
(2008) 01 MAD CK 0256

In the Madras High Court

Case No : Writ Petition No's. 26885, 27555 and 28979 of 2007 and M.P. No's. 2 and 3 in respective W.Ps.

T. Manthiramoorthy

APPELLANT

Vs

TWAD Board Diploma Engineers' Association
T.
Manthiramoorthy and Others Vs Tamil Nadu Water Supply
and Drainage Board and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Tamil Nadu Water Supply and Drainage Board Act, 1970 — Section 73
Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal)
Regulations, 1972 — Regulation 19

Citation : (2008) 01 MAD CK 0256

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Kandavadivel Doraisamy, in W.P. Nos. 26885 and 27555 of 2007 and G. Ravisankar, in W.P. No. 28979 of 2007, for the Appellant; N. Kannadasan, Addl. AG for Sudharshana Sundar and S. Arunachalam, for RR37 and 38 in W.P. Nos. 26885 and 27555 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—As per the amended prayer in W.P. No. 26885 of 2007 vide order dated 18.8.2007 in M.P. No. 4 of 2007, the petitioner, who is working as Junior Engineer in the first respondent Tamil Nadu Water Supply and Drainage Board is seeking to quash the resolution of the Selection Committee held on 06.7.2007 and to quash the proceedings No. 1 of the Selection Committee as well as the order of the first respondent in memo dated 08.8.2007 insofar as it relates to selection of 67 departmental candidates appointing them as Assistant Engineers by transfer of service from lower categories and to direct the respondents 1 and 2 to consider the case of the petitioner for promotion to the post of Assistant Engineer on the basis of length of service. This matter was admitted on 18.8.2007.

2. W.P. No. 27555 of 2007 is filed by 15 technical Assistants, who are awaiting promotion to the post of Assistant Engineers and they have made a similar prayer as that of the earlier writ petition.

3. W.P. No. 28979 of 2007 is filed by three Technical Assistants working in the first respondent Board seeking for the very same prayer as per the above said two petitions.

4. In view of the interconnectivity between the three petitions, the matters were clubbed together and heard. Heard the arguments of Mr. Kandavadivel Doraisamy, learned Counsel appearing for the petitioners in W.P. Nos. 26885 and 27555 of 2007 and Mr. G. Ravisankar, learned Counsel appearing for the petitioners in W.P. No. 28979 of 2007 and Mr. N. Kannadasan, learned Additional Advocate General leading Mrs. Sudharshana Sundar, learned Counsel for the TWAD Board and Mr. S. Arunachalam, learned Counsel appearing for some other contesting respondents in W.P. Nos. 26885 and 27555 of 2007 and perused the records.

5. The first respondent Tamil Nadu Water Supply and Drainage Board [for short, "Board"] is created by the Tamil Nadu Water Supply and Drainage Board Act, 1970 (T.N. Act No. 4 of 1971) by the State Legislature. By virtue of Section 73 of the TWAD Board Act, the Board is empowered to make regulations including fixing the terms and service conditions of appointment and scales of pay of officers and servants of the Board. The first respondent Board had framed Tamil Nadu Water Supply and Drainage Board Service Regulations 1972. By the said regulation, Tamil Nadu Water Supply and Drainage Engineering Service has been created. For the post of Assistant Engineer, it is prescribed that a person must have B.E. Degree qualification and five years' experience as Technical Assistant/Junior Draughting Officer / Draughting officer. All the petitioners are working as Technical Assistants eligible to be promoted as Assistant Engineers.

6. According to the petitioners, though Rule of reservation is not applicable for promotion by transfer and that the total number of Technical Assistants available was 88 at the time when the promotion are to be made and out of which, 36 Technical Assistants are qualified to be promoted as Assistant Engineers and in respect of Junior Draughting Officers, 304 persons were working and out of which, there were 64 qualified persons, who are eligible to be promoted. The grievance of the petitioners is that the only avenue of promotion available to the Technical Assistants is the post of Assistant Engineers whereas the Junior Draughting Officers are eligible to be promoted either as Assistant Engineers or Draughting Officers. But the first respondent Board has inherently biased towards Junior Draughting Officers and, therefore, they were only promoting Junior Draughting Officers to the post of Assistant Engineers and this forced some of the petitioners to approach this Court with W.P. No. 24161 of 2007 and this Court, vide order dated 18.7.2007, directed the official respondents to consider the grievance of the petitioners on the basis of the representations made by them. But even before any worthwhile consideration is made, to defeat

the claim made by the petitioners, the first respondent Board granted promotions on 23.7.2007 ignoring the claim of the petitioners. Further, the orders were anti-dated as 06.7.2007. Since the petitioners were aggrieved, a Contempt petition being C.P. No. 696 of 2007 was filed before this Court and when it came up for hearing on 03.8.2007, the first respondent Board filed a counter affidavit and also presented the proceedings of the Selection Committee dated 06.7.2007 containing the list of names of promoted candidates. This, according to the petitioners, was based upon pick and choose method without following any seniority. The selected persons have been arrayed as respondents 3 to 69 in these petitions.

