCC) Department dated 2.5.2000, it was extended to the backward classes also. Insofar as direct recruitment is concerned, as discussed earlier, 2 out of the 3 posts are meant for MBC (denotified community) and out of which 1 is also for Ex. Servicemen (Tamil Medium) category. Therefore, the submission made in this regard is also rejected.

9.6. Conduct of Interview:

The learned counsels appearing for the petitioners submitted that persons who have scored high marks in the qualifying examination were given lesser marks in the interview. There is no yardstick fixed for assessing the suitability of a candidate. In the absence of any procedure for awarding 15 marks, the selection will have to be held as arbitrary. This Court is unable to accept the said submission. There is no material available to hold that the respondents have awarded marks arbitrarily. The power of judicial review in a selection process is rather limited. The discretion is given to the respondents only for 15 marks. It is not as if all the apprentice trainees have been selected. The respondents have adopted a uniform methodology. Therefore, this Court does not find any merit in the submissions made.

9.7. Individual cases:

According to the learned counsels for the petitioners, two candidates by name E. Gayatri-Sl. No. 326 and E. Mani Megalai, Sl. No. 26 in the selection list though have not completed 18 years as on the last date of receipt of applications have been selected. The selection made is contrary to Rule 12(bbb) of the Tamil Nadu State and Subordinate Service Rules and Rule 91(2)(a) of the Tamil Nadu Electricity Board Service Regulations. Similarly it is submitted that insofar as the selected person by name R. Karthik Nivas is concerned, the marks shown by the said candidate is contrary to the marks obtained from the Institute in which he studied. By way of a reply learned counsel for the Electricity Board submitted that the first two candidates were found to have completed 18 years at the time of selection and for the 3rd candidate, the marks have been calculated with

reference to 85% for the purpose of selection. The check list given by the candidates has been taken into consideration. Considering the submissions made this Court is of the view that the respondent ought to have adopted a much stricter scrutiny. A candidate who was not qualified with reference to age as on the last date of application cannot be selected by taking into consideration of the age on the date of selection. Though the learned counsel for the Electricity Board has accepted the said position, it is submitted that inasmuch as the particulars were sent by the Special Commissioner and Commissioner Employment Training, the said candidates were allowed to participate in the selection process. The said contention cannot be accepted. Similarly insofar as the 3rd candidate by name R. Karthik Nivas at Sl. No. 516 in the Selection list is concerned, the respondents are duty bound to verify the same in the light of the documents produced by the petitioners before this Court. It will only appear that the respondents have not carefully verified the documents produced by the candidates, but merely went by the particulars produced by them. However, this Court is of the view that the said factor alone cannot be a ground to set aside the entire selection as they are individual cases which the respondents are required to have a look into.

9.8. Decisions relied upon by the petitioners:

9.8.1. Insofar as the decisions relied upon by the learned counsels appearing for the petitioners are concerned, much reliance has been made on the Division Bench judgment of this Court in Gopalasamy Vs. The Registrar, Madurai Kamaraj University, (W.P.(MD) No. 1997 of 2006 etc., batch, dated 5.12.2006 to contend that backlog vacancies will have to be notified and filled separately. In the said case, the facts are different. The backlog vacancies are sought to be added with the regular vacancies and communal roster was followed. There, taking note of the said anomaly, the Division Bench was pleased to set side the selection made giving liberty to the respondents to issue a fresh advertisement excluding the backlog vacancies. It is apposite to refer to the following passage of the Division Bench judgment:

"11. In so far as the vacancies which are available for selection and appointment and if the rules provided for a procedure to follow roster, such vacancies should be filled strictly by following the roster and to this extent, there cannot be any second opinion. However, the issue before us is not as to whether the vacancies should be filled up by following the roster or not. The issue is whether the respondent--University is justified in including the backlog vacancies which are meant for the Scheduled Caste and Scheduled Tribe candidates to be clubbed along with the other vacancies and advertise for selection by following roster. The question of roster does not arise in case of backlog vacancies, as those vacancies are exclusively earmarked for the SC/ST candidates on the basis of rule of reservation, which are recognised by the Courts. When it is the specific case of the respondent-University itself that the backlog vacancies have not been filled up for quite long number of years and those vacancies are also clubbed along with the other existing vacancies meant to be filled up by following roster, we are

