
(2010) 08 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No's. 19596 and 33372 of 2002, 8338, 20874 to 20877 and 22990 of 2008, 294, 22133, 22982, 23215, 26418 and 26728 of 2009, W.P.M.P. No's. 1838 of 2008 in Writ Petition No. 19596 of 2002, 49460 of 2002 in Writ Petition No. 33372 of 2002, 1 a

T.N. Rajan

APPELLANT

Vs

The Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 14, 16(1), 16(4)
Electricity (Supply) Act, 1948 — Section 79
Tamil Nadu Electricity Board Services Regulations — Regulation 104, 105, 79, 87, 87(1)

Citation : (2010) 08 MAD CK 0084

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Yashod Vardhan in W.P. Nos. 19596 and 33372 of 2002 and 8338 of 2008, V. Prakash for K. Sudalaikannu, in W.P. Nos. 20874 to 20877 of 2008 and 22133 of 2009, V. Ajoy Khose, in W.P. Nos. 22990 of 2008 and 22982 and 23215 of 2009 and L. Chandrakumar, in W. Nos. 26418 and 26728 of 2009, for the Appellant; S. Ramasamy, A.A.G. and N. Kavitha, Government Advocate, A/b., A. Selvendran for (TNEB), for Respondents 1 to 3 in W.P. No. 19596 of 2002, Party-in-Person in W.P. Nos. 20874 to 20876 and 20877 of 2008, W.P. No. 294 of 2009, W.P. Nos. 22982 and 23215 of 2009 and W.P. Nos. 26418 and 26728 of 2009, R. Muthukumarasamy for R. Santhanam, for Respondents 5 and 67 in W.P. No. 19596 of 2002; Respondents 6 and 66 in W.P. No. 33372 of 2002; Respondents 5 and 118 in W.P. No. 8338 of 2008 and Respondents 5 and 118 in W.P. Nos. 20874 to 20877 of 2008; and Respondent 5 in W.P. No. 22133 of 2009, R. Thiagarajan for S.T.S. Murthi, for Respondent 4 in W.P. Nos. 20874 to 20877 of 2008 and C.K. Chandrasekar, for Respondents 9 to 11 in W.P. No. 22133 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The Tamil Nadu Electricity Board constituted under the Indian

Electricity Act, made service regulations namely, Tamil

Nadu Electricity Board Service Regulations [hereinafter referred to as "the Service Regulation"] in respect of employees of the Tamil Nadu

Electricity Board (hereinafter referred to as "the Board") in exercise of the powers conferred upon the Board u/s 79 (c) and (k) of the Electricity

(Supply) Act of 1948 which came into force with effect from 1.7.1957. Until the year 1975, the post of Assistant Engineer (Electrical) was filled

up only by means of Direct Recruitment. By the Board Proceeding in B.P. Ms. No. 1703, dated 29.11.1975, the regulation was amended under

which the employees already in the service of the Board and who have obtained B.E. Degree shall also be eligible for such appointment by means

of promotion. The appointment from the existing employees holding B.E. Degree or equivalent qualification is known as "appointment by internal

selection". Regulation 92 which speaks of appointment states that appointment to the several classes, divisions and categories specified in Column

(1) Annexure I shall be made as specified in the corresponding entry in the Column (2) thereof. As per Annexure-I, the posts of Assistant Engineer

(Electrical) shall be filled up both by internal selection and by direct recruitment in the ratio of 1:1. According to the said regulation, "for the

purpose of appointment by internal selection, the selection shall be made on the basis of the service rendered after acquiring the B.E. Degree or the

equivalent qualification.

2. During the year 2000, the Board decided to fill up all the vacancies of Assistant Engineers (Electrical). By means of letter in D.O. Letter No.

116790/269/G55/ G551/2000-3 dated 3.11.2000, the Tamil Nadu Electricity Board informed that an examination would be held on 11.11.2000

to all those eligible and qualified employees who are proposed to be selected for the posts of Assistant Engineer (Electrical) by internal selection.

Following the same, the Board issued permanent B.P.(F.B.) No. 31, dated 4.12.2000 directing that the internal selection to the posts of Assistant

Engineer (Electrical) shall be made by conducting an examination in future from the existing eligible employees who are qualified. Accordingly, a

consequential proceeding requiring the in-service candidates to appear for the examination to be held on 09.12.2000 was issued. The said

proceedings dated 3.11.2000 and 28.11.2000 came to be challenged by a batch

of existing employees of the Board in W.P. No. 20512/2000. In the said Writ Petition, it was contended that the above proceedings were contrary to the service regulations. It was contended that the service regulations do not provide for any such examination for selection among the employees for promotion to the post of Assistant Engineer whereas the proceedings impugned in the said Writ Petition prescribed such an examination. Considering the same, this Court in W.P.M.P. No. 29822/2000 granted interim stay of the selection as against the quota for the employees [internal selection] by order dated 6.12.2000.

3. In the meanwhile, the Board gave advertisement on 27.11.2000 and issued proceedings to appoint A.Es. by direct recruitment as against the quota earmarked for the direct recruits. In W.P. No. 20512 of 2000, there was no stay granted by this Court as against the Board to go ahead with the selection and appointment of direct recruits. Accordingly, during the month of December, 2000, as many as 200 Graduate Engineers were appointed as A.Es. by way of direct recruitment.

4. While so, on 13.12.2000, the Board reconsidered the holding of examination for employees by internal selection. On 22.2.2001 yet another Writ Petition was filed in W.P. No. 3022/2001 challenging the above proposal to conduct examination for the internal selection. In that, the Board gave an undertaking that 346 posts of A.Es. shall be kept vacant until the final disposal of the Writ Petition to be filled up by internal selection.

During the month of March 2001, 100 more Graduate Engineers were appointed as A.Es. by direct recruitment. Thus, the total number of Graduate Engineers appointed by means of direct recruitment alone was 300.

