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P. Udayakumar and ors. Vs. the Tamil Nadu Electricity Board Represented by Its Chairman,

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Court : Chennai

Decided On : Sep-10-2007

Reported in : (2007)6MLJ694

Judge : V. Dhanapalan, J.

Acts : General Rules - Rules 2(1) and 39; [Constitution of India](#) - Article 16

Appeal No. : W.P. No. 21048 of 2005

Appellant : P. Udayakumar and ors.

**Respondent : The Tamil Nadu Electricity Board Represented by Its Chairman,
;The Chief Engineer (Personnel), Tamil**

Advocate for Def. : M. Vaidyanathan, Standing Counsel

Advocate for Pet/Ap. : R. Gandhi, Sr. Counsel for ;R.G. Narendhiran and ;R. Kamalarani, Advs.

Disposition : Petition allowed

Judgement :

ORDER

V. Dhanapalan, J.

1. The petitioners who are Technical Assistants-Mechanical in Mettur Thermal Power Station, Mettur Dam, Salem District, have filed this writ petition seeking issuance of a writ of certiorarified mandamus calling for the records relating to the Memo of the third respondent in his Memo No. 008029/45/G55/G552/2005-2 dated 27.03.2005 and quash the same and to consequently direct the respondents to consider and select them as Junior Engineer-Mechanical (Grade II) by internal selection in accordance with the Tamil Nadu Electricity Board Service Regulations as amended in B.P. Ms.(FB) No. 47, Secretariat Branch dated 12.06.1987.

2. The petitioners' case, in brief, as culled out from their affidavit, is as under:

The petitioners who are diploma holders in Mechanical Engineering, were appointed as Technical Assistants in the respondent Board on compassionate ground on 06.01.2000. Pursuant to calling of applications by the second respondent for internal selection to the post of Junior Engineer-Mechanical (Grade II) by Memo dated 03.10.2002, the petitioners' names were sponsored by the Superintending Engineer to the second respondent for the purpose of internal selection. In the said Memo of the second respondent calling for applications, the requirement was stated to be a Diploma in Mechanical Engineering and practical experience in Mechanical side for a period of not less than two years in the Board or three years elsewhere. Though all the petitioners have the prescribed qualification and experience for internal selection, their names were not included in the selection order of Junior Engineers-Mechanical (Grade II) published on 03.07.2003 by the second respondent and except three employees, the names of those who were not satisfying the requirement were included in the selection order dated 03.07.2003. This order was challenged in W.P. No. 18940 of 2003 insofar as it related to 68 persons who were selected by taking into consideration their service in the cadre of Helper/Wireman contrary to the service regulations. Subsequently, the petitioners withdrew the writ petition on the basis of assurance of the second respondent that they would be given promotion on their withdrawing the writ petition. The petitioners also gave as many as three representations to the respondents 1 and 2 followed by a legal notice. Since they were not promoted

despite the assurance of the second respondent, they filed W.P. No. 5831 of 2005 seeking a writ of mandamus to direct the second respondent to consider their representations and the legal notice and to promote them by internal selection and this Court directed the second respondent to dispose of the petitioners' representations in accordance with law and on merits within six weeks from the date of receipt of a copy of the order. Pursuant to this Court's directions, the third respondent, by order dated 27.03.2005, rejected the request of the petitioners and this order is challenged in this writ petition.

3. Heard Mr. R. Gandhi, learned Senior Counsel appearing for the petitioners and Mr. M. Vaidyanathan, learned Counsel for the respondents.

4. The learned Senior Counsel for the petitioners has contended that the petitioners have never claimed promotion based on the order dated 09.06.1986 as wrongly observed by the third respondent in para 5 of the impugned order and their claim is based on the respondents' Service Regulations which were amended in B.P. Ms.(FB) No. 47, Secretariat Branch dated 12.06.1987 in and by which it was stated that the amendments shall be deemed to have come into force on 29.11.1975. He has pointed out that the third respondent has erroneously stated in para 5 of the impugned order that there is no post of Mechanical Estimator in the Board without considering the fact that the Board, by its B.P. Ms.(Ch.) No. 31, has re-designated the post of Estimator as Technical Assistant - I Grade.

