RATIO JUDGEMENT

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on 20.01.2015
Pronounced on 26.2.2015
CORAM
THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

Writ Appeal Nos.1176 and 2044 of 2000
and
Writ Petition Nos.34843 of 2003, 1846 of 2004,
33479 of 2005 and 8534 of 2006
and
connected M.Ps.

W.A.No.1176 of 2000

The Tamil Nadu Electricity Board
Engineers' Sangam
represented by its General Secretary
Electricity Avenue
Anna Salai, Chennai. ...Appellant
vs.

1. Ero Velai Illa Pattatharigal Sangam
represented by its President
A.Shanmugavadivel

2. The Tamil Nadu Electricity Board
represented by its Secretary
Electricity Avenue
Anna Salai, Chennai.

3. The Chairman
The Tamil Nadu Electricity Board
Electricity Avenue
Anna Salai, Chennai.

4. The Tamil Nadu Electricity Board Engineer's Association
represented by its General Secretary
Electricity Avenue,
Anna Salai, Chennai.

5. K.Madheselvan
6. S.Santhakumar
7. K.Ramachandran
8. N.Radhakrishnan
9. K.Nakkeeran
10. A.Jaganathan

11. V.Selvaraj
12. S.Veluchamy
13. A.Soundararajan
14. N.Jagadeesan ...Respondents

W.A.No.1176 of 2000 is filed under Clause 15 of the Letters Patent, against the order of this Court dated 05.06.2000 made in W.P.No.1307 of 1997.

For appellant : Mr.V.Prakash
Senior counsel
for
Mr.Sunil Kumar

For respondent-1 : Mr.Vijay Narayan
Senior counsel
for
Mr.V.Bharathidasan

For Respondents 2 & 3 : Mrs.Varalakshmi

For Respondent-4 : Mr.P.S.Raman
Senior counsel
for
Mr.R.Santhanam

Respondents 5 to 14 : No appearance

W.A.No.2044 of 2000
1. Tamil Nadu Electricity Board
represented by its Secretary
Electricity Avenue
Anna Salai, Chennai 600 002.

2. The Chairman
Tamil Nadu Electricity Board
Electricity Avenue
Anna Salai, Chennai 600 002. ...Appellants

vs.

1. Ero Velai Illa Pattatharigal Sangam
represented by its President
A.Shanmugavadivel

2. The Tamil Nadu Electricity Board
Engineers' Association
represented by its General Secretary
Electricity Avenue
Anna Salai, Chennai.

3. The Tamil Nadu Electricity Board Engineer's Sangam
represented by its General Secretary
Electricity Avenue,
Anna Salai, Chennai.

4. K.Madheselvan
5. S.Santhakumar
6. K.Ramachandran
7. N.Radhakrishnan
8. K.Nakkeeran
9. A.Jaganathan
10. V.Selvaraj
12. S.Veluchamy
13. A.Soundararajan
14. N.Jagadeesan ...Respondents

W.A.No.2044 of 2000 is filed under Clause 15 of the Letters Patent, against the order of this Court dated 05.06.2000 made in W.P.No.1307 of 1997.

For appellants : Mrs.Varalakshmi

For respondent-1 : Mr.Vijay Narayan
Senior counsel
for
Mr.V.Bharathidasan

For Respondent-2 : Mr.P.S.Raman
Senior counsel
for
Mr.R.Santhanam

For Respondent-3 : Mr.V.Prakash
Senior Counsel
for
Mr.Sunil Kumar

W.P.No.34843 of 2003
Tamil Nadu Graduate Engineers Association
represented by T.Sivakumar
Chennai-600 007. ... Petitioner

.v.

1. The Tamil Nadu Electricity Board
represented by its Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.

2. The Tamil Nadu Electricity Board
represented by its Secretary

800, Anna Salai, Chennai- 600 002.

3. The Chief Engineer / Personnel
The Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.

4. The General Secretary
TNEB Engineer's Association
793, Anna Salai, Chennai 600 002.

5. TNEB Engineer's Sangam
represented by its General Secretary
V.Ashok kumar

(Fifth respondent is impleaded as per the order of this Court dated 18.12.2003 made in W.P.M.P.No.43776 of 2003)
... Respondents W.P.No.34843 of 2003 is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the concerned records of the proceedings of the third respondent vide Memo No.021295/170/G1/G12/2003-04 dated 06.11.2003 and quash the same.