of the considered view that the procedure adopted by the University totally would result in depriving the right of the SC/ST candidates for their claim over the backlog vacancies independent of their right to apply for appointment in respect of the other categories by following roster. The State may classify based upon substantial differentia, groups or classes and this process does not necessarily spell violation of Articles 14 to 16 of the Constitution of India. The fundamental right of equality of opportunity has to be read as justifying the categorisation of SC and STs separately for the purpose of adequate representation in the services under the State. The object is constitutionally sanctioned in terms, as Articles 16(4) and 46 specificate. The classification is just and reasonable and by exercise of such a power, certain posts are earmarked on the basis of reservation for SC/ST candidates and that posts of vacancies cannot be taken away and clubbed with the other categories of posts. If such procedure is adopted and allowed, it would result in infringement of the rights conferred on the SC/ST candidates, which are guaranteed under the Constitution and recognised by the Courts.

12. In that view of the matter, we are in complete agreement with the grievance espoused in these writ petitions and the respondent-University is not justified in including the backlog vacancies as well and advertise for filling up of those vacancies by following roster. Accordingly, the impugned Advertisement is set aside and the respondent-University is at liberty to issue a fresh advertisement in respect of such of those vacancies, excluding the backlog vacancies, and fill up the posts by following roster. So far as the backlog vacancies are concerned, the respondent-University shall advertise separately and the same could be filled up from among the SC/ST candidates. All the writ petitions are ordered accordingly. No costs. Consequently, M.P.(MD) No. 1 of 2006 and W.P.M.P.(MD) Nos. 2210, 2307 and 3149 of 2006 are closed."

Hence the ratio laid down therein does not have any application to the cases on hand. Moreover in the list produced by the respondents, the backlog vacancies of 24 were filled up first and thereafter the regular vacancies were filled up. The petitioners have also not shown any prejudice in the methodology adopted.

9.8.2. Reliance has been made by the learned counsel appearing for the petitioners on the decision rendered by the Supreme court in Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi and Others, to contend that qualification on the last date of submission of the application is the criteria as against the subsequently acquired one. There is no difficulty in appreciating the ratio laid down therein which has to be looked into and applied on facts by the respondents after affording an opportunity to the selected candidates.

9.8.3. Number of decisions have been relied upon to show that the selection made by calling the candidates only from Employment Exchange along cannot be considered as against the other candidates. There is no difficulty in appreciating the said position. Except the petitioner in W.P. No. 12348 of 2014, all other petitioners have taken part in the selection process. While it is the specific contention that ratio of 1:5 will have to be reckoned by including the candidates

who had the apprenticeship training, they cannot be allowed to contend to the contrary. Having participated in the selection process they are also not allowed to raise such a plea. Insofar as the petitioner in W.P. No. 12348 of 2014 is concerned, he was also one of the candidates who appeared in pursuant to the name having been sent through Employment Exchange in the previous selection. Regulation 89 speaks about calling for candidates from Employment Exchange as a mode for selection. Moreover, in the present case, the respondents have also called the apprentice trainees. But for the fact that he could not get renewal of his employment seniority, the petitioner in W.P. No. 12348 of 2014 would not have come before this Court with the said grievance. In all those decisions relied upon by the petitioners the sole methodology of selection was through Employment Exchange, which is not the factual position before us. Therefore, considering the peculiar facts of the case, this Court is of the view that the contentions raised based upon the selections rendered on the recent judgment of the Supreme Court in State of Madhya Pradesh and Others Vs. Ku. Sandhya Tomar and Another, cannot be countenanced. All other decisions on communal rotation relied on the issue of reservations are not relevant for the purpose of the case as the respondents have followed the communal reservation in accordance with law.

10. Conclusion:

Accordingly, all these writ petitions are dismissed. However, considering the facts and circumstances of the case, the following directions are issued:

""1. The respondents are directed to issue a detailed notification indicating the number of posts, qualification required, method of selection, rule of reservation and any other selection process involved for all the future vacancies.

2. The respondents are directed to verify the documents produced by all the selected candidates including the check list and in case of any discrepancy, to take appropriate action against such of the selected candidates including Mr. Karthik Nivas after affording an opportunity of being heard.

3. The respondents are also directed to verify the age of those selected candidates as on the last date of receipt of applications and if they are found to be minors, appropriate action will have to be taken by following due procedure.

4. The entire exercise will have to be done by the respondents within a period of two months from the date of receipt of copy of this order.""

However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.