5. While so, the Board reconsidered its earlier decision to hold examination for the internal selection and accordingly, the Board by B.P.(FB) No. 59, dated 13.11.2001 dispensed with such examination. Therefore, the Writ Petitions cited supra were all closed. When the Board was again about to continue the process of selection for the employees, one Geetha Lakshmi filed another Writ Petition on 17.12.2001 challenging the B.P.

(FB) No. 59. An interim stay was granted and the same was however vacated on 7.12.2001 at the instance of the employees who would be affected by the same. A Writ Appeal was filed challenging the order vacating the interim stay granted earlier. The said W.A. No. 3117/2001 was

dismissed on 22.2.2002. After that, the Board was again about to continue the process of internal selection of the employees.

6. While so, yet another Writ Petition by way of Public Interest Litigation was filed by the Tamil Nadu Graduate Engineers Association in W.P.

No. 11754/2002 challenging B.P.(FB) No. 59 under which the Board withdrew the conduct of examination for internal selection. Interim stay was

granted in the said Writ Petition. Thus, till April, 2002, the Board was virtually disabled from going ahead with the internal selection to fill up the

posts of Assistant Engineers by means of internal selection from and among the employees. But the Board could complete the process of selection

and appointment for direct recruitment as against the quota for the direct recruits.

7. On 13.4.2002, the interim stay granted in W.P. No. 11754 of 2002 was vacated. However, another Writ Petition was filed in W.P. No.

1602/2002 by some other person. But the same was dismissed as withdrawn on 8.5.2002 itself. Thereafter, the Board undertook the internal

selection process and completed the same during the month of May, 2002. Accordingly, the petitioners in all these Writ Petitions were all

appointed as A.Es. by means of such internal selection process during the month of May, 2002.

8. At this juncture, it needs to be mentioned that earlier as per the proceedings of the Board, in B.P.(FB) No. 29, dated 27.11.2000, the Board

directed that the probation period of such directly recruited Assistant Engineers will be two years with a consolidated emolument of Rs. 7,500/-

per month and after successful completion of probation, they will be absorbed as regular A.Es. in the regular time scale of pay. The said Board

proceeding was amended by B.P.(FB) No. 35 dated 13.12.2000 therein, it was directed by the Board as follows:

Recruitment of candidates through Employment Exchange for the post of Assistant Engineer/Electrical (Trainee) shall be made by conducting a

written examination in future. All appointees as Assistant Engineer/Electrical (Trainee) shall be on training initially for the period of two years

including induction training of three months with a consolidated pay of Rs. 7,500/- p.m. On completion of the training, he/she will be placed on

probation for two years in the time scale of pay which is applicable to the regular Assistant Engineer/Electrical in the Tamil Nadu Electricity Board.

9. Based on the above two Board Proceedings, the Direct Recruits who were recruited during December, 2000 and March, 2001 were put on training. When they were so undergoing training, the Board issued another proceedings under Permanent B.P.(FB) No. 9, Administrative Branch, dated 23.4.2002 thereby reducing the period of training from two years to three months. The operative portion as found in Paragraph No. 4 reads as follows:

The T.N.E.B. After careful examination of the whole issue taking into account the views of the various Chief Engineers, directs to reduce the period of training of newly recruited Assistant Engineers (Trainee) during December, 2000 and March, 2001 from two years to three months.

Accordingly, the following orders are issued:

- i. On completion of three months intensive training the Assistant Engineers/ Trainee shall be designated as Assistant Engineers with the duties and responsibilities of the regular Assistant Engineers.
- ii. The Assistant Engineers (Trainee) recruited during December 2000 and March 2001 shall be given the time scale of pay on par with the regular Assistant Engineers after completion of 3 months intensive training.
- iii. Their probation shall commence from the date of joining in the Board and will be for a period of two years within a continuous period of three years.

10. Based on the above Board proceeding, on completion of training for three months, the above direct recruits were all brought under regular time scale of pay. This happened during the year 2001.

11. From the narration of above facts, it can be culled out that there are now two classes of employees appointed as A.Es, the first being, the A.Es., who were appointed during December, 2000 and March, 2001 by way of direct recruitment who were brought under the regular time scale of pay in the year 2001 itself on their completing 3 months of training and the other group of Assistant Engineers being the Assistant Engineers appointed by means of internal selection process during the month of May, 2002.

12. Between these two classes of Officers, the seniority was not however fixed and list was not published. At that stage, a batch of Writ Petitions in W.P. No. 19596 of 2002, etc. were filed by the Assistant Engineers appointed

by internal selection process (hereinafter referred to as "the service candidates"), challenging B.P. (FB) No. 9 and also the consequential proceedings under which the direct recruits were brought under the regular time scale of pay.

13. During the pendency of the above batch of Writ Petitions, a Seniority List was published by the Board under Memo No.

12694/1149/AB/G18/G181/2007-2, dated 1.4.2008. Similarly, another list was published by the Board under Memo No.

126947/1149/AB/G18/G181/2007-2 dated 3.7.2008. Challenging the above seniority lists, the other batch of Writ Petitions in W.P. No. 274 of

2009 etc. have been filed. In some of these Writ Petitions, there is also a prayer to direct the Board to treat the service candidates who were

appointed during May, 2002 as deemed to have been appointed in the Calendar year 2001 notionally and to fix their inter se seniority with the

direct recruits as it was in the Calendar year 2001.

14. It is in this way, all the above Writ Petitions are now before this Court and since common issues are involved though the prayer made in some

of the Writ Petitions is slightly different and since in effect the relief sought for by the petitioners are in general, all these Writ Petitions were heard

together and they are disposed of by means of this common order.

