

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.01.2017

Delivered on : 25.01.2017

CORAM:

THE HON 'BLE MR. **JUSTICE T.S.SIVAGNAM**

W.P. Nos.5411, 1510, 1048, 3385, 5402, 5403,
12702 to 12705, 12724 to 12727, 21759, 26865, and 4123
of 2016
and W.M.P.Nos.4718, 1287, 6672, 10724, 808, 6671, 10723,
2775, 47081, 4709, 11091 to 11095, 11097 to 11101,
11124 to 11134, 18611, 23704, 23075 and 35199 of 2016

W.P.No.1510 of 2016

- 1 M.Ramani
- 2 N.Yuvaraj
- 3 P.Gopalakrishnan
- 4 D.Murugesan
- 5 V.Amirthapandi
- 6 M.Karthigairajan
- 7 C.Senthil
- 8 V.Gandhi
- 9 R.Manikandan
- 10 P.Radhakrishnan
- 11 S.Suji
- 12 R.Divya
- 13 D.Sivakumar
- 14 D.Devakumar
- 15 S.Sathish
- 16 S.Siva
- 17 S.Ilayaraja
- 18 H.Ramesh
- 19 M.Prabhu
- 20 A.Saran Kumar
- 21 R.Shanmugasundaram
- 22 V.Anjali
- 23 S.Siddesh Kumar
- 24 M.Dhandapani
- 25 S.Prasad Kumar
- 26 M.Mathivanan
- 27 S.Kalaiyaran

- 28 M.Parthiban
- 29 G.Nivetha
- 30 S.Rajadurai
- 31 M.Anandakumar
- 32 S.Salomi
- 33 J.Kavitha
- 34 C.Sivakumar
- 35 G.Karthikeyan
- 36 R.Vinod
- 37 N.Harish Kumar
- 38 A.Venkateswaran
- 39 M.Santhosh
- 40 M.Sathish Kumar
- 41 R.Nagaraj
- 42 P.Balamurali Krishnan
- 43 R.Muthukumaravel
- 44 S.Suresh
- 45 S.Abdul Refoy
- 46 N.Velmani
- 47 S.Sakthivel
- 48 E.Gokul
- 49 R.Ugesh
- 50 B.Mohan Karthik
- 51 S.M.Rajeshwaran

.. Petitioner

Vs

- 1 Tamilnadu Generation and
Distribution Corporation,
Rep. by its
Chairman and Managing Director,
144 Anna Salai, Chennai-2
- 2 The chief Engineer/Personnel
Tamilnadu Generation and Distribution
Corporation,
144 Anna Salai, Chennai-2
- 3 The Chairman
Board of Apprenticeship Training,
Southern Region,
4th Cross Road, CIT Campus, Taramani,
Chennai-113
- 4 E. Kiruthika

- 5 M. Kanimozhi
(R4 and R5 are impleaded as per order dated 28.01.2016 in W.M.P.No.2363 of 2016 in W.P.No.1510/2016)
- 6 E.Selvakumar, B.E. / EEE
- 7 M.Murali, B.E./EEE
8. C.U.Deepa Shree, BE/EEE
(R6 to R8 are impleaded as per order dated 04.03.2016 in W.M.P.No.3891/2016 in W.P.No.1510/2016)
- 9 E.Thirunarayanan
(R9 is impleaded as per order dated 26/07/2016 in WMP No.5865/2016 in WP.1510 of 2016)

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration, declaring 1st respondent (Per) (FB) TANGEDCO Proceeding No.10 Administrative Branch dated 10.12.2015 and Notification No.01/2015 dated 28.12.2015 requiring the petitioners who worked as Apprentices in the 1st respondent to undergo Written Examination is illegal and direct the respondents 1 and 2 to dispense with Written Examination for the petitioners for the ensuing direct recruitment to the Post of Assistant Engineer (Electrical), Assistant Engineer (Mechanical) and Assistant Engineer (Civil) and also direct respondents 1 and 2 to formulate a Scheme for absorbing Ex-Apprentices as per the amended provision of Sec.22(1) of the Apprentices Act 1961.

