
(2014) 12 MAD CK 0184

In the Madras High Court

Case No : Writ Petition Nos. 8829, 9125, 9126, 9319, 9923, 9927, 10589, 10598, 11785, 12003, 12004, 15512, 15636 and 15873 of 2014

S. Vanathaian

APPELLANT

Vs

Tamil Nadu Generation and Distribution Corporation Limited

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0184

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

Bench : Single Bench

Judgement

M.M. Sundresh, J.—W.P.Nos. 9125, 9126, 9319, 9923, 9927, 10589, 10598, 11785, 12003, 12004, 15512, 15636 and 15873 of 2014 have been filed challenging the notification issued by the second respondent therein in so far as the conduct of the interview is concerned and consequently, the selection list of 4000 numbers of ITI Helper (Trainee) by direct recruitment - 2013-2014 issued by respondents 1 and 2 was sought to be quashed with a further prayer to appoint the petitioners to the said post.

2. W.P.No. 8829 of 2014 has been filed seeking a direction to the respondents to select the petitioners as I.T.I. Helper (Trainee) in Tamil Nadu Generation and Distribution Corporation Limited.

3. As the relief sought for by the petitioners in all these cases are one and the same having similar grounds against the same respondents, they are disposed of by a common order for the sake of brevity.

4. Facts of the Case:-

4.1 Certain directions have been given by the Committee headed by the Hon'ble Mr. Justice Khalidh, Former Judge, Supreme Court of India, in pursuant to the order passed in S.L.P.No. 1820 of 1990 for the purpose of filling up of the vacancies by taking into consideration of evolving a methodology accommodating the existing workers vis-a-vis the skilled workers. It is apposite to extract the

following directions :

"110. How to select the remaining workers and where to place the ITI workers is the next question to be answered. Throughout my report, I have emphasized the fact that my function is to evolve a workable method to accommodate the existing workers without seriously affecting the Board's decisions and activities. It is not my intention to completely ignore the skilled helpers. They should find a place in the scheme of things. 7,000 ITI helpers have already been recruited. Others are waiting. The Supreme Court has appointed me to give a final decision which shall be binding on the parties. It is therefore necessary in the interests of fair play and justice that I take into account the claims of not only the existing workers but also the skilled workers who are not before me. After giving my anxious consideration, I decide that after the issue of appointment orders to 7,000 existing workers, the Board shall thereafter appoint the remaining existing workers from the lists and skilled workers in the ratios of 1:1. The existing workers will be selected by the Selection Committee and the ITI helpers by the Board."

4.2. In compliance with the said directions, respondents 1 and 2- Tamil Nadu Generation and Distribution Corporation (hereinafter referred to as "the TANGEDCO") issued proceedings in (Per.)FB TANGEDCO Proceedings No. 14 dated 12.07.2012 for filling up of 4000 ITI Helper (Trainee) vacancies by direct recruitment through Employment Exchange. Based upon the said Board 's proceedings, a notification letter has been sent to the Commissioner, Employment Exchange, Guindy, to sponsor ITI Candidates in each category according to their ratio with the Trade of Electrician and Wireman in the ratio of 1:5. It is apposite to refer the following passage of the said proceeding dated 12.07.2012.

"2. Accordingly the TANGEDCO hereby approved the following orders:

a) 4000 ITI Helper (Trainee) with NTC/NAC (ITI) qualification in the trade of Electrician and Wireman be appointed by Direct Recruitment through Employment Exchange, to minimize the large number of Helper vacancies in TANGEDCO. The 4000 ITI Helper (Trainee) will be given 2 years training with the consolidated pay of Rs. 3250/- per month and after completion of training they will come under the regular pay band of Rs. 5400-20200 - 1900 (Grade Pay)

b) Considering the large number of persons to be recruited within the short span of time and that the fact the recruitment is for the lowest level category in TANGEDCO, the Board directs that there may not be any need for interview excepting for testing their job fitness criteria. Hence, the TANGEDCO directs that a list may be drawn from the employment exchanges and all eligible candidates subject to their physical fitness required for the job specification, be recruited duly following other rules and regulations in force, so as to improve field level performance of the TANGEDCO."

