

In the High Court of Judicature at Madras

Dated: 22.06.2015

Coram:

The Honourable Mr.Justice **V.Ramasubramanian**
and
The Honourable Mr.Justice **T.Mathivanan**

W.A.Nos.1571, 1572, 1573, 1574, 1575 of 2012, 1641 of 2013,
1213, 1048 to 1052 of 2014 & connected M.Ps.

The Secretary, Tamil Nadu Electricity Board, 144, Anna Salai, Chennai-2. ..	Appellant-1 in WA Nos.1571/12, Appellant-2 in WA Nos.1574, 1575/12 R4 in WA Nos.1049, 1050/14 & R41 in WA No.1052/14
The Chief Engineer (Personnel) Tamil Nadu Electricity Boards 144, Anna Salai, Chennai-2. ..	Appellant-2 in WA Nos.1571, 1572, 1573/12, Appellant-3 in WA No.1574, 1575/12, R2 in WA No.1641/13, R3 in WA Nos.1213, 1048/14, R5 in WA Nos. 1049, 1050/14, R3 in WA No.1051/14 & R42 in WA No.1052/14
The Chairman, Tamil Nadu Electricity Board, 144, Anna Salai, Chennai-2. ..	Appellant-1 in WA Nos.1572, 1573, 1574, 1575/12, R1 in WA No.1641/13, R2 in WA Nos.1213, 1048/14, R3 in WA Nos.1049, 1050/14, R2 in WA No. 1051/14
TNEB Engineers Sangam rep. by its General Secretary. ..	Appellant-3 in W.A.Nos.1572/12, Appellant in WA No.1231/14, R4 in WA No.1048/14
R.Haridoss ..	Appellant in W.A.No.1641/13
Tamil Nadu Power Engineer's Origination rep. by its General Secretary Sridhar. ..	Appellant in WA Nos.1048 to 1052/14

Vs.

1.D.Ravichandran
2.G.Sivaraj
3.R.Arumugam
4.V.K.Balakrishnan
5.R.Muthusamy
6.M.Maruthiah

- 7.K.Muthu
- 8.V.Marimuthu
- 9.S.Ramalingam
- 10.A.K.Prabakar
- 11.T.Madhusoothanan
- 12.S.Manickam
- 13.S.Gunanayagam
- 14.P.Inbasekaran
- 15.A.Chandrasekaran
- 16.R.Selvam
- 17.K.Veeraperumal
- 18.R.Sornappa
- 19.K.N.Govindaraman
- 20.V.Sankar
- 21.K.Tamilvanan
- 22.I.Rajendran
- 23.A.Manoharan
- 24.R.Arunkumar
- 25.P.Mahalingam
- 26.M.Karuppusamy
- 27.M.Baskaran
- 28.K.Babu
- 29.Dr.Radhakrishnan
- 30.V.Nagarajan
- 31.A.Velumayil
- 32.R.Ravichandra Gowthaman
- 33.V.S.Cholan
- 34.R.Thayumanavan
- 35.T.Nagarajan
- 36.Mubarrack Ali
- 37.C.Rajendran
- 38.T.Pushparaj
- 39.A.Sriram
- 40.S.Shakthivel
- 41.K.Aranganathan
- 42.S.Sujatha
- 43.V.Saritha
- 44.V.Panchamoorthy
- 45.R.Palanivel
- 46.K.Ganesan

- 47.Tamil Nadu Electricity Board Engineers' Union
rep. by its General Secretary R.Govindharajan

- 48.Tamil Nadu Electricity Board Engineers Forum
rep. by its General Secretary.

- 49.C.Muruganandam

50.G.Vinothkumar
51.R.Arivalagan
52.S.Karthik

.. Respondents in WA No.1571/12

(RR 41 to 47 and RR 48 to 52 impleaded vide orders dated 8.1.2015 made in M.P.Nos.1 and 2/2014 respectively)

1.Tamil Nadu Electricity Workers Federation
rep. by its President K.Jayachandran.