For Petitioner : Mrs.R.Vaigai, Senior Counsel
for Mr.K.M.Ramesh in W.P.No.1510/2016

Mr.V.Chinnasamy in W.P.No.5411/2016

Mr.V.Raghavachari in W.P.No.1048/2016

Mr.C.Jagadish in W.P.No.3385/2016

Mr.V.Anilkumar in W.P.No.5402 & 5403/2016

Mr.G.Anandkumar in W.P.No.12702 to 12705/2016
& W.P.Nos.12724 to 12727/2016

Mr.Kandhan Doraisami in W.P.No.21759/2016

Mr.A.Rajeshkanna in W.P.No.26865 of 2016

Mr.B.Manoharan in W.P.No.41231 of 2016

For Respondents : Mr.K.Venkataramani,
Additional Advocate General assisted by
Ms.R.Varalakshmi for R1 & R2 in all W.Ps.

Mr.V.P.Sengottuvel,
SPC for R3 in W.P.No.1510/2016

Mr.Naveenkumar Murthy,
for Mr.K.Ramasamy for R4 & R5
in W.P.No.1510/2016
& R3&R4 in W.P.No.1048/2016

Mr.S.N.Ravichandran
for R6 to R8 in W.P.No.1510/2016
& R4 to R7 in W.P.No.1048/2016

Mr.K.S.Jeyaganeshan SPC,
for R3 in W.P.No.3385/2016

Mr.S.Janarthanam SPC
for R3 in W.P.No.26865/2016

COMMON ORDER

Since the relief sought for in all these writ petitions are identical, they were heard together and are disposed of by this common order. For the purpose of disposing the present batch of cases, W.P.No.1510 of 2016 is taken as a lead case.

2. The petitioners, who are 51 in number, have completed their Apprenticeship training in the respondent corporation viz. Tamil Nadu Generation and Distribution Corporation, and they seek for a writ of declaration to declare the proceedings of the first respondent dated 10.12.2015 and notification dated 28.12.2015 requiring the petitioners, who worked as Apprentices in the first respondent, to undergo written examination as being illegal and to direct the respondents 1 and 2 to dispense with the written examination for the petitioners for the ensuing direct recruitments to the post of Assistant Engineer (Electrical), Assistant Engineer (Mechanical) and Assistant Engineer (Civil) and also to direct the respondents 1 and 2 to formulate a scheme for absorbing the Ex-apprentices as per the amended provisions of Section 22(1) of the Apprentices Act, 1961 Act (herein after referred to as "the Act"). In this batch, one set of cases have been filed by Diploma Holders

viz., W.P.Nos.12702, 12705 and 12724 to 12727 of 2016 and the only distinction is that they are all Diploma Holders, whereas, the other writ petitioners are B.E. Engineering graduates.

3. The case of the petitioners is that under the provisions of the Act, every year TANGEDCO recruits Engineering Graduates/Diploma Holders as apprentices to undergo apprenticeship training for a period of one year and on successful completion of training, a certificate would be issued. The petitioners, on securing their Engineering Degree/Diploma enrolled their names with the Board of Apprenticeship Training, who in turn sponsored the name of the petitioners to the TANGEDCO for being trained as apprentices.

4. It is stated that the method of selection is by a Committee of three seniors officials of TANGEDCO, who verify the certificate of the petitioners/candidates, who have been sponsored by the Board of Apprenticeship Training and after taking oral interview, they are selected to undergo apprentices training. Thus the endeavour of the petitioner is to state that there is a process of selection of apprentices and it is not mechanically filled up based upon the list forwarded by the Board of Apprenticeship Training. It is submitted that Section 22 of the Act is very crucial, which had