For Petitioner : Mr.Vijay Narayan
Senior counsel
for
Mr.V.Bharathidasan
For Respondents 1 to 3 : Mrs.Varalakshmi
For Respondent-4 : Mr.P.S.Raman
Senior counsel
for
Mr.R.Santhanam

For Respondent-5 : Mr.V.Prakash
Senior Counsel
for
Mr.Sunil Kumar
W.P.No.1846 of 2004
T.Sivakumar ... Petitioner
..vs..
1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.

2. The Chief Engineer / Personnel
The Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002. ... Respondents

W.P.No.1846 of 2003 is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the entire records of the respondents relating to the proceedings of the second respondent in Lr.No.114843/637/G.55/G.551/2003-1 dated 09.12.2003 and quash the same and consequently, forbear the respondents from in any manner resorting to internal selection of candidates for the post of Assistant Engineer to the services of the Tamil Nadu Electricity Board without following the process of direct recruitment on par with internal selection.

For Petitioner : Mr.P.Srinivas
For Respondents : Mrs.Varalakshmi
W.P.No.33479 of 2005
Tamil Nadu Graduate Engineers Association
(Regn. No.275/2001)
represented by T.Sivakumar
Chennai-600 007. ... Petitioner

.v.

1. The Tamil Nadu Electricity Board
represented by its Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.

2. The Tamil Nadu Electricity Board
represented by its Secretary
800, Anna Salai, Chennai- 600 002.

3. The Chief Engineer / Personnel
The Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.

4. The General Secretary
TNEB Engineer's Association
793, Anna Salai, Chennai 600 002.

5. TNEB Engineer's Sangam
represented by its General Secretary
V.Ashok kumar

(Fifth respondent is impleaded as per the order of this Court dated 07.12.2005 made in W.P.M.P.No.38865 of 2005)
... Respondents W.P.No.33479 of 2005 is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the concerned records of the proceedings of the respondent Board viz., Order No.055372/171/G1/G12/2004 dated 19.10.2004 and letter No. 080692/ 452/G1/G12/2005-2 dated 05.09.2005 and quash the same.
For Petitioner : Mr.V.Bharathidasan
For Respondents 1 to 3 : Mrs.Varalakshmi
For Respondent-4 : Mr.Naveen Kumar Murthi

for
Mr.R.Santhanam

For Respondent-5 : Mr.V.Prakash
Senior Counsel
for Mr.Sunil Kumar

W.P.No.8534 of 2006
TNEB Engineer's Association
represented by its General Secretary
Er.K.Apparswamy
Chennai-2. ... Petitioner

..vs..

1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.

2. The Tamil Nadu Electricity Board
represented by the Secretary
800, Anna Salai, Chennai- 600 002.

3. The Joint Commissioner of Labour/Conciliation
Chennai 600 006.

4. TNEB Engineer's Sangam
represented by its General Secretary
793, Anna Salai, Chennai 600 002. ... Respondents

W.P.No.8534 of 2006 is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the concerned records of the proceedings of the third respondent in proceedings No.B2/70538/05 dated 15.10.2005 and the consequential proceedings of the second respondent vide (Per) B.P. (Ch) No.219 dated 16.10.2005 and quash the relevant paragraph under page 8 of the impugned proceedings dated 15.10.2005 and para 3(ii) of the impugned proceedings dated 16.10.2005 regarding the ratio 2 : 3 between AEs and JEs Grade - I in Distribution Sections and the ratio of 2 : 2 : 1 between AEs and JEs Grade - I and JEs Grade - II in other areas.