2.K.Aranganathan
3.S.Sujatha
4.V.Saritha
5.V.Panchamoorthy
6.R.Palanivel
7.K.Ganesan

8.Tamil Nadu Electricity Board Engineers' Union
rep. by its General Secretary
R.Govindarajan

.. Respondents in WA No.1572/12

(RR 2 to 8 impleaded vide order dated 8.1.2015 made in M.P.No.1/2014)

1.V.Janarthanam
2.K.Aranganathan
3.S.Sujatha
4.V.Saritha
5.V.Panchamoorthy
6.R.Palanivel
7.K.Ganesan

8.Tamil Nadu Electricity Board Engineers' Union
rep. by its General Secretary
R.Govindarajan

.. Respondents in WA No.1573/12

(RR 2 to 8 impleaded vide order dated 8.1.2015 made in M.P.No.3/2014)

1.K.Vijayalakshmi
2.N.Manimaran
3.K.Aranganathan
4.S.Sujatha
5.V.Saritha
6.V.Panchamoorthy
7.R.Palanivel
8.K.Ganesan

9.Tamil Nadu Electricity Board Engineers' Union

rep. by its General Secretary
R.Govindarajan

.. Respondents in WA No.1574/12

(RR 3 to 9 impleaded vide order dated
8.1.2015 made in M.P.1/2014)

1.Y.G.Raghuraman
2.S.Santhakumar
3.K.Aranganathan
4.S.Sujatha
5.V.Saritha
6.V.Panchamoorthy
7.R.Palanivel
8.K.Ganesan

9.Tamil Nadu Electricity Board
Engineers' Union rep. by its
General Secretary R.Govindarajan

.. Respondents in WA No.1575/12

(RR 3 to 9 impleaded vide order dated
8.1.2015 made in M.P.1/2014)

V.Janarthanam

.. Respondent-3 in WA No.1641/13

Tamil Nadu Electrical Workers
Federation rep. by its President
K.Jayachandran.

.. R1 in WA Nos.1213, 1048/14

K.Vijayalakshmi
N.Manimaran

.. RR 1 & 2 in W.A.No.1049/14

Y.G.Raghuraman
S.Santhakumar

.. RR 1 & 2 in WA No.1050/14

V.Janarthanam

.. R1 in WA No.1051/14

1.D.Ravichandran
2.G.Sivaraj
3.A.Arumugam
4.V.K.Balakrishnan
5.R.Muthusamy
6.M.Maruthiah
7.K.Muthu
8.V.Marimuthu
9.S.Ramalingam
10.A.K.Prabakar
11.T.Madhusoothanan
12.S.Manickam

- 13.S.Gunanayagam
- 14.P.Inbasekaran
- 15.A.Chandrasekaran
- 16.R.Selvam
- 17.K.Veeraperumal
- 18.R.Sornappa
- 19.K.N.Govindaraman
- 20.V.Sankar
- 21.K.Tamilvanan
- 22.I.Rajendran
- 23.A.Manoharan
- 24.R.Arunkumar
- 25.P.Mahalingam
- 26.M.Karuppusamy
- 27.M.Baskaran
- 28.K.Babu
- 29.D.Radhakrishnan
- 30.V.Nagarajan
- 31.A.Velumayil
- 32.R.Ravichandra Gowthaman
- 33.V.S.Cholan
- 34.R.Thayumanavan
- 35.T.Nagarajan
- 36.Mubarrack Ali
- 37.C.Rajendran
- 38.T.Pushparaj
- 39.A.Sriram
- 40.S.Shakthivel

.. RR 1 to 40 in WA No.1052/14

Writ Appeals filed under Clause 15 of the Letters Patent to set aside a common order dated 16.12.2010 in W.P.Nos.28486 of 2003, 43061 of 2002, 4471 of 2005, 39659 of 2004 and 39660 of 2004 passed by a learned single Judge.

For Appellants .. **Mr.P.H.Arvinth Pandian,**
Additional Advocate General for
Ms.R.Varalakshmi, Standing Counsel.