5. While pointing out that the method of appointment to the post of Junior Engineer-Mechanical (Grade II) stated by the third respondent in para 6 of the impugned order is not in force as on date, the learned Senior Counsel appearing for the petitioners has contended that since the Board's Service Regulations have been amended by Board Proceedings No. 47 dated 12.06.1987 which has come into force with effect from 29.11.1975, the reliance made on Memo dated 29.09.1977 which states that the service rendered in the lower post for which the diploma is a pre-requisite or not, may be taken into account for the purpose of appointment to the post of Junior Engineer-II Grade, cannot hold good. On this aspect, he has further contended that the Memo dated 09.06.1986 was cancelled in Memo dated 03.12.1986 pending decision on the method of appointment to the

post of Junior Engineer-Grade II and since a decision to this effect has been taken in B.P. Ms. No. 47 dated 12.06.1987 giving effect from 29.11.1975, B.P. Ms. No. 47 alone will prevail over the Memo dated 29.07.1977 which is not in force as on date.

6. In support of his contention that the respondents have erred in promoting some persons taking into account their service rendered in the category of Helper/Wireman contrary to B.P Ms. (FB) No. 47, the learned Senior Counsel has placed strong reliance on a judgment of the Supreme Court in its decision reported in : AIR 2006 SC2662 in the case of K. Madalaimuthu and Anr. v. State of Tamil Nadu and Ors. and the relevant paragraph reads as under:

24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants. The decisions cited by Mr Rao have been rendered in the context of Rule 10(a)(i)(1) and the other relevant rules which are also applicable to the facts of the instant case. Apart from the above, the law is well settled that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2(1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39(c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularised. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre.

7. Per contra and at the foremost, the learned Counsel for the respondent Board has contended that since the Memo dated 09.06.1986 stands cancelled by Memo dated 03.12.1986, the reliance by the Board on the Memo dated 29.09.2007 which prescribes that even the service rendered in the lower post for which diploma is a

pre-requisite or not, may be considered for promotion to the post of Junior Engineer-Grade II, is perfectly in order. It is also his contention that 72 employees who joined in Board's service on or before 01.05.1999 were selected to the post of Junior Engineer-Mechanical (Grade II) by internal selection with reference to their entry into the Board's service or year of passing of Diploma whichever is later and this is also in accordance with the Memo dated 29.09.2007 and the petitioners who have joined on or after January 2000 as Technical Assistants-Mechanical have not reached the zone of consideration for selection and as such, their names have not been considered for promotion.

8. The learned Counsel for the respondents has further contended that pursuant to this Court's direction in W.P. No. 5831 of 2005 to Board to dispose of the petitioners' representations within six weeks, the Board has examined the representations dated 16.04.2004 and 30.08.2004 in detail and has passed the order under challenge which is in no way infirmed in view of the aforesaid reasons and the employees selected to the post of Junior Engineer-Mechanical (Grade II) by internal selection have already joined the said post. Lastly, he has also brought to the notice of this Court that challenging the dismissal of W.P.M.P. No. 2949 of 2005 in this writ petition, the petitioners had preferred Writ Appeal in W.A. No. 1525 of 2005 and the same has been dismissed by the First Bench of this Court holding that the learned Single Judge has only observed that by an interim order, the final relief of promotion cannot be granted and as such, there is no infirmity in the said order of the learned Single Judge.

9. I have given careful consideration to the arguments made by the learned Counsel on either side.

10. The main point for consideration in this petition is whether the respondent Board is correct in relying on Memo dated 29.07.2007 which says that the service rendered in the lower post for which the diploma is a pre-requisite or not, may be taken into account for the purpose of appointment to the post of Junior Engineer-Grade II, to come to the conclusion that the petitioners have not reached the zone of consideration for promotion to the post of Junior Engineer-Mechanical (Grade II).

11. In regard to the above, it may be useful to refer to B.P. Ms. (FB) No. 47 dated 12.06.1987 which has admittedly come into force on 29.11.1975 and the relevant portion of the same reads as under:

In Regulation 87, after Sub-regulation (10), the following sub-regulation shall be inserted, namely -

10-A. A candidate is said to be recruited by internal selection to a post if at the time of his selection for appointment thereto he is in the service of the Board. Appointment by internal selection shall be deemed to be direct recruitment for all purposes including for reservation of appointment with reference to Regulation 89(b).