For Petitioner : Mr.P.S.Raman
senior counsel
for
Mr.R.Santhanam

For respondents 1 & 2 : Mrs.Varalakshmi
For Respondent-3 : No appearance

For Respondent-4 : Mr.V.Prakash
Senior Counsel

for
Mr.Sunil Kumar

COMMON JUDGMENT
(Judgment of the Court was delivered by R.MAHADEVAN, J.)
The appeal in W.A.No.1176 of 2000 is filed by the TNEB Engineers Sangam against the order in W.P.No.1307 of 1997 dated 05.06.2000. Against the very same order, the Tamil Nadu Electricity Board and its Chairman have filed the appeal in W.A.No.2044 of 2000.
2. The brief facts of the case are as follows:
The Writ petition in W.P.No.1307 of 1997 was filed by one Ero Velai Iilla Pattatharigal Sangam challenging the proceedings of the first respondent, i.e the Tamil Nadu Electricity Board in para 4 (iii) of B.P (F.B) Ms.No. 5, dated 25.01.1994 read with para 2 (xii) of BP. Ms. No.123 dated 01.03.1980 and for a consequential declaration to declare the ratios of 2:1:2, 2:2:1 and 2:3 as between the Assistant Engineers (Graduates) and Junior Engineers Grade -I and Junior Engineers Grade -II (Non-Graduates), as null and void and to direct the first respondent to forthwith maintain the 3:1 ratio, as between the Assistant Engineer and Junior Engineer Grade - I cadre strength of class II of the Engineering Service of the first respondent.

3. The members of the writ petitioner sangam are unemployed youth with majority of them being Engineering Graduates. Some of them, according to the petitioner, had completed the apprenticeship training with the first respondent. The case of the petitioner is that in the promotion and appointment ratio fixed for the above posts, the Board has failed to take into consideration, the interest of the members of its association. The further case of the petitioner is that for the purpose of filling the post of Assistant Executive Engineers, earlier the ratio of 3:1 was followed, i.e for every three candidates from the post of Assistant Engineer, one candidate from the post of Junior Engineer Grade - I of Class-II would be considered. The entry level for Diploma Holders is Technical Assistants and the post of Diploma Holders is filled up in the ratio of 3:1, i.e. for every direct recruitment of three Diploma Holders, one non-diploma holder would be promoted. The Technical Assistants are promoted as Junior Engineer Grade - II, who would inturn be promoted to the post of Junior Engineer Grade - I and like wise. The further case of the petitioner is that the post of Assistant Engineer would be filled by internal selection among Diploma Holders, who have completed part-time Engineering and by direct recruitment in the ratio of 1:1. The ratio of 3:1 for considering the candidates from the categories of Assistant Engineers and Junior Engineers Grade - I to the post of Assistant Executive Engineer has also been upheld by the Apex Court in W.P.No. 3736 of 1982. However, the Board suddenly started following the ratio of 2:1:2, i.e Two Assistant Engineers, one Junior Engineer Grade - I and Two Junior Engineer Grade - II and altered the same to 2:2:1 based on a settlement under Section 18(1) and 12(3) of the Industrial Disputes Act. For the rural areas in Distribution Circle, the ratio was fixed at 2:3 and the same was also approved by the Board in the impugned proceedings. Aggrieved, the petitioner has filed the writ petition inter alia contending that the interest of the members of the petitioners association, i.e the Diploma Holders has been ignored, the ratio to be followed is 3:1, that the above fixation of ratio is arbitrary and discriminatory, affects the rights guaranteed under Article 14 and 16 of the Constitution of India, that only the statutory service regulation is applicable to decide the recruitment and promotion in the service of the Board and the provisions of the Industrial Disputes Act cannot be invoked and that the present ratio would deter the entry and promotion scope of its members in service.

4. The Electricity Board and the Chairman, arrayed as first and second respondents opposed the writ petition contending that the writ petitioner had no locus standi to challenge the ratio and the Board proceedings. The respondents 1 and 2 also denied the applicability of the ratio 3:1 for Technical

Assistants. No ratio is adopted for filling up the post of Technical Assistants, which would be filled by open competition from Diploma Holders and selection from Diploma Holders in lower regular work establishment. The respondents also relied upon the settlement executed by the Board and the employees and the ratio of 3:1 implemented in Public Works Department and Highways Department cannot be implemented in the Board for all cadres. It is for the Board to decide on the ratio in the interest of exigency of the work. Because of their level of entry, most of the Diploma Holders retire as Junior Engineer/Electrical Grade - I/Assistant Executive Engineer whereas the Engineer have chances of going upto the level of Chief Manager/Member of the Board. Relying upon the Apex Court judgment in S.L.P.Nos. 5205-5328 of 1996, it was contended that the Apprentices cannot claim any exclusive right and the preference can be given if only other material aspects are equal and hence, sought the dismissal of the writ petition.

5. The 3rd respondent in the writ petition, also assailed the ratio approved by the Board contending that the ratio fixed based on the settlement is not binding on the members of their association and that the ratio affects the opportunities of its members. The 3rd respondent also had vouched for following the ratio of 3:1 and only by which, more opportunities would be available for Graduate Engineers while coming into the service as direct recruits. The 3rd respondent has supported the case of the writ petitioner insofar the ratio is concerned.

