

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) Nos.1158 and 1159 of 2018  
and  
WMP(MD)Nos.8340 to 8342 of 2018

- 1.The Tamilnadu Generation and Distribution Corporation Limited, rep.by its Chairman – cum – Managing Director, 144, Anna Salai, Chennai – 600 002.
- 2.The Chief Engineer/Personnel Tamil Nadu Generation and Distinction Corporation Limited, 144, Anna Salai, Chennai – 600 002. ... Appellants in both W.As.

- 1.T.Neerathpandian
- 2.S.Murugan
- 3.K.Navaneethakrishnan
- 4.G.Rengarajan
- 5.T.K.Murugan
- 6.B.Sharmila
- 7.K.Jayalakshmi
- 8.A.Mutharam ... Respondents in both W.As.

Appeals filed under Clause 15 of Letters Patent to set aside the orders dated 08.03.2018 passed in W.P(MD)Nos.15792 of 2016 and 13553 of 2017 by this Court.

For Appellants : Mr.J.Anand  
in both appeals.

For Respondents : Mr.T.Lajapathi Roy  
in both appeals.

COMMON JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

These writ appeals have been preferred against the orders of the learned single Judge, by which, the impugned board proceedings was quashed with a direction to the appellants to follow 2% quota in the matter of promotion.

2.The respondents/writ petitioners were employed as Technical Assistants/Junior Engineers Grade-II. They are qualified in Instrumentation discipline. The next promotional avenue for the aforesaid post is that of Assistant Engineer (Electrical). Earlier, 2% reservation was earmarked for Instrumentation Engineers. This was changed by clubbing the Instrumentation Engineering with Electronics and Communication Engineering and accordingly, allotment was fixed for these categories at 7%. Therefore, exclusive reservation of 2% for Instrumentation Engineering was given up by the impugned board proceedings dated 21.08.2014. This is made the respondents/writ petitioners aggrieved, as they would not be eligible for promotion. Accordingly, they challenged it.

3.The learned single Judge was pleased to allow the writ petitions by holding that though change has been brought forth by the impugned board proceedings, there was no consequential amendment under the regulation. Therefore, between the board proceedings and regulation, the latter will have primacy, having statutory prescription. Challenging the same, the appellants are before us.

4.Assailing the aforesaid order of the learned single Judge, the learned counsel appearing for the appellants would submit that the learned single Judge did not take into consideration Class II of the Tamil Nadu Electricity Board Service Regulations which reads as follows:

(1)	(2)	(3)
Category 3	Assistant Engineer (Electrical)	\$\$ Internal Selection and Direct Recruitment shall be made in ratio of 1:1. Internal selection shall be made xxxxx based on the minimum length of service rendered after acquired B.E. Degree of equivalent qualification, as may be decided by the Board from time to time. \$\$ \$\$ substituted vide (Per) B.P. (FB) No.23 (SB) dated 12.04.2001. xxxxx Expressions omitted vide (Per) B.P. (FB) No.17 (SB), dated 06.03.2002.

*Note 1 : Those who have been recruited as Assistant Engineers (Telecommunication) shall be merged in the cadre of Assistant Engineers (Electrical), and their seniority fixed with reference to the date of their appointment as Assistant Engineer (Telecommunication).*

*&&*

*Note 2 : Every batch of recruits to the category of Assistant Engineer (Electrical) Shall consist of persons possessing the prescribed qualification with the discipline and in the percentage as specified below:*

<i>Electrical &amp; Electronics Engineering</i>	<i>: 91%</i>
<i>Electronics &amp; Communication Engineering</i>	<i>: 5%</i>
<i>Instrumentation Engineering</i>	<i>: 2%</i>
<i>Computer Science/Information Technology Engineering</i>	<i>: 2%</i>

*&& substituted vide (Per) B.P. (FB) No.7 (SB) dt. 08.02.2006."*

5. Therefore, the impugned board proceedings itself is an amendment and earlier amendment was carried out bringing it under the statute which is only a consequential action and therefore, the order of the learned single Judge perceiving it before the proceedings cannot be sustained in the eye of law.

6. After hearing the argument on the last occasion, we asked the learned counsel for the appellants as to whether any accommodation can be made by considering those persons working as Technical Assistants, Junior Engineers Grade II with the qualification of Instrumentation Engineering, qualified on the date of impugned regulation eligible for consideration for promotion.

7. Today, the learned counsel appearing for the appellants would submit that the impugned regulation can be applied prospectively and in that sense, out of the eight respondents/writ petitioners, five would be eligible for the year 2017, since vacancies have already been filled even before filing of the writ petitions.