15. Let me first take up the challenge to the Board Proceedings in B.P.(FP) No. 9 (Administration Branch) dated 23.04.2002. It is the common

ground in these writ petitions that the period of training for direct recruits was reduced by means of this impugned Board Proceeding from two

years to three months only with a view to favour the direct recruits so that they could get the seniority of the calendar years 2000 and 2001;

whereas the petitioners could get their seniority only below the above 300 direct recruits. In this regard I may at the out set state, that, admittedly,

in the Service Regulations, there is no training prescribed for the Assistant Engineers who are directly recruited. Regulation 87(1) of the Service

Regulations states that a person is said to be "appointed to a class of service" when in accordance with these regulations or in accordance with the

Regulations applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such class of

service or commences probation, instruction or training prescribed for members

thereof. An understanding of Service Regulation 87 would make it very clear that if only there is a training prescribed under the service regulations, the trainee shall be said to be appointed on the date of his completing such training. But, there is no such training at all prescribed for directly recruited Assistant Engineers on their appointment. Such kind of training is prescribed under Regulation 104 of the Service Regulations only for Accounts Officers and Assistant Accounts Officers. Therefore, the training that was given by the Board to the directly recruited Assistant Engineers was only an arrangement made by the employer to enhance the quality of work to be performed by such directly recruited Assistant Engineers. In other words, the training that was given by the Board was not to fulfill any training prescribed under the service regulations. Undoubtedly, it is an in-service training given by the Board only to enhance the quality of the work. Therefore, from Regulation 87, it is crystal clear that these direct recruits became the Assistant Engineers as on the date of commencement of the probation. Since the date of completion of the training does not determine the date of entry into the service for the purpose of fixing their seniority, the contention that the training period was reduced to three months only to favour the direct recruits so that they could get seniority over and above the petitioners is only misconceived. Thus, the reduction of period of training from two years to three months passed under B.P.(FB) No. 9 cannot be found fault with in any manner.

16.1 The learned senior counsel Mr. V. Prakash would submit that the direct recruits were not appointed in regular cadre of service as Assistant Engineers in the years 2000 and 2001. Instead, they were appointed only as Assistant Engineers (trainees). The learned senior counsel would further submit that according to the appointment order, they will be absorbed into the regular service only on completion of the training. Therefore, according to him, the date on which they completed the training should be the crucial date for determining the calendar year for the purpose fixing the inter se seniority. For this purpose, the learned senior counsel has relied on a letter addressed to one of the candidates by name Mr. Venkatesh

M. under letter No. 136363/G13/G13(1)/Admin. Br./2000, dated 24.03.2001 issued by the Chief Engineer / Personnel wherein it is stated as

follows:

...The Superintending Engineers concerned will issue orders of Appointment as Assistant Engineer/Electrical/Trainee in Generation separately.

16.2 Relying on this letter, the learned senior counsel would submit that the direct recruits were appointed in the years 2000 and 2001 as trainees

and not as regular Assistant Engineers. To counter the said argument, the learned Additional Advocate General would submit that what is relied on

by the learned senior counsel is only an intimation and not the appointment order. He has produced a memorandum No.

37942/1245/Admn.I/A.1/F.4/2000-21, dated 27-12-200 which according to him is the appointment order which clearly states as follows:

Thiru. V. Kothandaraman, S/o. G. Venkatapathy, Virudhachalam, Cuddalore selected by direct recruitment and allotted to this circle by the Chief

Engineer /Personnel/Chennai is appointed as Assistant Engineer/Electrical in Class II Service. On appoint he will be placed under training for a

period of 2 years on a consolidated pay of Rs. 7,500/-(Rupees Seven Thousand Five Hundred only) per month.

17. In my considered opinion, this appointment order clearly obviates the doubt raised by the learned senior counsel Mr. V. Prakash. Now from

the appointment order, it has come to light clearly that the direct recruits were not appointed as trainees, but they were appointed only as Assistant

Engineers. Further, a perusal of the service regulations would go to show that there is no such cadre as Assistant Engineer [Trainee] at all.

Therefore, there is no scope at all for the Board to appoint any trainee. As it is evident from the appointment order itself on appointment, the

appointed Assistant Engineers will undergo training. Thus, the statement in the appointment order clearly goes to show that training to which the

direct recruits were subjected, either two years or three months, was only an administrative action to enhance the quality of the work and not in

accordance with any statutory requirement.

18. Mr. S. Ramasamy, the learned Additional Advocate General has, across the bar, made a statement that the seniority of these direct recruits

were fixed only on the basis of their joining duty and not from the date of completion of training. The learned Counsel for the petitioners is not in a

position to dispute the same. Thus, the reduction of the period of training to the direct recruits has in no manner affected the seniority of the

petitioners and, therefore, they cannot feel aggrieved by the action of the Board in reducing the period of training to the direct recruits. In view of

the above position, the challenge to B.P.(FB) No. 9 should fail.

19. Now, coming to the challenge in respect of the seniority lists published , at the out set , I have to refer to the Regulation 97 which speaks of

inter se seniority of the employees of the Board. Regulation 97 reads as follows:

(a) The seniority of a person in a class of service, category or grade shall, unless he has been reduced to a lower rank as a punishment, be

determined by the rank obtained by him in the list of approved candidates drawn up by the Board or other appointing authority , as the case may

be. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

Provided that the seniority of Assistant Engineers (Electrical) / (Civil) / (Mechanical) recruited both by internal selection and direct recruitment in

the ratio of 1: 1 in a particular calendar year shall be fixed in the following cyclic order:

(a) Internal Selection;

(b) Direct Recruitment

....

20. A close reading of Regulation 97(a) would make it ipso facto clear that the date of commencement of the probation shall be the date on which

the employee joins duty irrespective of seniority. At this juncture, it would be worthwhile to extract Regulation 87(1) which reads thus:

87. (1) A person is said to be ""appointed to a class of service"" when in accordance with these regulations or in accordance with the Regulations

applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such class of service of

commences probation, instruction or training prescribed for members thereof.

Explanation:

The appointment of a person holding a post borne on the cadre of one category or class of service to hold additional charge of a higher post in the

same category or class of service or a post in another category or class of service or to discharge the current duties thereof does not amount to

appointment.

21. A conjoint reading of regulations 97(a) and 87(1) would make it undoubtedly clear that in respect of Assistant Engineers the date of

commencement of the probation shall be the date on which he joins duty and the date of appointment shall be the date on which the candidate

commences his probation. To put it precisely, the date of joining duty alone determines the inter se seniority of the candidates in a calendar year

and the same shall be fixed in the cyclic order of ratio of 1: 1 between the internal selectees and direct recruits.