6. Sailing with the Board, the 4th respondent inter alia contended that the petitioner had no locus standii to challenge the Boards proceedings confirming the ratio of 2:2:1. The 4th respondent also resisted the writ petition on the ground that representing about 7000 members comprising of Diploma and Degree holders, the agreement was entered into and has stood the test of time and therefore, it cannot be questioned that too by a third party who has no privity. The 4th respondent also contended that the post of Technical Assistant is not filled up following the ratio of 3:1 and a writ petition challenging the terms of settlement under Section 18(1) and 12(3) is not maintainable and hence, sought the dismissal of the writ petition.

7. After hearing the parties, the Learned single Judge allowed the writ petition holding that the writ petition was maintainable insofar the members, who had completed their apprenticeship is concerned and by relying on the Judgment of the Hon'ble Apex Court in Writ Petition No. 3736 of 1982 has held that the ratio of 2:1:2 and 2:2:1 would affect the rights of the members of the petitioner who had completed apprenticeship, allowed the writ petition with a direction to follow the ratio of 3:1. The Learned Judge has also gone further and directed the 1st and 2nd respondents to call for the applications from the eligible members of the petitioner association, conduct written examination and oral interview as per rules and select them on merits and issue appointment orders within six months. Pending writ petitions, few employees whose promotions were kept on hold had impleaded themselves in the writ petition.

8. Aggrieved, the Writ Appeal No.1176 of 2000 has been filed by the 4th respondent and Writ Appeal No.2044 of 2000 has been filed by the 1st and 2nd respondent.

9. The learned senior counsel, Mr.V.Prakash appearing on behalf of the appellant / 4th respondent in W.A.No.1176/2000 painstakingly argued that the Learned Judge has completely gone beyond the scope of the writ petition and issued the directions. The learned senior counsel further contended that the Learned Judge failed to consider that the judgment of the Hon'ble Apex court in Kothandaramans case cannot be applied to the present facts and circumstances of the case as the petitioners under the guise of Hon'ble Supreme Court order wanted the ratio of 3:1 to be implemented to feeder category. The learned senior counsel also contended that just because some of the members were alleged to have completed

the apprenticeship training, no documents were produced and in any case, the members not being employees of the Board cannot challenge the terms of 18(1) and 12(3) settlement. The learned senior counsel pointing out to the earliest of settlement on 29.02.1980 contended that different ratios at different levels have been fixed and implemented from 1980 onwards based on the settlement between the Board and the employees with regard to the posts of Assistant Engineer, Junior Engineer Grade - I and II without challenge and therefore, the challenge to the ratio fixed by the settlements cannot be sustained. The learned senior counsel also contended that since the members of the appellant Sangam also comprise of Diploma and Degree Holders, the same would be binding on the 4th respondent Engineers Association. The Learned Senior counsel also contended that in any case, the rights of the engineers have not been encroached as their entitlement in the ratio has not been altered and the reference to engineers is only for the purpose of better illustration and understanding and therefore, failure to hear them would not invalidate the settlements. Relying upon the judgments in AIR 1966 SC 305 (All India Reserve Bank Employees Association Versus Reserve Bank of India), 2004 (10) SCC 460 (Mukand Ltd., .vs. Mukand Staff and Officers' Association), 1994 (6) JT SC 26 (Ram Pukar Singh Versus Heavy Engineering Corporation), 1998 (7) SCC 273 (Dr.Duryodhan Sahu and others .vs. Jitendra Kumar Mishra and others), 2006 3 LLJ 255 Mad (Chairman and Managing Director, Metal Box India Ltd., and Metal Box Company Workers'Union represented by its President .vs. Metal Box Company Workers Union represented by its President) and order in W.P No 23245 of 2001 and 11754 of 2002 (B.Geethalakshmi .vs. TNEB), he sought the Writ appeal to be allowed.