For the entries in Column (2) against category 7-Junior Engineer (Mechanical) II Grade, the following entries shall be substituted, namely,-

Appointment by internal selection of Mechanical Estimator or equivalent categories in Regular Work Establishment and Draughtsmen II Grade and Draughtsmen III Grade.

Note: For the purpose of appointment by internal selection, the selection shall be made on the basis of services rendered in the categories mentioned above with diploma qualification.

12. From a reading of B.P. Ms.(FB) No. 47 referred to above, it can be concluded that what holds good as on date is only the said Board Proceedings which is put into effect from 29.11.1975 and as such, the reliance by the respondent Board on the Memo dated 29.09.2007 does not have legs to stand. Further, in the B.P. Ms. No. (FB) No. 47, it has been clearly stated that the internal selection shall be made only on the basis of service rendered in the categories of Mechanical Estimator or equivalent categories in Regular Work Establishment and Draughtsmen II Grade and Draughtsmen III Grade with diploma qualification. In such a view of the matter, the stand taken by the third respondent in the impugned order based on Board's Memo dated 29.09.2007 cannot be sustained.

13. Further, it is also stated in paragraph 5 of the impugned order that there is no post of Mechanical Estimator in the respondent Board and the method of appointment to the post of Junior Engineer/Mechanical II Grade is by internal selection and not by promotion based on seniority of Technical Assistant/Mechanical. In this regard, the learned Senior Counsel appearing for the petitioners has brought to the notice of this Court that the post of Mechanical Estimator has been re-designated as Technical Assistant I Grade vide B.P. Ms.(Ch.) No. 31 dated 12.01.1988 and that the third respondent has not taken the said Board Proceedings into consideration. There is certainly a force in the argument of the learned Senior Counsel for the petitioners as this kind of arbitrary exercise by the third respondent has resulted in non-consideration of the petitioners' claim for promotion on account of which they have been deprived of their due promotion and this act of the third respondent is in violation of the equality of opportunities in the matter of employment and promotion as provided under Article 16 of the [Constitution of India](#).

14. It is also seen that as per the Service Regulations of the Tamil Nadu Electricity Board, one must possess a Diploma in Mechanical Engineering and should have practical experience in the Mechanical side for a period of not less than two years in the Board or three years elsewhere, after acquiring Diploma in Mechanical Engineering. The persons selected in the proceedings dated 03.07.2003 have passed D.M.E. before their appointment as Helper/Wireman, etc. in the Board and further, they have not got any practical experience in the Mechanical side as required by the Service Regulations and they were selected as Technical Assistants internally only after 30.04.2002 which means their service of six months in the Board is less than the service of the petitioners in the cadre of Technical Assistants. Hence, the non-consideration of the petitioners' case for promotion to the post of Junior Engineer-Mechanical (Grade-II) while considering the case of others who have got lesser experience than the petitioners as Technical Assistants appears to be arbitrary. In this regard, the judgment of the Supreme Court relied on by the learned Senior Counsel for the petitioners, adds strength to his arguments. Thus, looked at from any angle, the decision of the third respondent in not considering the petitioners' case is against the Board's Service Regulations amended in B.P. Ms.(FB) No. 47 dated 12.06.1987 which amendment

shall be deemed to have come into force on 29.11.1975. Thus, I am of the considered view that the third respondent has not properly taken note of the Board's Service Regulations while considering the case of the petitioners and in fact, has misinterpreted the same against the petitioners. As such, the impugned order dated 27.03.2005 suffers from infirmities such as non-application of mind and arbitrariness and accordingly, it is set aside and the respondents are directed to consider the case of the petitioners and select them as Junior Engineers - Mechanical (Grade II) by internal selection bearing in mind, B.P. Ms. (FB) No. 31 in and by which the post of Estimator has been re-designated as Technical Assistant-Grade I which is the basic cadre for consideration for promotion to the post of Junior Engineer-Mechanical (Grade II), within a period of twelve weeks from the date of receipt of a copy of this order.

In fine, the writ petition stands allowed without any order as to costs.

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