4.3. Writ Petitions in W.P.Nos. 24128 of 2012 etc batch have been filed seeking

to relax the upper age limit while filling up the vacancies to the post of ITI helper (Trainee) in TANGEDCO by direct recruitment through Employment Exchange. These writ petitions were disposed of by this Court by way of a common order dated 01.11.2012. The following passage of the order passed by this Court is apposite:

"12. As I have already stated, considering the plight of the casual labourers who are working with the Corporation, the Hon''ble Supreme Court appointed Hon''ble Justice V.Khalid as One Man Commission to make recommendations. In the said recommendations, Hon''ble Mr.Justice V.Khalid found that there were 18,006 vacancies to be filled up. The Commission recommended to formulate a Scheme. As per the scheme, 7,000 vacancies should be filled up by absorbing the casual labourers who were already in service. This has been satisfied already. Further according to the scheme, the remaining 9,000 vacancies should be filled up in the ratio of 1:1 between the casual labourers who are already in service and the I.T.I. Trade Certificate holders awaiting for employment by having their names on the Rolls of the Employment Exchanges. Similarly in respect of the further remaining 2,000 vacancies the same 1:1 ratio should be adopted. So far as the 4,500 vacancies to be filled up by absorbing the casual labourers, it is stated by the respondents that the same has been satisfied. These writ petitions are concerned only with the 4,500 and 1,000 vacancies to be filled up by direct recruitment from I.T.I. certificate holders. Out of these 5,500 vacancies, it is stated that already 2,500 vacancies have been filled up from open market in the year 2009 by appointing I.T.I. Trade Certificate holders. Thus, there remains 3,000 vacancies to be filled up by calling for the list of eligible candidates from the local Employment Exchanges. This should have been done somewhere in the year 2003-04 itself. But it was not done. Even after the disposal of batch of writ petitions in The Superintending Engineer, Nagapattinam Electricity Distribution Circle, Tamil Nadu Electricity Board and The Executive Engineer, Operation and Maintenance, Tamil Nadu Electricity Board Vs. The Inspector of Labour and D. Athmanathan, also, the same was not done. Now only the process to recruit 2054 candidates have been undertaken. Had these vacancies been filled up immediately after the earlier proceedings more particularly immediately after the Scheme formulated by the One Man Commission, these petitioners would have got employment in due course. Since it was not done, now the petitioners have lost their upper age limit. In these special circumstances, I am of the view that on the ground of Equity it is absolutely necessary for this Court to issue a direction to the respondents to relax the upper age limit for these I.T.I. Trade Certificate Holders so far as the current selection is concerned.

13. In the result, the writ petitions are disposed of with a direction to the respondents to relax the upper age limit by lifting the upper age limit in respect of the I.T.I. Trade Certificate Holders who are waiting on the Rolls of the Employment Exchanges as against the current selection process alone. Consequently, the connected miscellaneous petitions are closed. No costs."

4.4. In compliance with the order passed by this Court dated 01.11.2012, the respondents 1 and 2-Board has issued proceedings dated 04.07.2013 to fill up 4000 vacancies of ITI Helper (Trainee) by lifting the upper age limit for the current selection process alone. Accordingly, a list was drawn from the Employment Exchange and the selection would be subject to physical fitness required for job specification by following other rules and regulations in force.

4.5. As per the order of the Supreme Court in C.A.Nos. 5285-5328 of 1996 dated 03.10.1996, preference was given by way of calling the candidates who have undergone apprenticeship training in the Board to attend only the interview for the post of ITI Helper(Trainee) along with the other candidates sponsored through Employment Exchange. It is to be known that no marks were given to the candidates, who had undergone apprenticeship training by way of preference for selection. Accordingly, an Advertisement was given in two daily newspapers for apprenticeship candidates to enroll their names for the purpose of attending the interview. In the said decision referred to supra, the Apprentices/Trainees were not required to sit for the written examination as they have acquired training under the same management, but will have to go through the process of viva-voce test. The preference would be exercised "when other things being equal" over direct recruits and therefore, the apprentice-trainees have no right to be appointed as a matter of course.