undergone an amendment in 2014, which was published in the Gazette of India dated 18.12.2014. According to the petitioners, prior to the amendment, the provision of Section 22 of the Act did not guarantee or provide for any right to the apprentices for securing employment in the relevant establishment. However, TANGEDCO was recruiting apprentices whenever vacancies arises in various posts notwithstanding the fact that there is no obligation under the Act whenever regular vacancies is notified for recruitments. It is further submitted that the TANGEDCO was following a pattern of calling for names in the ratio of 1:5 from Employment Exchange and separate notification will be issued to Ex-apprentices simultaneously. It is the submission that though there is no written policy for recruitment of Ex-apprentices in the 1st respondent establishment, the 1st respondent was giving preference for ex-apprentices when regular vacancies are filled up. The main grievance of the trained apprentice is that the TANGEDCO has taken a decision to conduct a written examination for recruitment by referring to and stating that it is in implementation of the judgment of the Honourable Division Bench of this Court in W.A.No.1027 of 2013 dated 09.06.2014. The petitioners have no grievance in TANGEDCO adopting such procedure by calling for applications from the open market and to require those open market candidates to undergo written examination. But would

state that such pattern of selection cannot be made applicable to Ex-apprentices as they have acquired a right for consideration of appointment as per the amended provisions of Section 22 of the Act.

5. By referring to the amended Section 22(1) of the Act, it is submitted that it creates a mandatory obligation on the employer to formulate or evolve a policy or scheme to recruit the apprentices who have completed the period of apprenticeship training in the establishment and the word used is "shall" and therefore, it is mandatory.

6. Referring to the decision of the Hon'ble Supreme Court in ***UP State Road Transport Corporation and another Vs. U.P.Parivahan Nigam Shishuksh Berozgar Sangh and others*** reported in ***(1995) 2 SCC 1*** , it is submitted that guidelines were laid down by the Hon'ble Supreme Court in the matter of considering the trained apprentices for employment. In the light of the said decision, trained apprentices like the petitioners cannot be called upon to undergo a written examination. Reference was also made similar regulation framed by the Railway Board and Bharat Heavy Electricals Limited. Thus the challenge to the impugned notification is by contending that the TANGEDCO did not formulate

the policy for recruitment as amended Section 22(1) of the Act, till date and calling for applications from the open market is arbitrary and illegal. However, insisting upon the petitioners to apply along with the candidates from the open market is further arbitrary and against the spirit of amended section 22 of the Act. Placing heavy reliance on the judgment in the case of UP Transport Corporation (supra) it is reiterated that apprentices, who have completed one year training, shall not be required to undergo written examination and therefore, the impugned notification to the said extent requires to be set aside.

7. It is argued by the learned Senior Counsel appearing for the petitioners that the apprentices are only opposing the move of the respondents in conducting a written examination and compelling the petitioners to undergo written examination, but are ready and willing to subject themselves to viva-voce test. The learned counsel referred to the Government Order in G.O.Ms.No.44 Labour and Employment dated 11.03.2015, and submitted that the Government issued directions to implement the judgment of the Hon'ble Division Bench in W.A.No.1027/2013 and by referring to the said Government Order, the respondent issued the impugned proceedings dated 10.12.2015, and directed that selection of all category shall be made on merit viz., 85% for the competitive

written examination and 15% viva-voce and as per communal roaster and if other things being equal, preference should be given to the apprentices, who have completed apprentice training with the respondent. Further, the notification states that all candidates will have to sit for written examination which includes the trained apprentices. It is submitted that the impugned notification dated 10.12.2015 is flawed, because it refers to the Government Order viz., G.O.Ms.No.44 dated 11.03.2015, which sought to implement the judgment of the Division Bench in W.A.No.1027 of 2013 and the said case was entirely on different set of facts and therefore, the impugned notification dated 10.12.2015 is illegal and consequently, the notification dated 28.12.2015 also requires to be set aside. In this regard, the learned counsel referred to the judgment of Hon'ble Division Bench and pointed out that the said decision is wholly inapplicable to the case of the trained apprentices.