22. Similarly, Regulation 95 (a) speaks of probation which reads as follows:

95. Probation

(a) Every person appointed initially to the entry level post shall be on probation for a total period of six months on duty within a continuous period

of nine months, except in respect of persons appointed to the following categories by direct recruitment in whose cases the period of probation

shall be as follows:

(i) Assistant Executive Engineers

(ii) Assistant Engineers

(iii) Accounts Officers

(iv) Assistant Accounts Officers

(v) Medical Officers

(vi) Office Helper

Two years on duty within a continuous period of three years

Six months on duty within a continuous period of one year

Explanation:

In respect of persons recruited directly, the period of taking over charge on first appointment shall be treated as duty for the purpose of this

Regulation.

Note 1: The probationer in a post of Assistant Engineer (Electrical or Junior Engineer (Electrical) shall be eligible to count for any period of service

rendered by him as an Assistant Engineer (Mechanical), Junior Engineer (Mechanical) or Junior Engineer (Civil) with reference to Regulation 105.

Note 2: No probation shall be necessary in the case of appointment between the categories of Junior Assistants and Typists including Steno-

typists.

Note 3: The period of joining time availed by a probationer on return of leave should be counted towards the prescribed period of probation if but

for the leave, he would have continued to officiate in the post to which he was appointed. The absence on Gazetted holidays and on compensatory

leave which are permitted to be affixed to earned leave cannot be counted as duty for purpose of probation.

23. The explanation appended to Regulation 95(a) would again make it clear that in respect of persons recruited directly, the period of taking over

charge on the first appointment shall be treated as duty for the purpose of this Regulation.

24. Now , coming to the facts of the case, the direct recruits/respondents were appointed either during December, 2000 or March, 2001. They

joined duty forthwith and, according to the above regulation, their probation commenced immediately. Therefore, as per Regulation 97, their

seniority should be counted from the month of December 2000 in respect of 200 direct recruits and in the month of March 2001 in respect of 100

direct recruits as on the date of their joining duty.

25. The petitioners / internal selectees were admittedly appointed only in the month of May 2002. Therefore, their seniority should be fixed on the

basis of their joining duty as Assistant Engineers in the month of May, 2002.

26. Now, turning to the proviso to Regulation 97 [Extracted in Para 19 above] it would deal with the inter se seniority of direct recruits and internal

selectees who become Assistant Engineers during a particular calendar year. While fixing their inter se seniority, the ratio of 1: 1 is to be maintained

in cyclic order. In the cases on hand, as I have already demonstrated , the direct recruits became Assistant Engineers during the calendar years

2000 and 2001; whereas the petitioners / internal selectees became Assistant Engineers only in the calendar year 2002. Therefore, the petitioners

can demand for fixation of seniority in the ratio of 1: 1 with the direct recruits of the calendar year 2002. But, they cannot demand for fixation of

seniority by following the above ratio for the calendar years 2000 and 2001 inasmuch as during the calendar years 2000 and 2001, the petitioners

were not at all Assistant Engineers.

27. The impugned seniority lists have been published by taking into consideration

the date of joining into service of the direct recruits in the years

2000 and 2001 and the date of promotion of the internal selectees during the month of May 2002. Regarding this fact, there is no dispute between

the parties.

28. Nextly, coming to the main contention of the internal selectees. Mr. V. Prakash, the learned senior counsel appearing for the petitioners would

point out that for recruiting direct recruits as well as promotees by means of internal selection, notifications were issued simultaneously in the year

2000 and thus, the process commenced simultaneously. But, the appointment to the in-service candidates by means of internal selection could not

be completed till May, 2002 because of various litigations as enumerated in the earlier paragraphs of this order. The learned senior counsel would

submit that the petitioners cannot be found fault with in any manner for the same. He would rely on Regulation 92 which states that appointment to

the several classes, divisions and categories specified in column (1) of Annexure-I shall be made as specified in the corresponding entry in column

(2) thereof.

29. The learned senior counsel appearing for the petitioners would now refer to Annexure I referred to in Regulation 92. In the said Annexure in

respect of Division II (Electrical) Engineers it is stated that the method of appointment shall be ""internal selection and direct 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"".

30. Relying on these two provisions the learned senior counsel for the petitioners would submit that the direct recruitment should not have been

done without awaiting the result of the litigations under which the recruitment by internal selection was stalled during the years 2000 and 2001. The

learned senior counsel would submit that because the direct recruitments were completed during the years 2000 and 2001 without making

recruitment by internal selection, the ratio of 1: 1 during the calendar years 2000 and 2001 was not maintained by the Board. As a result, the inter

se seniority of the petitioners and that of the direct recruits could not be made during the calendar years 2000 and 2001 as required under

Regulation 97 of the Service Regulations. The learned senior counsel would

further submit that applying the legal doctrine *actus curiae neminem gravabit* exercising the equity jurisdiction, this Court should direct to treat the appointment of the direct recruits only as ad hoc until the calendar year 2002 and to treat them as regular employees only from the calendar year 2002. The learned senior counsel would further add that by so doing, the Board should rearrange the seniority as per the Regulation 97 in the ratio 1: 1 between the direct recruits and the internal selectees.

Thus, according to him, the base calendar year for fixation of inter se seniority of the petitioners and the direct recruits should be taken only as 2002. In the alternative, the learned senior counsel would submit that the petitioners should be deemed to have been appointed in the calendar year 2000 itself and by so doing, the calendar year 2000 should be taken as the base year for fixation of seniority of the internal selectees and the direct recruits in the ratio 1: 1 as provided in Regulation 97. This can otherwise be called as "retrospective promotion" from the year 2000 for the purpose of fixing the seniority. The learned senior counsel would further submit that though such seniority is to be retrospectively given to the petitioners from the calendar year 2000, the petitioners are not entitled for any monetary benefit out of the same. He would submit that their pay should be notionally fixed, their seniority should be fixed in the calendar year 2000 and they should be accordingly given consequential promotion.

