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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.6470/2021

THE CHAIRMAN TANGEDCO & ANR.

APPELLANT(s)

VERSUS

PRIYADAARSHINI

RESPONDENT(s)

O R D E R

We have heard learned counsel for parties.

Learned senior counsel for the appellants has drawn our attention to the regulations and the G.Os. in question more specifically in the sequence as set out in the rejoinder.

In this behalf it is stated that as per regulation 89(a) of Tamil Nadu Electricity Board (TNEB) Service Regulations reservation of appointments both by direct recruitment and by promotion are being followed.

In order to facilitate recruitment of personnel from the open market, G.O.(Ms.) No.44 dated 11.3.2015 was issued inviting applications for the post of Assistant Engineer/ Electrical/ Mechanical & Civil to be filled up by a selection process comprising of a written examination and an interview. The written examination

was completed on 31.1.2016 ^{WWW.LIVELAW.IN} for the post of 375 Assistant Engineers and the competitive written examination marks were published on 30.7.2016. The appellant(s) published the cut-off marks of appearing for viva voce interview for the post of 375 Assistant Engineers by direct recruitment on the website on 27.1.2017.

As far as the respondent is concerned, she had applied through an online process and while making such an application had not mentioned that she was eligible for concession to come under any priority quota except for the benefit of reservation as she belonged to the SC community. Thus, as per the disclosure of information by the respondent she is eligible for General Quota, SC(General) and SC(Women) quota only. She appeared in the written examination on 31.1.2016 and secured 28.333 marks. The respondent, having scored more than the cut-off marks, was called for the interview and the final score post interview was 29.283.

The claim of the respondent was predicated on G.O.Ms. No.188 dated 28.12.1976 providing for an order of priority list. However, stand of the respondent is that despite the respondent being an outstanding scout, that is not a priority for appointment to the post of direct recruitment through employment exchange. It

appears that candidates at different serial numbers had applied under priority quota of inter-caste marriage and dependents of ex-servicemen and the candidates who have scored higher marks than the cut-off marks prescribed for priority quota and had reached the zone of selection under the priority quota based on merit of the marks and as per roster prescribed by Government of Tamil Nadu was given the benefit. We may note, notification does not prescribe an outstanding scout as a priority.

The dispute has arisen as according to the appellant, the G.O.Ms. No.549 of the TNEB Select Service Regulations do not provide priority for an outstanding scout which has however weighed with the courts below in granting benefit to the respondent.

In our view the most material aspect is that G.O.Ms. No.549 provided for "preference only " and not priority. The relevant provision reads as under:-

"Rule 55 of Tamil Nadu State and Subordinate Service Rules

55. Employment concession following for outstanding rule scouts;-

Notwithstanding anything contained in these rules or in the Special Rules for the various State and Subordinate Service, other things being equal, preference shall be given to the Outstanding scouts for appointment to any post by direct recruitment.

Explanation:- For the purpose of this rule, "outstanding scout" means a person who has received the award from the President of India."

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The principle of preferential candidates would apply when there is a tie between the preferential candidate and a general candidate and the person who is to be treated as a preferential can be given a mark over a general candidate. This is the most material distinction. In view thereof, the respondent could not have been treated as a “preferential candidate” much less a “priority candidate”.

The respondent apparently was also conscious of this fact as she has not claimed eligibility for concession under any priority quota and having scored 29.283 marks in total, the last selected person was well above her marks both under SC(General) category or SC(women) Category, the latter being 34.142 and was thus denied selection.

In our view the courts below appeared to have missed the distinction between priority and preference moreso as respondent had not claimed any priority other than what she had set out. The question of preference, even if it had to work in favour of the respondent, would arise if she was identically situated as the other candidates in terms of the marks and would then get the preference, we find it apposite to reproduce the observations of this Court in *Secy., A.P. Public Service Commission v. Y.V.V.R. Srinivasulu*, (2003) 5 SCC 341:

"10. ... The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of selection for them. The "preference" envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-à-vis others in the matter of actual selection.

11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the

competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered."

The direction by the learned Single Judge as affirmed by the Division Bench actually amounts to bringing the respondent in a "priority category". Thus, the findings of the learned Single Judge and Division Bench can't really be sustained.

We having observed aforesaid, must note that the two courts below having held in a particular manner, we have put to the learned senior counsel for the appellant(s) to obtain instructions whether there were vacancies where the respondent could be accommodated so as to at least put this lis to an end. The concern expressed by the learned senior counsel for the appellant(s) was that it would amount to accepting the legal position as set out in the impugned order but otherwise the respondent can be adjusted. It is in view thereof we have proceeded to set out the legal position so that there is no repeat of the nature of the problem faced in terms of the impugned orders. But at the same

time we are inclined to accommodate the respondent more in the nature of exercise of the power conferred on us under Article 142 of the Constitution of India. What persuades us to exercise this power is the fact that the respondent is an outstanding scout who is recipient of a Presidential Award for her contribution as a scout. In view of the passage of time and the hopes and aspirations arising from the impugned orders, albeit on a wrong legal principle, in view of what has been volunteered by the learned senior counsel for the appellant the respondent would be accommodated in the post of Assistant Engineer (Electrical) but will be at the bottom of the seniority list and will get benefits only from the date of her appointment order which may be issued to her in a period of one month from today.

Civil appeal is allowed in the aforesaid terms.

Leaving parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M. M. SUNDRESH]

NEW DELHI;
27th OCTOBER, 2021

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.6470/2021

THE CHAIRMAN TANGEDCO & ANR.

Appellant(s)

VERSUS

PRIYADAARSHINI

Respondent(s)

(I.A.No.95728/2021- PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 27-10-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESHFor Appellant(s) Mr. Jaideep Gupta, Sr. Adv.
Mr. D. kumanan, AOR
Mr. Sheikh Fakhruddin Kalia, Adv.For Respondent(s) Mr. S. Nagamuthu, Sr. Adv.
Mr. M. P. Parthiban, AOR
Mr. A. S. Vairawan, Adv.
Mr. R. Sudhakaran, Adv.
Mrs. Shalini Mishra, Adv.
Mr. T. Hari Hara Sudhan, Adv.
Mr. Vikash G.R., Adv.UPON hearing the counsel the Court made the following
O R D E RCivil appeal is allowed in terms of the signed order.
Pending applications stand disposed of.(RASHMI DHYANI)
COURT MASTER(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER

(Signed order is placed on the file)