For Respondents .. **Mr.R.Yashod Vardhan Sr.Counsel**
 Mr.Ramachandran
 Mr.Balan Haridas
 Ms.B.Nagasaila
 Mr.K.Srinivasa Murthy
 Mr.S.N.Ravichandran
 Mr.K.Rajkumar
 Mr.Ajay Khose

COMMON JUDGMENT
(Made by V.Ramasubramanian,J.)

These writ appeals are filed either by the Management of the Tamil Nadu Electricity Board or by the individual employees or by associations of employees, challenging a common order passed by a learned Judge in a batch of about five writ petitions, setting aside an amendment to the Tamil Nadu Electricity Board Service Regulations.

2. We have heard Mr.P.H.Arvinth Pandian, learned Additional Advocate General, assisted by Ms.R.Varalakshmi, learned Standing Counsel for the Electricity Board, Mr.R.Yasodh Vardhan, learned senior counsel for one appellant Union and Mr.R.Ramachandran, learned counsel appearing for another appellant. We have also heard Mr.Balan Haridas, Ms.D.Nagasaila, Mr.K.Srinivasa Murthy, Mr.S.N.Ravichandran, Mr.K.Rajkumar and Mr.Ajay Khose, learned counsel appearing for the respondents.

3. The Tamil Nadu Electricity Board, which got bifurcated into the Tamil Nadu Electricity Generation and Distribution Corporation and Tamil Nadu Transmission Corporation, had several categories of employees, both technical and non-technical, on its rolls. There was also an establishment known as Regular Works Establishment, in which there were different categories of posts. The holders of these posts were both Diploma holders as well as non-Diploma holders. Until 1987, the Diploma holders and non-Diploma holders in the Regular Works Establishment, irrespective of the posts they were holding, were promoted to the post of Junior Engineer (Electrical) Grade-II, in the ratio of 3:1.

4. But it appears that by a Board Proceeding bearing BPMS (FB) No.33 dated 4.4.1987, the Diploma holders were segregated, so as to constitute a separate state cadre. The non-Diploma holders were re-designated and they were made into a separate cadre.

5. Unfortunately, the aforesaid bifurcation of a single Regular Works Establishment into two different cadres was not done through an amendment to the Tamil Nadu Electricity Board Service Regulations. The bifurcation of the cadre was done by way of Board Proceedings and the said bifurcation was carried into effect through several subsequent administrative orders.

6. When the Chief Engineer (Personnel) issued a proceeding dated 12.11.2002, granting promotion to one set of persons as Junior Engineers and denying promotion to another set of persons, the Tamil Nadu Electrical Workers Federation filed a writ petition in W.P.No.43061 of 2002 challenging the same. The grievance of the Federation was that the Diploma holders in certain categories of posts, have been left out.

7. When the said writ petition was pending, the Tamil Nadu Electricity Board issued a fresh Board Proceeding in BP (FB) No.17 dated 5.7.2003, amending Tamil Nadu Electricity Board Service Regulations. This was done in exercise of the power conferred by Section 79(C) of the Electricity (Supply) Act, 1948.

8. It is relevant to point out here that in the writ petition W.P.No.43061 of 2002 filed by the Tamil Nadu Electrical Workers Federation, their claim was that promotions ought to have been granted as per BP(FB) No.33 dated 4.4.1987. But in the counter affidavit filed to the said writ petition, the

Electricity Board took a stand that the Service Regulations have been amended under BP No.17 dated 5.7.2003. Immediately thereafter, a group of about 40 persons who had originally joined the Electricity Board merely as ITI trained persons, but who acquired the qualification of a Diploma in Electrical and Electronics Engineering filed a writ petition in W.P.No.28486 of 2003, challenging the amendment to the Service Regulations issued in BP No.17 dated 5.7.2003.

9. Thereafter, four persons working as Foreman Grade-I came up with two independent writ petitions in W.P.Nos.39659 and 39660 of 2004, challenging the validity of the amendment to the Service Regulations.

10. Subsequently, yet another person who was originally appointed as Helper in the Board and who later acquired the qualification of a Diploma in Electrical and Electronics Engineering came up with the last of the writ petitions, namely W.P.No.4471 of 2005 challenging the amendment to the Service Regulations.