As a matter of fact, such prayer has been made in some of the writ petitions.

31. In respect of this contention, it is contended by the learned Additional Advocate General that there was no stay of the direct recruitment process by this Court which was commenced in the year 2000. Therefore, there was no legal impediment for the Board to go ahead with the direct recruitment and accordingly, the quota for direct recruitment was completed in the year 2001. The learned Additional Advocate General would further submit that by making this appointment, there was no encroachment upon the quota earmarked for the service candidates in the ratio of 1: 1 as provided in the Annexure to the service regulations. When there is no such excess appointment thereby depriving the service candidates, according to the learned Additional Advocate General, the question of giving retrospective seniority from the year 2000 does not arise.

32. I have given anxious consideration to these rival submissions because it

involves the fate of the several employees. As it is pointed out by the learned senior counsel appearing for the petitioners, the service candidates become Assistant Engineers, in general, at their fairly old age because while in-service, they have to acquire B.E. Degree, which normally takes four years and thereafter they have to complete their services in the Board for six years. Thus, to acquire qualification to become eligible for being considered for the post of Assistant Engineer, a service candidate has to spend at least 10 years. Therefore, normally, the in-service candidates become eligible for the post of Assistant Engineers only during the fag end of their service; whereas the direct recruits get into the service at the very early age. Having regard to these facts only, the regulation has provided for the ratio of 1: 1 in the matter of appointment as well as in the matter of fixing the internal seniority during a particular calendar year. By so providing the ratio in the matter of appointment as 1: 1 , the regulation has virtually carved out a clear quota for these two categories namely, (1) direct recruits; and (2) service candidates. This should be construed as mandatory. Therefore, while conducting selection , it should be ensured that the above quota is strictly adhered to and there is no encroachment of one category into the quota earmarked for the other category.

33. In the cases on hand, strictly in accordance with the Annexure to the Service Regulations, the Board rightly commenced the process to appoint both the in-service candidates as well as the direct recruits during the calendar year 2000. As pointed out by Mr. V. Prakash, the learned senior counsel appearing for the petitioners, had the selection process been completed for both the categories during the calendar year 2000, surely, many of the service candidates would have been seniors to the direct recruits as per the quota of 1: 1 ratio provided in proviso to Regulation 97 of the Service Regulations. Unfortunately, because of the various impediments about which I have already narrated, the in-service candidates could not get selected and appointed during the year 2000 so as to get the seniority of the year 2000. For this, the in-service candidates are also to be blamed to some extent. It is they who had approached this Court and got an order of stay of such process of internal selection alone without requesting the court to stay the process of direct recruitment also in view of the fact that ratio of 1: 1 is a method of selection. It is not as though all

such eligible in-service candidates had approached this Court by filing the earlier litigations. Only a select group of people approached this Court

and got the entire process stalled. As a result, those in-service candidates who were willing to participate in the examination and those who were

hopeful of getting through the examination also could not get selected during the calendar year 2000 and thus they have also been deprived of their

quota of the year 2000 for no fault of theirs.

34. It is to be noticed that in the earlier litigations, there was no attempt made by these in-service candidates to get the order of stay extended so

as to stay the process of direct recruitment also. It was never brought to the notice of this Court during the earlier litigations about the possible

effect in the seniority , if the process of recruitment of direct recruitment alone went ahead and that ratio is one of the methods of appointment.

Even when the earlier writ petitions were disposed of by this Court, neither there was any observation made by this Court nor any direction issued

in respect of seniority of the in-service candidates. The earlier writ petitions were simply disposed of and the interim orders were also only as

against the internal selection. They had nothing to do with the direct recruitment. The Tamil Nadu Electricity Board which is such a big organization

providing essential services cannot be expected to keep hundreds of posts of Assistant Engineers, who are to work in the field, vacant.

Considering the paucity of Assistant Engineers and since there was no stay granted by this Court, the Board had thought it fit to go ahead with the

direct recruitment and that is how the direct recruitments were made during the calendar years 2000 and 2001. Therefore , the Board cannot be

blamed either in the matter of rushing through the direct recruitment during the years 2000 and 2001 or for postponing the process of internal

selection of service candidates till May 2002.

35. Nextly, coming to the contention of Mr. V. Prakash, the learned senior counsel, that the ratio of 1: 1 as provided in Annexure to the Service

Regulations was not strictly adhered to and the same has been given a go by, I do not find any merit in it. Indisputably, the said proportion is one of

the methods of appointment. But, there is no provision in the service regulations to carry forward the quota earmarked for a particular category to

future. Though it may be true that the appointments of these in-service

candidates were made as against the vacancies arose in the year 2000, since there is no provision for carry forward, their seniority cannot be fixed as per the roster as it was in the calendar year 2000. As I have already stated, as per the Regulation 87, the date of joining duty which marks the commencement of the probation is the date on which the petitioners are said to be appointed and as per Regulation 97 the said date shall be the crucial date for the purpose of fixation of their seniority. Therefore, as per this regulation, for the purpose of fixing inter se seniority of the petitioners, it was rightly fixed in the ratio of 1: 1 only in the calendar year 2002 and not in the years 2000 and 2001.

36. Mr. V. Prakash, the learned senior counsel would rely on a judgment of the Hon"ble Supreme court in M.S.L. Patil, Asstt. Conservator of Forests, Solarpur (Maharashtra) and Others Vs. State of Maharashtra and Others, wherein the Hon"ble Supreme Court in para 3 has held as follows:

3. ...It is not in dispute that there is a ratio prescribed for the direct recruits and the promotees, namely 1:1. In other words, for every 100 vacancies the promotees are entitled only to 50 vacancies. It is not in dispute that these promotees have been promoted in excess of the quota.

Under those circumstances, it is settled law that the promotees who are appointed in excess of the quota cannot get the entire length of service.