8. The learned Senior Counsel referring to the decision in the case of ***UP State Road Transport Corporation and another*** (supra) submitted that the Hon'ble Supreme Court laid down the aspect which have to be kept in mind while dealing with the claims of trainees to get employment after successful completion of their training and also the observation in paragraph No.13 of the

judgment stating that the trainees would not be required to appear in any written examination, if any provided by the regulations. Therefore, it is submitted that the respondent board cannot insist upon the petitioners to undergo the written examination.

9. Mr.K.M.Ramesh, learned counsel for the Writ Petitioners while adding to the submissions of the learned Senior counsel submitted that the Apprentices are selected by a three member Committee consisting of Senior officers, who scrutinizes the credentials and thereafter, they are absorbed as Apprentices and all the candidates, who are trained as Apprentices are academically brilliant candidates and upon completion of the training, they are far better than the fresh Graduates or Diploma Holders and substantial funds were spent by TANGEDCO for training the Apprentices and the decision in the case of ***UP State Road Transport Corporation and another*** (supra) having not been watered down, the trained Apprentices cannot be directed to undergo the written examination.

10. Mr.V.Raghavachari, learned counsel appearing for some of the petitioners while elaborating upon the submissions of the other learned counsels submitted that the petitioners have entered into an agreement-Apprentice contract wherein they have

undertaken not to secure employment elsewhere and only persons with outstanding merits and qualifications were selected for the training and in this regard, credentials of the petitioners were referred to. In respect of all previous selection, the TANGEDCO had appointed persons, who possess education qualification and had undergone the apprenticeship training and there was no requirement for any written examination. It is further submitted that by virtue of the amendments to the Apprentice Act, 2014, rights of the apprentices stood protected under Section 22(1) of the Act and therefore, the apprentices should not be compelled to undergo the written examination.

11. Mr.G.Anandkumar, learned counsel appearing for the trained apprentices, who are Diploma holders adopted the arguments of the other petitioners.

12. Mr.K.Venkataramani, learned Additional Advocate General appearing for M/s.k.Varalakshmi, learned counsel for TANGEDCO submitted that the only issue to be decided in these cases is whether the apprentices are entitled for exemption from written examination. In this regard, the qualification prescribed in the impugned notification and the procedure for selection was elaborately referred to. It is submitted that the Regulations clearly

state that the trained apprentices would be granted preference provided other things be equal and they cannot be placed at an higher pedestal. It is further submitted that the case of the petitioners is largely based on the decision of the Hon'ble Supreme Court in the case of ***UP State Road Transport Corporation and another*** (supra), but the said decision was clarified in the case of ***U.P.Raj Viduyut Parishad Apprentice Welfare Association & Anr.***, reported in ***2000 3 SCR 1201***, which was followed in the recent decision in the case of ***Public Service Commission, Uttaranchal vs Jagdish Chandra Singh Bora & Anr., etc.***² reported in ***(2014) 8 SCC 644***, and therefore, the petitioners cannot place any reliance on the observations in para 13 of the decision in the case of ***U.P.State Transport Corporation*** (supra). Further, the said decision is a judgment *in personam* applicable to the particular case and the other decisions, which have been relied on by the respondents are judgments *in rem* and applies to all cases of trained apprentices including the Writ Petitioners. It is further submitted that the impugned notifications were issued based on statutory Regulations, namely, Regulation 89 of the TNEB Service Regulation provides for recruitment through written examination and interview as well. The Regulation does not provide for dispensing with exam for Apprentice and therefore, uniform policy was adopted by TANGEDCO and written examinations were

conducted not only for Assistant Engineers/Technical Assistant/Field Assistants posts, but also for other posts including Junior Assistants, Typists, Steno-Typists etc. It is further submitted that policy of the Board is in terms of B.P. No.10, dated 28.12.2015, is to recruit personnel by giving the Apprentices the preference as explained by the Hon'ble Supreme Court in the case of ***U.P.Raj Viduyut Parishad Apprentice Welfare Association & Anr.***, (supra), and therefore, all candidates have to undergo the written examination and the interview. Further, it is submitted that the policy of the Board has been consistent and it is in accordance with the amended Section 22(1) of the Act. By dispensing with the written examination for apprentices, two different classes will be created among equals and there will not be a level playing field among the two categories. Further, when the Service Rules provides for a written examination, the Hon'ble Supreme Court has held that the same cannot be dispensed with. Thus, the only protection that the apprentices are entitled to is a preference, when other things are equal. Further, it is submitted that there is no vested right for the Apprentices to claim employment in the services of the TANGEDCO.