4.6. The Special Commissioner, Employment and Training, Guindy, Chennai, had sponsored about 13560 ITI candidates. Only the qualified candidates were called for interview from the Employment Exchange.

4.7. The Board has issued proceedings in (Per) FB TANGEDCO Proceedings No. 15, dated 04.07.2013, which reads as follows:

"A list may be drawn from the Employment Exchange and all eligible Candidates subject to their physical fitness required for the job specification be recruited duly following other rules and regulations in force."

4.8. The candidates, who appeared for the interview are evaluated with 85% of academic marks and 15% of viva-voce/interview marks, which is meant for assessing one's ability to do pole climbing and cycling with respect to physical fitness. The ratio of 1:5 was followed as per G.O.Ms.No. 18, Labour and Employment (N2) Department dated 25.02.2008, by which the list of ITI qualified candidates were called for from the Employment Exchange. The candidates were required to have the qualification of ITI(NTC/NAC). The appointment by direct recruits have sought to be filled up by following the ratio of 1:1 as per the orders of Honourable Justice Kalidh Commission between contract labourers and qualified ITI holders.

4.9. 1455 candidates, who have completed one year training of apprenticeship in TANGEDCO with ITI qualification were called for the interview. Among 15015 candidates, 10,728 candidates have attended the interview. On scrutiny, based on their ITI National Trade Certificate, 10357 candidates were found to be eligible

and 351 candidates were held ineligible as they did not possess the qualification of ITI Electrician or Wireman Trade, apart from not possessing National Trade Certificate(NTC) issued by the National Council for Vocational Training, New Delhi(NCVT).

4.10. The selection of 4000 ITI Helper(Trainee) was made as per the Government Order in G.O.Ms.No. 65 Personnel and Administrative Reforms (Personnel) Department, dated 27.05.2009. The appointment orders were issued to the selected candidates. The selection has been made based upon the marks scored by the candidates in ITI National Trade Certificate/National Apprenticeship Certificate- 85% and interview marks-15%, Communal Roaster, priority and rule of reservation. The selection was made by computing the percentage of marks obtained in ITI NTC/NAC to 85% and then by adding marks awarded at the time of viva-voce with the maximum of 15%. The selection was made combining the eligible candidates sponsored by the Employment Exchange as well as Apprenticeship candidates. The petitioners herein are the non selected candidates. These are the background facts governing all the cases before us.

5. Submissions of the Petitioners:-

The learned counsels appearing for the petitioners submitted that the appointments have not been made as per the directions of the Justice Kalidh Commission. The petitioners ought to have been selected merely based upon their Employment Exchange Seniority. They have been waiting for so long. Considering the posts, which are basic ones, no interview is required. The viva-voce conducted is contrary to the Board's proceedings dated 04.07.2013. The respondents cannot change the rule after the selection process has started. In support of their contentions, the learned counsels appearing for the petitioners made reliance upon the Division Bench judgment of this Court in K. Nehru Vs. The State of Tamil Nadu and The Management of Tamil Nadu Pollution Control Board .

6. Submissions of the Respondents:-

6.1. The learned counsels appearing for respondents 1 and 2 and the learned Special Government Pleader appearing for the third respondent submitted that the ratio of 1:1 between the contract labourers and qualified ITI holders has been fixed in compliance with the directions of Justice Kalidh Commission. The petitioners do not have any locus standi to question the same. The respondents have also acted in compliance with the directions of the Supreme Court in S.L.P.No. 1820 of 1990 dated 11.02.1991. No doubt, interview has been conducted which is for assessing the physical fitness. It was done in relation to the job specification. The said procedure has been followed from the year 2005 onwards in all recruitments. Even as per the Board's proceedings in Per.B.P.(FB) No. 40, dated 14.12.2005 and Memo of the Tamil Nadu Electricity Board, Administrative Branch in Memo No. 100459/265/G.57/G.572/2007 dated 03.02.2009, the following guidelines were issued to entrust the process of

recruitment.