Therefore, they are required to be fitted into seniority according to the rules. As to what is the date on which the promotees or the direct recruits

came to be appointed into the respective quota is a matter of record and the seniority is required to be determined according to the law laid down

by this Court. In several judgments of this Court, it is now firmly settled that merely because of the fact that State Government could not make

direct recruitment due to its inaction, it cannot be said that the rule of quota has been broken down. Therefore, as and when the direct recruitment

has been made, the direct recruits are entitled to placement of their seniority into the vacancies reserved for them as per the ratio and the seniority

determined as per the rules within the respective quota. Similarly, when the promotees came to be promoted in accordance with the rules in excess

of their quota, this Court

31 stated in Keshav Chandra Joshi and others etc. Vs. Union of India and others,

through a Bench of three Hon''ble Judges, that the promotees in excess of the quota cannot be given seniority from the respective dates of their promotions.

They have to be considered only from the respective dates on which their respective quota is available. The same decision was followed and

reiterated in A.N. Sehgal and others Vs. Raje Ram Sheoram and others, . Under these circumstances, we do not think that the judgment of this

Court is vitiated by any error of law for reconsideration. Even Rule 4, second proviso has no application to the facts in this case. Rule 4

contemplates the seniority and second proviso postulates that when the recruitment could not be made, they have to certify the ground on which it

could not be made and thereafter the seniority has to be determined. In view of the law now laid down, the certification of the non-making of direct

recruitment according to rules, bears no relevance. The question of carry forward in this case, as laid down in Mandal case, has no application for

the reason that the recruitment in proportion is one the methods of recruitment and is required to be made. The balance posts are required to be

recruited by subsequent publication and the promotees have no right to get into the post reserved for the direct recruits. Mandal's case concerns

carry forward posts reserved under Article 16(4) for Scheduled Castes, Scheduled Tribes and Other Backward Classes which has nothing to do

in this case. Though some of the grounds will be available to argue the case on merits, that is no ground to reopen the settled law laid by this Court

in earlier decision.

[Emphasis supplied]

37. Relying on the above judgment, the learned senior counsel would submit that in the cases on hand also since the ratio of 1: 1 as provided in the

service regulations was not adhered to by the Board, the direct recruits who were appointed during the years 2000 and 2001 should be treated to

have been appointed on ad hoc basis and they should be further treated to have been appointed in cadre service only in the year 2002. This

argument may prima facie appear to be attractive if one takes into consideration the misfortune of these internal selectees. But there is no substance

in the said argument. A close reading of the above passage of the judgment of the Hon''ble Supreme Court would make it undoubtedly clear that

there are two factors which were considered by the Hon''ble Supreme Court. The first one was that the quota rule had broken down due to the inaction of the Government and secondly, there were excess appointments made thereby encroaching upon the quota earmarked for the other category. In those circumstances, the Hon''ble Supreme Court has held that those candidates who were appointed in excess thereby encroaching upon the quota of the other category should be treated to have been appointed on ad hoc basis and in the same process, the candidates in the other category who were actually appointed at a latter point of time should be given retrospective seniority from the date on which the ad hoc appointments were so made and thus, the seniority should be assured. But, in my considered opinion , this equalization method which was propounded and adopted by the Hon''ble Supreme Court following the earlier judgments has got no application to the facts of the present case.

First of all, the quota rule broke down not because of any inaction on the part of the Board but because of various other reasons for which the Board cannot be blamed at all. Despite several efforts taken to fill up the quota for the in-service candidates, the Board could not make any progress till 2002 because of various court orders. Thus, the quota rule broke down. But, it was not because of the Board.

38. The Hon''ble Supreme Court in the above case has further proceeded to say that ""the question of carry forward in that case, as laid down in Mandal's case, has no application for the reason that the recruitment in proportion is one the methods of recruitment and is required to be made.

The balance posts are required to be recruited by subsequent publication and the promotees have no right to get into the post reserved for the direct recruits. In the cases on hand also, since the rule of quota is one of the methods of appointment, the fact that there is no provision for carry forward is immaterial.

39. The second factor which weighed in the mind of the Hon''ble Supreme court was that the quota earmarked for in-service candidates was exceeded thereby making appointment encroaching upon the quota earmarked for the direct recruits. But, in the instant cases, the number of posts earmarked in the ratio of 1: 1, as it was in the year 2000, was not at all filled up till 2002 by making any direct recruitment. All the 300 direct

recruits were appointed as against the quota earmarked only for that category. Thus, the quota earmarked for direct recruitment was not at all

exceeded. In view of the fact that both the conditions are not satisfied, the question of equalization as propounded by the Hon''ble Supreme Court

in the above judgment cannot be made applicable to the facts of the present case at all.

40. At this juncture, I may refer to the judgment of the Hon''ble Supreme court in Radha Mohan Malakar and Others Vs. Usha Ranjan

Bhattacharjee and Others, upon which the learned Additional Advocate General has made much reliance wherein while dealing with the identical

issue, the Hon''ble Supreme Court in paragraphs 23 and 24 has held as follows:

23. In our opinion the principle of the decision in AIR 1977 251 (SC) can be illustrated by taking a hypothetical example. Suppose in a particular

service 50% of the vacancies are to be filled in by promotion and 50% by direct recruitment, and suppose there is a rule that the inter se seniority

of direct recruits and promotees is to be fixed according to the rotation of vacancies between direct recruits and promotees in the manner that the

first post will go to a promotee, the second to a direct recruit, the third to a promotee, the fourth to a direct recruit, and so on. Even here the

ordinary rule that seniority will depend on the length of the continuous officiating service has to be followed unless the quota of direct recruits or of

the promotees has been exceeded. It is only if the said quota is exceeded that the appointees have to be pushed down in the seniority, otherwise

seniority has to be taken from the date of continuous officiating service.

24. In the present case it is admitted that the quota of direct recruits has not been exceeded. Hence, in our opinion, the seniority of direct recruits

(the appellant) has to be taken from the date of their initial appointment and they cannot be pushed down in seniority. The promotees (the

respondents herein) were appointed to the Grade II of TCS after the appointments of the direct recruits (the appellants). Hence the former have to

be treated as junior to the latter. The earlier Division Bench decision of the High Court dated 29.7.1992 has to be understood in the light of the

decision of this Court in N.K. Chauhan's case.