11. Therefore, all the five writ petitions namely W.P.Nos.43061 of 2002, 28486 of 2003, 39659 and 39660 of 2004 and 4471 of 2005 were taken up together. After noting the stand taken by the Electricity Board, all the five writ petitions were allowed by a learned Judge by a common order dated 16.12.2010, on the short ground that the discrimination made in the impugned amendment to the Service Regulations between those who entered into service with a Diploma in Engineering and those who acquired a Diploma after entering into service, was not a reasonable classification. In other words, the learned Judge held that the moment a person acquired the

qualification of Diploma in Engineering, he must be considered as equal to the person who entered into service with the qualification of Diploma. Not stopping at that, the learned Judge also went on to hold that all the employees working under various categories falling in the Regular Works Establishment were equal.

12. Therefore, aggrieved by the common order of the learned Judge setting aside the amendment to the Service Regulations, the Tamil Nadu Electricity Board has come up with five writ appeals namely W.A.Nos.1571, 1572, 1573, 1574 and 1575 of 2012. An association of Engineering Employees known as the Tamil Nadu Power Engineers Organization, has come up with five writ appeals in W.A.Nos.1048 to 1052 of 2014, challenging the common order passed by the learned Judge in all the five writ petitions. These appeals are filed as third-party appeals, as this association was not a party to the main writ petitions.

13. Similarly, another association of Engineers by name TNEB Engineers Sangam, which was third respondent in W.P.No.43061 of 2002, has come up with an appeal in W.A.No.1213 of 2014. One individual employee by name R.Haridoss, who was not a party to any of the five writ petitions, also filed an appeal in W.A.No.1641 of 2013 by way of a third-party appeal after taking leave.

14. Thus, there are 12 writ appeals on hand, challenging the common order passed by the learned Judge setting aside the amendment to the Service Regulations. After the filing of the writ appeals, a few associations of employees and few individuals have jumped into the fray and got impleaded

as respondents, either to support the case of the appellants or to support the case of the respondents. This is how the number of parties in the writ appeals have multiplied.

15. As we have indicated in the narration of facts, the Electricity Board amended the Service Regulations under BP No.17 dated 5.7.2003. The amendment was issued in exercise of the power conferred by Section 79(C) of the Electricity (Supply) Act, 1948. By the said amendment, the Electricity Board sought to do the following:-

(i) For promotion to the post of Junior Engineer, a ratio of 3:1 was stipulated between Diploma holders holding the posts of Technical Assistants (Electrical), Senior Draftsman and Draftsman on the one hand and the other categories of employees in the Regular Work Establishment.

(ii) One out of four vacancies in the post of Junior Engineer, reserved for Regular Work Establishment, has to be filled up from the holders of the posts of Foreman Grade-I, Line Inspector and equivalent categories, who satisfy certain criteria.

(iii) For appointment by promotion to the post of Junior Engineer Electrical Grade-II, a Diploma in any one of the branches of Engineering such as Electrical, Electrical and Electronics, Electronics and Communication, Instrumentation Technology or Computer Science and Engineering together with an experience of two years was necessary.

16. As we have pointed out earlier, the challenge of some of the associations of employees to the amendment was that the amendment did not give scope for persons who acquired a Diploma in Engineering after

gaining entry into service, to switch over to the categories that became eligible for promotion. It appears that persons employed in certain categories of posts in the Regular Work Establishment were required to become Technical Assistants upon acquiring a Diploma, before becoming eligible for promotion to the post of Junior Engineer Grade-II. This according to writ petitioners amounted to invidious discrimination.

17. The learned Judge upheld the objections of the writ petitioners on the short ground that there cannot be a discrimination between two sets of Diploma holders, merely on the ground that one had a Diploma even at the time of entry into service and another got a Diploma after entry into service.

18. Technically, the learned Judge was right to some extent in holding that a discrimination between Diploma holders and non-Diploma holders is permitted by law and that there cannot be a discrimination between two sets of persons with the same qualifications.