"3) The following guidelines may be adopted in the interview.

- a) Verification of ITI qualification NTC/NAC Certificates in the field of Electrician and Wireman Trade.
- b) Verification of Transfer Certificate for proof of age.
- c) Proficiency test in Cycling and Pole Climbing.
- d) Weightage may be given for those with 2 Wheeler licence.
- e) Weightage may be given to those who are already engaged as Contract Labourers in the Board, if sponsored by the Employment Exchange."

6.2. The selection has been made by following due procedure. The petitioners have not produced any material with respect to the selection made. No independent assessment has been made apart from verifying the physical fitness of the candidates. The petitioners having participated in the selection process cannot question the same. The petitioners, having not reached the zone of consideration, are not entitled to challenge the selection made. When the cut of date has been fixed as on 16.08.2013, the petitioners cannot contend that junior registrations cannot be called for. They do not have any legal right to do so. Having obtained the relaxation, the petitioners cannot ask for anything more. They do not have any vested right for the post dehors their merit merely based on their Employment Exchange registration. The Board's proceedings No. 14 dated 12.07.2012 has been complied with in its letter and spirit. Therefore, no interference is required.

7. DISCUSSION:-

7.1. All the petitioners were sponsored through Employment Exchange. The apprentices have been called for to comply with the directions of the Supreme Court. The petitioners have willingly participated in the selection process. In pursuant to the notification issued for filling up of 4000 vacancies, along with others the petitioners had also participated in the selection process. As narrated above, out of 100% marks, 85% has been earmarked for the marks obtained in the qualification acquired by the candidates and 15% marks was earmarked for viva-voce. The ratio has been fixed as per the directions of the Justice Kalidh Commission. Accepting the said ratio, the petitioners have participated in the selection process. The order passed by this Court in respect of age relaxation was given effect to. Merely because a registration was done in the Employment Exchange, the said fact alone cannot give vested right for appointment.

7.2. In the viva-voce, marks were awarded for Pole Climbing and Cycling. These two activities are very important for carrying out the work for the selected candidates. In the check list itself, it was recorded as to whether a candidate is fit for Pole Climbing and Cycling. Based upon the same, marks have been awarded.

7.3. The Board's proceedings No. 14, dated 12.07.2012, does not disclose the procedure for testing the candidates to the job fitness. In other words, all eligible candidates must necessarily undergo their physical fitness test in relating to the job specification. The requirement is in the realm of the employer viz., the respondents 1 and 2. The object of the selection itself is to improve the fitness level performance of the employees with a particular and special reference to the natural job undertaken by them. Such a yardstick adopted by the respondents cannot be termed as arbitrary or illegal. It also cannot be termed as contrary to the Board's proceedings No. 14 dated 12.07.2012. The proceedings of the respondents dated 04.07.2013 also clearly states that testing regarding Pole Climbing and Cycling over the candidates for the post of ITI Helper (Trainee) is required at the time of viva-voce/interview. This Court does not find any change in the rule adopted by the respondents. The decision relied upon by the learned counsel appearing for the petitioners do not have any application to the present cases. There is no change in rule or application of different prescription to the selection. When a selection is made, it is the bounden duty of a public employer to verify and specify about the ability of the candidate to perform the proposed work to be assigned to him after selection. Therefore, this Court does not find any arbitrariness in the process adopted by the respondents.

7.4. As rightly submitted by the learned counsel appearing for the respondents, the same process has been adopted in the years 2007 and 2009. The power of judicial review over a selection made by conducting a viva-voce test is rather limited. After all, 85% has been fixed based upon the marks obtained in the qualification acquired by the candidates. It is only for the remaining 15%, the viva-voce was fixed and by which, the candidates were verified on their ability to indulge in Pole Climbing and knowledge in Cycling. The petitioners, as a matter of right, cannot claim that the selection should be only based upon the seniority in the Employment Exchange or the marks obtained as per the qualifications. They also cannot contend that persons registered after them shall not be called for to participate in the selection process. Therefore, this Court do not find any error in the selection process involved. Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.