41. In the cases on hand also, as per the proviso to Regulation 97 , the inter se seniority in a particular calendar year will be fixed in the cyclic

order in the ratio of 1: 1 - viz., the first vacancy will go to internal selection and the second will go to direct recruitment and so on. Thus, the

process will so go on as per the roster. As held by the Hon'ble Supreme Court in the above judgment, if only the quota of direct recruits has in

any manner exceeded, their seniority will be pushed down and the service candidates' seniority will be pushed up as per the equalization method.

But, in the instant cases, as rightly pointed out by the learned Additional Advocate General, the quota for the direct recruits has not exceeded and

as I have been repeatedly narrating, the vacancies earmarked for direct recruits as per 1: 1 ratio alone was filled up and there was no

encroachment upon the vacancies earmarked for the in-service candidates.

42. Reliance is also made on the judgment of the Hon'ble Supreme Court in D. Ganesh Rao Patnaik and Others Vs. State of Jharkhand and

Others, to contend that the appointment of the direct recruits in the years 2000 and 2001 should be directed as only ad hoc postings and they

should have been treated to have been appointed on regular basis only in the year 2002. For this proposition, the learned Counsel would rely upon

para 22 of the said judgment wherein the Hon'ble Supreme Court has held thus:

22. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously can

note that if an appointment is made accidentally, because of a particular emergent situation, such appointment obviously would not continue for a

reasonably long period. In Black's Law Dictionary the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly

unfortunate". It thus indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. In Oxford Dictionary the

meaning given to the word "fortuitous" is, happening by accident or chance rather than design. In our opinion it will not be proper to hold that the

promotion of the contesting respondents was fortuitous as contended by the learned Counsel for the appellants. It cannot be said that the

contesting respondents were promoted by accident or by chance. Their promotion order was passed as there were vacancies to the posts of

Additional District and Sessions Judges, though in the quota of direct recruits, but as no recruitment from the said channel had been made for a

long time and sufficient number of candidates were not available, the vacancies

were filled in by giving promotion to members of the Bihar Civil Service (Judicial Branch). If promotion orders had not been passed and the posts had not been filled in , the judicial work in the districts would have suffered. However, it is clear that having regard to the various orders passed on the judicial side by the Patna High Court and the legal position being well settled that the temporary posts have also to be counted for determining the one-third quota of direct recruits, the promotion given to the contesting respondents was not in accordance with law. Instead of taking the harsh step of rescinding their order of promotion the Patna High Court, on the administrative side, took the decision to treat them promoted against the subsequent quota of promotees. Therefore, the contesting respondents can under no circumstances claim seniority over the appellants and the view to the contrary taken by the Jharkhand High Court on 29.08.2003, which is the subject-matter of challenge in the present appeal, is wholly erroneous in law.

But the proposition stated in the said judgment has got no application to the facts of the present cases for the simple reason that in the cases on hand, direct recruitments were not made by chance or by accident or by any illegal mode or as a stop gap arrangement outside the scope of the service regulations. As I have already stated , they were all appointed by conducting a regular process of selection . Therefore, their appointment cannot be treated as ad hoc appointment at all for the purpose of fixing their seniority.

43. The learned senior counsel Mr. V. Prakash would make a faint attempt to say that the Board has violated the service regulation which prescribes 1: 1 ratio among the direct recruits and internal selectees and having done so, the Board should not now claim that the roster has broken down on its own and, therefore, the petitioners cannot be given the benefit of seniority. In other words, according to him, the Board only made the rule of quota to break down and it cannot say that because there is no rule of carry forward, the board would not give retrospective promotion. The learned senior counsel would further submit that at least by exercising the equity jurisdiction of this Court, the grievance of these service candidates should be addressed, otherwise, they may not have the chance of getting promotion at all in view of the fact that these 300

direct recruits are all far young in age. In this regard, the learned senior counsel would rely on the judgment of the Hon"ble Supreme Court in The

State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, wherein the Hon"ble Supreme Court in para 56 has held as follows:

56. The wise and tonic words of our learned brother, if we may say so with great deference, are however portentous. While striking a balance

between the long hunger for equal chance of the lowlier and the disturbing concern of the community for higher standards of performance, the State

should not jettison the germinal principle of equality altogether. The dilemma of democracy is as to how to avoid validating the abolition of the

difference between the good and the bad in the name of equality and putting to sleep the constitutional command for expanding the areas of equal

treatment for the weaker ones with the dope of "special qualifications" measured by expensive and exotic degrees. These are perhaps meta-

judicial matters left to the other branches of Government, but the Court must hold the Executive within the loading strings of egalitarian

constitutionalism and correct, by judicial review, episodes of subtle and shady classification grossly violative of equal justice. That is the heart of the

matter. That is the note that rings through the first three fundamental rights the people have given to themselves.

44. Though this argument deserves to be sympathetically considered, I regret that I am unable to give any relief to the petitioners. In the instant

cases, the delay in appointment of the in service candidates was not caused by Board. Initially, as I have already narrated, it was because of some

of the in-service candidates, who challenged the examination system of course with genuine grievance. Later on, direct recruits also contributed for

the delay by filing the subsequent writ petitions. Thus, virtually the process of selection of service candidates was stalled and the Board could do

nothing to avoid the delay. It is really unfortunate. But on that score, this Court cannot direct the Board to rearrange the seniority by adopting the

equalization method as propounded by the Hon"ble Supreme Court in the above judgment, because doing the same under the pretext of exercising

the equity jurisdiction in favour of the petitioners will result in injustice to the direct recruits. Therefore, this Court is unable to exercise its equity

jurisdiction in favour of the petitioners.