19. But, what has actually been lost sight of is the fact that the service rendered in a particular post, after acquiring a qualification, cannot be equated to the service rendered in a post before acquiring the qualifications. It is always permissible for the employer to give weightage to the service rendered by a person after acquiring the qualification. If discrimination is sought to be made on the basis of the fact that the service rendered by one with a qualification stands on a different footing than the service rendered by another before acquiring the qualification, such a classification has a nexus with the object sought to be achieved. Therefore, we are of the considered opinion that the classification sought to be made by the impugned

amendment, was a reasonable classification and that it would not offend Article 14 of the Constitution.

20. It appears that during the pendency of the above writ appeals, some of the Unions/associations of employees of TNEB accepted this legal position and offered to sign Memoranda of Settlement, conceding the validity of the impugned amendment to the Service Regulations. The draft Memorandum of Settlement that some of the Unions are prepared to enter into with the management contains the following clauses:-

"(i) The Non T A's such as LI, CI etc. who had acquired diploma but did not opt to be appointed as T A through internal recruitment will also be considered and promoted to the post of Junior Engineers Grade II in vacancies arising against the ratio of 3 reserved for Technical Assistants from the date the Technical Assistants who joined immediately after the LI, CI etc. acquired Diploma as a onetime measure. It is pertinent to point out that some of the writ petitioners have been promoted to the post of JE II as against the TA quota of 3 subject to the outcome of the writ appeal. The same shall be regularised with consequential seniority and further promotion benefits also.

(ii) BP 17 dated 05.07.2003 shall be restored prospectively and the same shall be allowed.

(iii) The Board shall issue appropriate amendments to B.P. 17 to make it effective from the date of this MOU."

21. Despite the fact that most of the Trade Unions/Associations of Employees are agreeable to sign Memoranda of Settlement to the above effect conceding the validity of the impugned amendment to the Service Regulations, we decided to deal with the issue raised in the writ appeals, lest some other employees and some other associations do not reopen the

litigation all over again from the stage where the Memoranda of Settlement were signed.

22. As we have pointed out earlier, the classification sought to be made between the service rendered before acquiring a qualification and the service rendered after acquiring a qualification, cannot be said to be arbitrary and whimsical. Today, the right of the employer to prescribe higher qualifications for promotion and also his right to treat the qualified and unqualified employees differently, has come to be well recognized. In **Tamil Nadu Electricity Board v. Tamil Nadu Electricity Board Thozhilalargal Ikkiya Sangam [(2008) 3 SCC 359]**, the Supreme Court pointed out that prescription of different channels for promotion itself was a policy decision on which the Courts cannot interfere. Similarly there are any number of decisions of the Supreme Court which stipulate that a classification based upon qualification is permissible in law. Therefore, no exception can be taken to the impugned amendment to the Service Regulations.

23. In **Chandravathi v. C.K.Saji [(2004) 3 SCC 734]**, the Supreme Court was concerned with the validity of the prescription contained in the Kerala Public Health Engineering Service Rules and the Kerala Engineering Service (General Branch) Rules. As seen from para 20 of the decision, the question that was taken up for consideration by the Supreme Court in that case was as to whether in terms of the scheme of the Kerala Engineering Service (General Branch) Rules, Diploma holders are entitled to claim any weightage for the service rendered by them prior to their acquisition of the degree qualification in the matter of promotion to the higher posts, especially

when a specific quota is fixed for degree holders and Diploma holders. Persons who assailed the prescription relied upon the decision of the Supreme Court in ***T.R.Krishnan v. State of Kerala***. But after analysing the said decision, a three member Bench of the Supreme Court held in *Chandravathi* that a classification on the basis of educational qualification is a reasonable one and that it satisfies the doctrine of equality as adumbrated in Article 14 of the Constitution. In para 43 of the report, **the Supreme Court held that the State as an employer is entitled to fix separate quota for promotion of degree holders, Diploma holders and Certificate holders and that the State cannot be stated to have acted arbitrarily by giving an option to such Diploma holders who acquired a higher qualification later, so as to enable them to either opt for promotion in the category of degree holders or Diploma holders.**

24. Therefore, the impugned amendment to the service Regulations cannot be said to offend Article 14 of the Constitution. The classification sought to be made by the impugned amendment is a reasonable classification and hence the learned Judge could not have set aside the same.