13. The decision of the Hon'ble Division Bench in W.A. Nos.1596 & 1597 of 2010, relied on by the petitioners was

distinguished by the learned Additional Advocate General by contending that the facts in the said case was totally different, as it was a case of candidate, whose name was left out, though he had completed the training before the crucial date i.e., 13.09.1998, and the decision cannot be applied to the facts of the present case. Further, it is submitted that in terms of the amendment to the Act, the employer has a right to frame the Regulation and there is a discretion. The impugned Board Proceedings was issued after the amendment to Section 22 of the Act and it is the policy of the TANGEDCO. Therefore, all candidates have to undergo the process of recruitment by participating in the written test as well as in the oral interview.

14. Mr.Naveen Kumar Murthy and Mr.S.N.Ravichandiran, learned counsels appearing on behalf of the candidates from the open market, while adopting the arguments of the learned Additional Advocate General reiterated the obligation cast upon the employer to frame Regulation as per the amended Section 22 of the Act and this having been done, the petitioners cannot challenge the same and insist that they should not be subjected to the written test. The learned counsel referred to the decision of the Division Bench in the case of *Ex.Apprentice Association vs. UOI & Ors.*, in *W.P.No.36699 of 2015, dated 12.04.2016*. Thus, it is their

submission that the mandate of the Hon'ble Supreme Court is to provide a level playing field to the candidates and merit should be the primary yardstick for recruitment into public service. It is further submitted that even prior to the amendment to Section 22 of the Act, Service Regulations of TNEB have held the field and after the amendment, BP No.10 has been issued, which is the policy framed by the TANGEDCO. Further, it is submitted that the category of posts to which the candidates are to be appointed are class-2 category posts with promotional avenues and the recruitment is not akin to a recruitment of a class-3 or class-4 posts. Therefore, it is submitted that all candidates should be subjected to both the written test and the oral interview.

15. By way of reply, Mr.K.M.Ramesh, learned counsel submitted that the decision referred to by the learned Additional Advocate General in the case of **Public Service Commission Uttranchal** (supra), is distinguishable and the issue is totally different, where 10 marks were given to Apprentices and the decision was rendered on the said aspect and cannot be made applicable to the facts of the present case.

16. I have heard the learned counsels appearing on either side and perused the materials placed on record.

17. The short issue that falls for consideration is whether the petitioners who are trained Apprentices in the TANGEDCO/TNEB, who are either Engineering Graduates or Diploma Holders are required to subject themselves to a written examination in addition to an oral interview for being considered to be appointed to the post of Assistant Engineer/Technical Assistant etc. It may not be necessary to have an in depth analysis of the factual issues and suffice to note that the Writ Petitioners, who are either Engineering Graduates or Diploma Holders who have completed one year Apprenticeship Training in TANGEDCO/TNEB. All of them have been issued a completion certificate by the Board of Apprentices. They stake a claim to post in the TANGEDCO, pursuant to the notification dated 28.12.2015. The trained apprentices are not averse to attending oral interview, as a part of the selection process, but they insist that they should not be compelled to take a written examination. This contention stems out of and largely by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***U.P. State Road Transport Corporation*** (supra). In the said case, the direction issued by the Allahabad High Court was put to challenge by the U.P. State Road Transport Corporation, wherein a direction was issued to employ, those who had received training in the workshop of the said

Transport Corporation. After taking into consideration the object behind the enactment of Apprentices Act, the Hon'ble Supreme Court issued certain directions and certain observations which are contained in paragraphs 12 and 13 of the judgment, which reads as follows:-

12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful of their training:-

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India. v. Hargopal, AIR 1987 SC 1227, would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.