45. At this juncture, I may refer to the judgment of the Hon''ble Supreme Court in Uttranchal Forest Rangers'' Association [Direct Recruit] and

Ors. v. State of U.P. And Ors. (2006) 10 SCC 346 wherein the Hon''ble Supreme Court in para 37 and 40 has held as follows:

37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in

the cadre so as to be adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in the case of Keshav Chandra

Joshi and others etc. Vs. Union of India and others, held that when promotion is outside the quota, seniority would be reckoned from the date of

the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy

within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to

do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one, it must be strictly

implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result

of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise

would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution.

....

40. The High Court, in the impugned judgment dated 26.11.2001 has proceeded on the basis that vacancies arose in 1987-88 and, therefore,

should be given retrospective effect. The said submission, in our opinion, has no force and import. In our view, the date on which vacancies arose

cannot without more be made a basis of giving retrospective promotion and seniority. In Jagdish Ch. Patnaik and Others Vs. State of Orissa and

Others, , this Court observed:

32. The next question for consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the

seniority irrespective of the fact when the persons are recruited? Mr. Banerjee''s contention on this score is that since the appellant was recruited to

the cadre of Assistant Engineer in respect of the vacancies that arose in the year

1978 though in fact the letter of appointment was issued only in March 1980, he should be treated to be a recruit of the year 1978 and as such would be senior to the promotees of the years 1979 and 1980 and would be junior to the promotees of the year 1978. According to the learned Counsel since the process of recruitment takes a fairly long period as the Public Service Commission invites application, interviews and finally selects them whereupon the Government takes the final decision, it would be illogical to ignore the year in which the vacancy arose and against which the recruitment has been made. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the Court to include something which is not there in the Rules of Seniority under Rule 26. Under Rule 26 the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into for determination of the inter se seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something which is not there in Rule 26 and thereby legislate a new Rule of Seniority. We are, therefore, not in a position to agree with the submission of Mr. Banerjee, the learned senior counsel appearing for the appellants on this score.

46. A close reading of the above judgment would make it clear that it is settled proposition of law that no retrospective promotion or seniority can be granted from any date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the mean time. In the said judgment, the Hon"ble Supreme Court has again reaffirmed the view taken in Keshav Chandra Joshi's case cited supra. In the instant cases, as I have been repeatedly saying the appointment of the direct recruits cannot be termed as irregular or illegal. Therefore, their seniority cannot be pushed down to the year 2002 so as to fix the inter se seniority with the in-service candidates and similarly, the seniority of the service candidates also cannot be retrospectively fixed from the year 2000.

47. The learned senior counsel Mr. R. Thiyagarajan appearing for the Association of the Graduate Engineers would submit that under Order II,

Rule 2 of the CPC by applying the principles of constructive resjudicata, the petitioners are not entitled to question the seniority list. According to him, the judgments of this Court in earlier writ petitions would operate as constructive resjudicata in respect of the issues involved in these writ petitions. I do not want to go into the said question in view of the conclusion which I have arrived at earlier since any such discussion on this issue will only be academic.

48. The learned senior counsel Mr. R. Thiyagarajan would further rely on the board proceeding in B.P. Ms. (FB) No. 65 (Administrative Branch) dated 12.08.1985 wherein in Clause 4 , the term ""calendar year"" has been defined as follows:

For the purpose of deciding the calendar year in respect of directly recruited Assistant Engineers and internally selected Assistant Engineers, the date of approval of the list by the competent authority will be the criterion.

49. Relying on the same, the learned senior counsel would submit that in respect of the direct recruits, the select list was approved by the competent authority in the year 2000 and 2001 respectively and therefore, their seniority should be fixed only by taking 2000 and 2001 retrospectively as the relevant calendar years. Similarly, according to him, the list of promotion given to the in-service candidates was approved in the year 2002 and, therefore, their seniority should be fixed on the basis of the calendar year 2002. This argument, with which I fully agree, will again fortify the conclusions, which I have already arrived at.

50. During the course of argument, the learned Counsel on either side referred to number of Board Proceedings in respect of the service conditions of the employees of the Board. I am unable to appreciate the action of the Board in issuing various Board proceedings unmindful of want of jurisdiction and power on the Board to issue such proceedings. As I have stated in the beginning of the judgment, the Tamil Nadu Electricity Board Service Regulations has been issued in exercise of the power conferred on the Board u/s 79 of the Electricity (Supply) Act, 1948 which states that the Board may, by notification in the Office Gazette , make regulations not inconsistent with the Act and the rules made thereunder in respect of any of the matters to provide for all or any of the matters enumerated therein. If the Board wants to vary any of the provisions of the Regulations it

can do so by bringing in amendment in accordance with the Regulation 79 of the Service Regulations. But, without doing the same, the Board has

issued several proceedings which includes one of the proceedings under which examination for the internal selection was introduced in the year

2000. The said Board proceeding prescribing the examination for the service candidates is not sustainable at all. It is only the said act of the Board,

which is the root cause for all these problems which are today faced by the Assistant Engineers and the Board in the matter of fixing the inter se

seniority. The Board should be a model employer and the same should take care of its employees without showing any discrimination among them,

be it direct recruits or rank promotees. I regret to state, but for the initial illegal action of the Board in prescribing examination for internal selection

in gross violation of the service regulations, appointments under both the sources, namely, direct recruitment and internal selection would have been

made very smoothly in the year 2000 itself and in such case, all these problems would not have emerged at all. Therefore, for all these anomalies

which have virtually resulted in class war between the direct recruits and the service candidates, it is only the Board which is to be blamed.

51. In view of the foregoing discussions, except expressing sympathy for these petitioners who have been deprived of their seniority because of

number of litigations, I am unable to grant any relief to the petitioners in these writ petitions in view of the settled legal position which I have dealt

with elaborately in the preceding paragraphs.

52. Writ Petition Nos. 294, 22133, 22982, 23215, 26418, 26728 of 2009 have been filed challenging the promotions given to the direct recruits

during the pendency of the other writ petitions. In view of the fact that the fixation of seniority has been found correct, the promotions given to the

direct recruits cannot be found fault with.

53. In the result, all the writ petitions fail and the same are accordingly dismissed. No costs. Consequently connected MPs are closed.