25. But unfortunately, the Board appears to have implemented the impugned Service Regulations with effect from the date of issue of BP No.33 dated 4.4.1987. The power of the employer to amend, even retrospectively, the Service Regulations, though well recognized, is not unrestricted. As a matter of fact, BP No.17 dated 5.7.2003 does not also stipulate that the amendment issued therein will have retrospective effect from 4.4.87 or 1.5.87. **Therefore, the Board proceeding dated 5.7.2003, though valid in law,**

can only have prospective effect.

26. Strictly speaking, the we are obliged to stop our discussions at this stage and record our conclusion to the effect that the impugned amendment is valid, but it would have only prospective effect from 5.7.2003. But instead of resolving the problem on hand, such a disposal is likely to create more problems for both sides. This is due to the fact that this 12 year old litigation revolving around the validity of the impugned Service Regulations, has led to some persons gaining promotion without reference to the impugned Regulations. Some persons appear to have filed writ petitions and obtained orders for granting promotion, on the basis of the judgment of the learned Judge. Some other writ petitions seeking similar reliefs are pending before Court. Therefore, things have come to such a pass that the strict implementation of the impugned Board Proceeding dated 5.7.2003 with effect strictly from 5.7.2003 may not be practically feasible. If this is done, it would lead to many reversions and promotions, upsetting the applecart. Therefore, we are of the considered view that a curtain can be finally drawn as on this date, allowing all those who have gained promotions so far and all those who legitimately have a claim for promotion up to this date, to pass through the check post. If this is done, no employee will be left with a grievance, in view of the fact that there are about 3,000 vacancies to be filled up by way of promotion.

27. Therefore, all the writ appeals are disposed of to the following effect:

- (i) We hold B.P.No.17 dated 05.7.2013 as valid and the order of the

learned Judge declaring the said Board proceeding to be bad is set aside.

(ii) However, B.P.No.17 cannot take retrospective effect from 04.4.1987, which is the date on which B.P.No.33 was issued administratively. This is due to the fact that though B.P.No.33 dated 04.4.1987 was followed by other proceedings such as B.P.No.31 dated 12.01.1988, B.P.No.5 dated 26.01.1994, B.P.No.15 dated 05.3.2002 and B.P.No.61 dated 05.11.2002, no amendment to the Tamil Nadu Electricity Board Service Regulations were issued until the issue of B.P.No.17 dated 05.7.2003. Therefore, the attempt made in B.P.No.17 dated 05.7.2003 to give effect to the amendments issued therein from 04.4.1987, on the basis of the executive instructions, cannot be upheld. Hence, it is declared that B.P.No.17 dated 05.7.2003 will take only prospective effect from 05.7.2003.

(iii) In view of the fact that several persons came to be promoted either by orders of Court or by administrative orders, without reference to the prescription contained in the amendment issued on 05.7.2003, we do not wish to upset the promotions already made, as it may lead to another set of litigations. Therefore, promotions so far made, without reference to the amendment dated 05.7.2003, shall not be reversed.

(iv) There are persons who are similarly placed as those who have got promotions *de hors* the amendment dated 05.7.2003, on account of the orders issued by this Court both before and after the amendments were struck down by the learned Judge. Since these persons are in no way different from those who have approached Court and obtained orders, their cases may also be considered in exercise of the power of relaxation conferred

upon the Board under the Tamil Nadu Electricity Board Service Regulations.

Once this is done, these persons who have not been promoted due to the amendment so far, will also become placed on par with those who have been promoted *de hors* amendment.

No costs. Consequently, connected M.Ps. are closed.

22.6.2015.

Internet:Yes

kpl/gr.

V.RAMASUBRAMANIAN,J,
and
T.MATHIVANAN,J.

kpl/gr

W.A.Nos.1571, 1572, 1573,1574,
1575 of 2012,1641 of 2013,
1213, 1048 to 1052 of 2014

22.6.2015.