13. In so far as the cases at hand are concerned, we find that the Corporation filed an additional affidavit in C.A. Nos. 4347-4854 of 1990 as desired by the Court on 20th October, 1992 giving position regarding vacancies in the posts of conductors and clerks. If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the trainees for giving employment in

suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the regulations. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. In so far as the age requirement is concerned, the same shall be relaxed as indicated above.

18. In terms of the above directions in the said case the Hon'ble Supreme Court observed that other things be equal, a trained apprentice should be given preference over direct recruits, trainee would not be required to get his names sponsored by the employment exchange, age relaxation can be granted and the seniority among those trained to be maintained. What is sought to be heavily relied upon by the petitioners/trained apprentices, is the observations of the Hon'ble Supreme Court in paragraph 13 of the judgment (supra). They seek for appropriate direction as granted in the said case and that they should not be subjected to any written examination. It would be relevant to point out that paragraph 13 pertains to cases, which were dealt with by the Hon'ble Supreme Court in the said appeal. Paragraph 12 pertains to four directions, which are general in nature dealing with claims of trainee to get employment.

19. Thus, it has to be seen as to whether the petitioners can seek for identical direction as observed by the Hon'ble Supreme Court in paragraph 13 of the judgment. In fact, this issue arose before the Allahabad High Court and a Full Bench of the Allahabad High Court in the case of **Arvind Gautam vs. State of U.P and Ors.**, reported in **1999 3 AWC 2093**, wherein it was held that the directives of the Hon'ble Supreme Court in the case of **U.P. State Road Transport Corporation** in paragraph 13, apply strictly to the persons, whose cases which came up for consideration before the Hon'ble Supreme Court and not to others.

20. In the case of **U.P.Raj Viduyut Parishad Apprentice Welfare Association & Anr.**, (supra), when the matter came up before the Hon'ble Supreme Court, reference was made to paragraph 12 of the judgment in the case of **U.P. State Road Transport Corporation** (supra), and the correctness of the view taken by the Full Bench of the Allahabad High Court in the case of **Arvind Gautam vs. State of U.P and Ors.**,(supra), also came up for consideration and the Hon'ble Supreme Court held that the view taken by the Full Bench in the case of **Arvind Gautam vs. State of U.P and Ors.**,(supra), is correct one and that Apprentices have to go through the procedure of

examination/interview and that they are however entitled to the benefits of directions in paragraph 12(1) to (4) in ***U.P. State Road Transport Corporation's*** case.

21. The correctness of the Full Bench decision of the Allahabad High Court in the case of ***Arvind Gautam vs. State of U.P and Ors.,***(supra), was tested by the Hon'ble Supreme Court in the case of ***Bhoodev Singh & Ors., vs. Chairman U.P.S.E.B*** reported in ***2002 4 AWC 3035 (SC)***, held that the view taken by the Full Bench in the case of ***Arvind Gautam vs. State of U.P and Ors.,***(supra), does not require any re-consideration. In the said case, the Hon'ble Supreme Court took note of the judgment of the Hon'ble Supreme Court in the case of ***Tamil Nadu Electricity Board vs. P.Arul,*** in *Civil Appeal No.5285-5328 of 1996*, wherein certain observations were made that Apprentices trainees are not required to sit for the written examination, but only in viva-voce. The Hon'ble Supreme Court observed that the aforesaid statement in ***Arul's*** case, has been too broadly stated and cannot be held to be a law laid down in cases of all appointments to different cadre governed by different set of recruitment rules or regulations. Thus, the observations of the Hon'ble Supreme Court in ***Arul's*** case, was held to be very broadly stating the law laid down in the cases of all appointments to different cadres. However, we need not dwell