8. The learned counsel appearing for the respondents/writ petitioners though did not have any serious objection to that, nonetheless would submit on merit that even on an earlier occasion, a stand was taken by the appellants in WP(MD)No.21410 of 2017 that the regulation will have primacy. Since the learned Single Judge has found that regulation has not been amended as such, interference is required, in which case, all the eight would be benefitted. Alternatively, it is submitted that in the event of, this Court, agreeing with the submission of the appellants, remaining three persons will be considered under the impugned regulation.

9. Considering the above, we are of the view that the order of the learned single Judge requires interference to the extent that as per Class II of the Tamil Nadu Electricity Board Service Regulations, referred to supra, the Board has got ample power to pass resolution, and if it is done, the same will have an effect of amending the resolution. Mere consequential act in carrying out and placing it in the regulation book by itself will not take away the decision made through the impugned regulation. Unfortunately, before the learned single Judge, Class II has not been brought to notice. Be that as it may. We find that the order requires interference to that extent. Further, in view of the fair submission made by the learned counsel appearing for the appellants, 5 of the respondents/writ petitioners would be eligible by applying cut of date, by which, earlier regulation would be taken into consideration. To put it differently, but for the impugned regulation and on that date five of them would be eligible under the old regulation. Law is also in favour of the respondents to that effect because their right accrued when vacancies have arisen. To that effect, the impugned board proceedings will have only the prospective effect which can also be stated as retroactive effect, when a right has accrued for consideration at relevant point of time. Insofar as other three writ

petitioners are concerned, they shall be considered as and when their eligibility arises under the impugned regulation.

10. Accordingly, these writ appeals stand allowed in part as indicated above. Consequently, the writ petitioners 1, 2, 6 to 8 would be eligible prior to the impugned regulation and under the old regulation they would be promoted to the category of Assistant Engineer (Electrical) in terms of 2017 proceedings. Insofar as the other three writ petitioners are concerned, they will be considered as and when they acquire qualification. No costs. Consequently, WMP(MD)Nos.8340 to 8342 of 2018 are closed.

[M.M.S., J.] [N.S.K., J.]  
19.09.2018

Index : Yes / No  
Internet : Yes / No

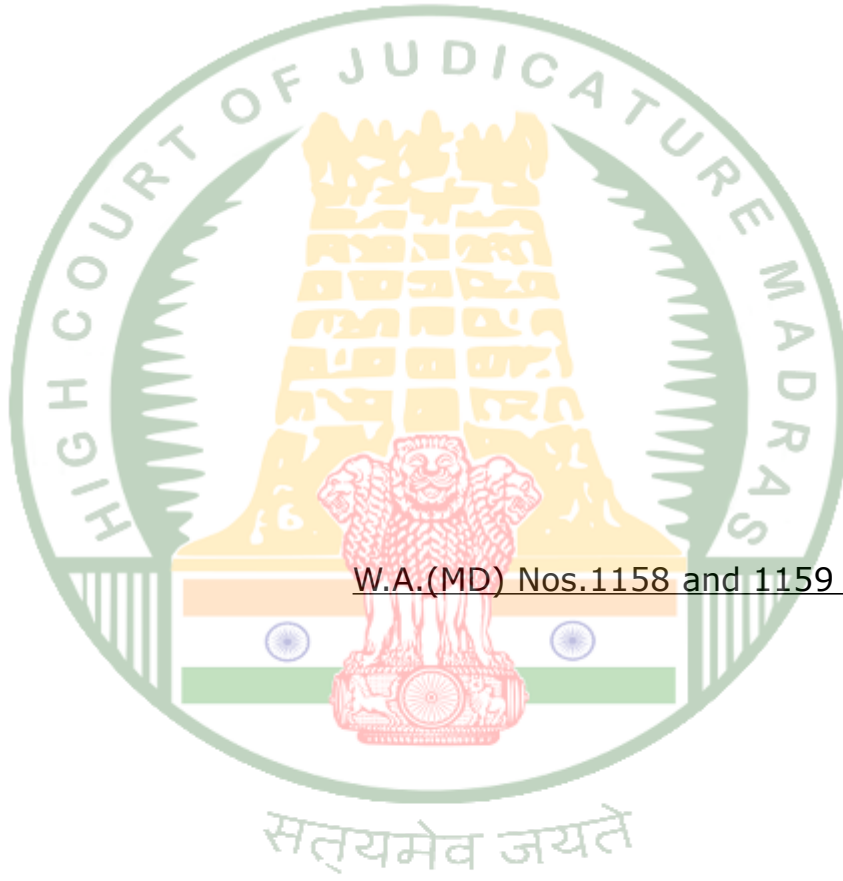
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and  
N.SATHISH KUMAR, J.

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