7. According to the petitioners, the length of service of all the respondents were taken into account and as many as 56 of them have joined subsequent to the filing of the petitions and even the qualifying Engineering Degree was obtained by them much later. It is also contended that not only a person must have B.E. Degree but also must have five years' service in the feeder post. It was stated that adopting communal roster in the promotion is against the reasoning given by the Division Bench of this Court vide order dated 28.02.2005 in W.P. No. 11296 of 2003, etc. batch cases and SLP filed by the State was also rejected by the Supreme Court. The Selection Committee constituted by the first respondent Board, by proceedings dated 06.7.2007, was directed to fill up 100 vacancies of Assistant Engineers in terms of the ratio of 1:2 prescribed by the Board, i.e., 33 vacancies by direct recruitment and 67 by departmental candidates working in the lower categories. After getting all the names of candidates, it was found that the number of qualified persons available from the lower categories was 67, viz., the following categories.

Electrical Superintendent - 1 Draughting Officer - 9 Junior Draughting Officer - 44 Technical Assistant - 13 The names of the 67 departmental candidates were arranged by following the rule of reservation and 19 candidates, who were selected by direct recruitment, were also arranged on the basis of the communal roster. It is this selection proceedings dated 06.7.2007 that is under challenge in all the three writ petitions and at the time of admission of the writ petitions, this Court, by an interim order directed that any selection made will be subject to the result of the writ petitions.

8. A counter affidavit dated Nil (September 2007) has been filed by the Managing Director of the first respondent Board on behalf of the Board as well as Selection Committee. It was stated that the respondents have followed the due procedure prescribed by the Government and also the practice of the Board. It was further stated that the total number of sanctioned posts in the category of Junior Draughting Officer was 307 and Technical Assistant was 85 and roughly, it comes out to 78% of Junior Draughting Officers and 22% of Technical Assistants. Since the scale of pay of the Draughting Officers and Electrical Superintendents was higher, ten eligible persons were allotted to the post of Assistant Engineers and the balance of 57 posts were given on the basis of ratio of each of the category.

In view of the above method, since the Junior Draughting Officers were occupying 78% of the total strength, they were given 44 posts and Technical Assistants were occupying 22% and they were given 13 posts thereby all the 57 posts were filled up with these two categories. It was also stated that while filling up the posts, category strength as well as communal roster were strictly followed and there was no deviation from the same.

9. As per Regulation 19 of the Tamil Nadu Water Supply and Drainage Board Service Regulations, 1972, the post of Assistant Engineer can be filled up only by direct recruitment and unmindful of the same, 206 persons have been appointed as Assistant Engineers by promotion from the lower categories from the years 1986 to 1988. As it was contrary to the Regulations, they were not able to be regularised and since the Board did not have the power to retrospectively amend the regulations, the persons, who were appointed earlier, could not be regularised. Even though letters were addressed to the State Government about the same issue as early as in the year 1998 followed up to the year 2004, the State Government issued Tamil Nadu Ordinance 3 of 2007 amending Section 73 of the Act enabling the Board for making regulations both prospectively and retrospectively and also made it mandatory that any modification or cancellation of regulations should be approved by the State Government. Pursuant to this, the Government also issued G.O. Ms. No. 128 Municipal Administration and Water Supply Department dated 11.9.2007 regularising the appointment of 206 persons as Assistant Engineers, who were recruited from the lower categories. In fact, as early as in the year 1997, by Board Proceedings being B.P. Ms. No. 131 dated 04.4.2007, the ratio of 1:2 between direct recruits and recruitment by transfer was arrived at though it was done pending amendment to the regulations.

10. The learned Additional Advocate General contended that the petitioners, who were all Technical Assistants, have been fairly treated by the Board and necessary proportionate allotment of posts has been given to them in consonance with the strength occupied by them in the Board. It is also stated that while fixing percentage for each of the categories, the Board followed the Government order in G.O. Ms. No. 1069 Personnel and Administrative Reforms Department dated 13.10.1984 wherein it was stated that if the scales of pay of the feeder categories are similar, then for the purpose of promotion, a percentage of each feeder category can be prescribed taking into consideration the cadre strength of each of the feeder categories and further, that higher scale of pay in the feeder category may be considered first and thereafter, it can go down to the next higher feeder categories. It is also contended that there cannot be any combined seniority list of all Technical Assistants and Junior Draughting Officers and in the present case, the appointment is only by transfer of service. Therefore, rule of reservation has been followed. It is also stated that the Division Bench judgment of this Court will have no application in the facts and circumstances of the present case. This is not a case where the direct recruits were eligible through open market were challenging the rule of reservation. The

ratio fixed by the Board based upon the percentage of each of the feeder categories cannot be said to be arbitrary and violative of Articles 14 and 16 of the Constitution of India. In fact, the said arrangement is rational and will only enhance fair play in the action of the first respondent Board. Further, in the present case, all the persons, who were eligible, have been considered and depending upon the ratio fixed on each of the feeder categories, they have been promoted.

11. In the light of the above, all the writ petitions are misconceived and devoid of any legal grounds. Accordingly, all the writ petitions will stand dismissed. However, there will be no order as to costs. Connected Miscellaneous Petitions are closed.