much into the said controversy in the light of the lucid pronouncement in ***U.P.Raj Viduyut Parishad Apprentice Welfare Association & Anr., and Bhoodev Singh & Ors.,*** (supra). Thus, the resultant legal position is that the directions/observations made by the Hon'ble Supreme Court in paragraph 13 of the judgment in ***U.P. State Road Transport Corporation*** (supra), does not lay down a law that Apprentices need not sit for a written examination, as clarified by the Hon'ble Supreme Court, the said observations pertain to the cases, which were dealt with by the Hon'ble Supreme Court and not amounting to general directions. The above referred decisions were all referred to and considered in ***Public Service Commission Uttaranchal vs. Jagdish Chandra Singh Bora & Anr., etc.,*** in Civil Appeal Nos.3034 & 3036 of 2007 and the Hon'ble Supreme Court, while interpreting the condition "other things be equal, a trained apprentice should be given preference over direct recruits" held that the only natural meaning for the aforesaid phrase "other things be equal" is that all candidates must have been subjected to the same selection process, that is same written test and interview. The above discussion is sufficient to hold that the petitioners/trained apprentices cannot seek themselves to be treated as a different class or category of persons to be exempted from taking the written examination. The law, as laid down by the

Hon'ble Supreme Court in the aforementioned decision, is clear and no such right accrues to the Apprentices and the reliance placed on the observations made by the Hon'ble Supreme Court in para 13 of the judgment in ***U.P.State Road Transport Corporation*** (supra), is flawed.

22. Having held so, the Court would be required to consider as to whether the other submission made on behalf of the Apprentices merit consideration. One of the contentions raised was that the trained Apprentices undergo process of selection and the best candidates are selected for apprenticeship training and substantial time and monies spent on them. The documents produced by the petitioners to substantiate the same, were carefully perused by the Court shows that the selection of the candidates to undergo Apprenticeship training for the year 2014-15 was done using information and communication technology. The notification issued by the Board of Apprenticeship training, Southern Region, Chennai clearly states that the selection will be as per the guidelines laid down by the TANGEDCO/ TANTRANSCO, as per the academic marks and they should contact the respective TANGEDCO office, when they attend interview regarding the status of their selection. Thus, the Board forwards the names of the candidates based on the marks. Thereafter, the candidates are

interviewed and based upon their fitness, they are absorbed. The marks obtained in the BE/AME examination is the basis and 85% credit is given to the said marks and 15% for viva-voce in technical subjects and managerial skills. Therefore, at best, the procedure adopted is a filtering mechanism to ensure that candidates, who scored good academic marks and who were strong in technical and managerial skills will be imparted training. When call letter is sent by TANGEDCO to the candidates, whose names are sponsored by the Board of Apprentices, there is a specific clause, which states that the candidates should give an undertaking that he/she should not claim any right at a later date for regular appointment in TANGEDCO on account of undergoing the Apprenticeship training.

23. It is not in dispute that such is the condition agreed to by all the petitioners/trained Apprentices. In such circumstances, the only option available to them is to compete with the candidates from the open market, subject themselves to the process of recruitment, as notified by the TANGEDCO vide notification dated 28.12.2015, appear for the written examination, attend the oral interview and in the event, there is a tie between a trained Apprentice and the candidates from the open market, that is, if all things are equal, then and then alone, the trained Apprentice is entitled for preference.

24. An argument was advanced stating that the Apprentice Act as amended vide Amendment Act, 2014 has crystallized the rights of the petitioners in a more definite manner. The amended Section 22(1) of the Act states that every employer shall formulate its own policy for recruiting any Apprentice who has completed the period of Apprenticeship Training in its establishment. One limb of the argument by the petitioner is that a policy is already in vogue and as per the said policy, no written test is required for recruiting an Apprentice. The other limb of the argument is that after the amendment to the Act, it has become mandatory for TANGEDCO to formulate its own policy and no policy having been formulated, the policy prevailing prior to the amendment, would stand.

24. In my considered view both the submissions are not tenable. Firstly, the recruitment policy, which held the field prior to the Amendment of Section 22(1) of the Act, was a service Regulation, which provided leverage for the TANGEDCO to adopt methods of recruitment. After the amendment, the impugned Board Proceedings in BP.FB.No.10, dated 10.12.2015, came to be passed, which is the basis for the impugned notification, dated 28.12.2015. The Board of TANGEDCO took a decision with regard

to direct recruitment to the post of Assistant Engineers, Technical Assistants and Field Assistants (Trainee) and other approved 750 posts sponsored by the employment exchange, Apprentices in TNEB / TANGEDCO/ TANTRANSCO and open market candidates.

25. On a reading of BP No.10, it is evident that it is a policy decision taken by the Board concerning recruitment to the post referred above. The three sources of recruitment have been mentioned, namely through the employment exchange, trained apprentices and candidates from the open market. The Board took into consideration the decision of the Hon'ble Division bench which directed wide publicity while inviting applications not only restricting to sponsorship by the employment exchange or the Apprentices alone. This judgment was accepted by the Government and a policy decision was taken by the Government in G.O.Ms.No.44, Labour and Employment Department, dated 11.03.2015. The Board before mechanically adopting or resolving to adopt the Government's policy constituted a three member committee with the Director (Distribution) as Chairman and the Secretary and the Chief Engineer (Personnel) as its members and the Committee submitted their recommendations with regard to the mode of recruitment and selection and all other matters incidental thereto. The Board considered the report of the said committee

and after examination of the proposal accorded approval for the said proposal. Thus, in all respects B.P.No.10, dated 10.12.2015, is the policy of TANGEDCO for recruiting not only Apprentices, but also persons from the open market. Thus, the contention of the petitioner that there is no policy framed after the amendment to the Apprentice Act is incorrect. Further, this Court finds that the amendment to Section 22(1) of the Act does not confer any vested right on the petitioners/Apprentices. Even much prior to the amendment, the policy of the Board was that if merit and ability are equal, preference shall be given to apprentice who had undergone training in the Board. All that the amendment insists upon the employer is to frame a policy, which has been done in terms of B.P. No.10.

26. One of the arguments was based on a Government Order in G.O. Ms. No.142, dated 10.11.1998. This Government Order cannot come to the assistance of the petitioners, as this was issued much prior to the judgments of the Hon'ble Supreme Court in the case of ***U.P.Raj Viduyut Parishad Apprentice Welfare Association & Anr.,*** (supra) ***and Bhoodev Singh & Ors.,*** (supra). In fact the inspiration to include clause No.5 in G.O.Ms.No.142, was based on the observations made in ***P.Arul's*** case, which was held to be laying down a very broad principle and cannot be held to be

law laid down. Therefore, the petitioners cannot rely upon G.O.Ms.No.142.

27. Thus, for all the above reasons, the petitioners have not made out a case for grant of the relief sought for and accordingly, all the Writ Petitions are dismissed. During the pendency of these Writ Petitions, this Court passed an interim order on 26.07.2016, by which TANGEDCO was permitted to declare the results of all the candidates who appeared for the written examination, but, TANGEDCO shall not proceed further with the selection process and confine themselves only for publication of results and await final orders in the Writ Petitions. As all the Writ Petitions filed by the apprentices have been dismissed, TANGEDCO, is permitted to proceed further with the recruitment process based on the results in the written examination. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.01.2017

vsm/pbn
Index :Yes/No
Internet:Yes/No

To

- 1 The Chairman and Managing Director,
Tamilnadu Generation and
Distribution Corporation,
144 Anna Salai, Chennai-2
- 2 The chief Engineer/Personnel
Tamilnadu Generation and Distribution
Corporation,
144 Anna Salai, Chennai-2
- 3 The Chairman
Board of Apprenticeship Training,
Southern Region,
4th Cross Road, CIT Campus, Taramani,
Chennai-113

T.S.SIVAGNANAM,J.

Vsm/pbn

**W.P. Nos.5411, 1510, 1048, 3385, 5402,
5403, 12702 to 12705, 12724 to 12727,
21759, 26865, and 4123 of 2016**

25.01.2017
<http://www.judis.nic.in>