10. The learned counsel for the Electricity Board assailing the orders of the Learned single Judge contended that the writ petitioner has no locus standii as none of its members are in employment with the Board. Further, the learned counsel contended that undergoing an apprenticeship training would not give any right and they would have to be treated in par with other aspirants. The learned counsel further contended that the re-fixation of the ratio at 2:2:1 would not affect the rights of the Engineers as there is no change to their representation which was also earlier at 2. The Learned counsel also contended that the learned single Judge erred in giving directions regarding inviting applications from the members of the petitioner association, and also failed to understand that the ratio of 2:2:1 is followed only for the post of Assistant Engineers/Junior Engineers Grade - I / Junior Engineers Grade - II and not for the post of Assistant Executive Engineer and pressed for the appeal of the Board to be allowed.

11. Mr.Vijay Narayan, the learned senior counsel appearing for the writ petitioner would contend that the learned single Judge had rightly addressed the issue of maintainability of the writ petition and followed the dictum of the Hon'ble Apex Court wherein the ratio of 3:1 has been upheld. The learned senior counsel also contended that the Board has not considered the prospects of the members of the petitioner association, who had undergone apprenticeship training. The learned senior counsel also contended that unless proper representation is permitted at the entry level, the chances of members would be affected while being promoted to the post of Assistant Engineers/Junior Engineers. Contending that there is nothing perverse, the learned senior counsel sought for the dismissal of both the appeals.

12. Mr.P.S.Raman, the learned senior counsel appearing for the Engineers Association contended that the learned Judge was right in upholding the principle of 3:1. The learned senior counsel also contended that the settlement arrived at between the Board and 4th respondent sangam is not binding on Engineers association as the Engineers form under a different class and cannot be treated on par with Diploma Holders or part time Engineering Graduates. The learned senior counsel also contended that regular Engineering Graduates are more technically sound and the need of the hour is to provide more opportunities to them. The learned senior counsel also pointing out to the pleadings of the Board in several cases contended that the Board has been taking inconsistent stand creating confusion.

13. So far the employees who have impleaded themselves are concerned, there is no representation before us.

14. We have heard all the counsels and perused the records.

15. Before going into the merits of the case, we condemn the lacklustre attitude of the 1st and 2nd respondents in permitting the Chief Engineer/Personnel of the Board to sign the affidavit in C.M.P.No.17684 of 2000, sworn by the Secretary of the Board. We direct the Board and its counsel to be more vigilant before such affidavits are filed in Courts.

16. Now coming to the maintainability of the writ petition and the directions issued, we agree with the contention of the learned senior counsel appearing for the 4th respondent and counsel for the Board that the writ petition, at the instance of a third party challenging the terms governing the promotion to various cadre, is not maintainable. The members of the petitioner association are not the employees of Board. Some of them are alleged to have undergone the apprenticeship training with the Board. But that would not give them any right to challenge the terms of agreement between the Board and its employees or the proceedings of the Board. Even the Hon'ble Apex Court has in S.L.P.Nos. 5205-5328 of 1996, only held that among other things being equal, the persons who have undergone apprenticeship training must be given preference. Therefore, to enjoy the preference, one must be found eligible on par with another candidate at the entry level post. Nevertheless it is also not the case of the petitioners association that the application of its members are pending consideration. It is also pertinent to mention here that the policies of the Board do not prevent the members of the petitioner association from participating in the selection process. Hence, the apprehension of the petitioner is unwarranted and the plea of the petitioner cannot be entertained unless a right is established and unless it is shown that the right to be considered is taken away. The learned senior counsel for the 4th respondent has also relied upon the judgment of the Hon'ble Apex Court in 1998 (7) SCC 273 (Dr.DuryodhanSahu and others .vs. Jitendra KumarMishra and others) to contend that the Hon'ble Apex Court rejected the plea of a stranger challenging the creation of a post before the Administrative Tribunal. This Court is of the view that the above judgment is not relevant as it deals with the powers and jurisdiction of Administrative Tribunals. In any case, we have already held that the writ petition is not maintainable.

17. Though under Article 226 of the Constitution, the relief sought by the petitioner can be moulded in the interest of justice, it must be used sparingly. Such relief inconsistent with the prayer and pleadings must not affect the rights of the third parties. If there is a possibility of infringement of rights of other parties, the Court must refrain from doing so. As pointed out earlier, the members of the petitioner association could very well participate in the selection process along with others if they are otherwise qualified. Therefore, the learned Judge erred in directing the Board to call for applications from the eligible members of the petitioner association alone as if they alone are entitled. Even a common man, if qualified and eligible but not being a member of any association can apply for any post to which applications are invited. Hence the learned Judge has exceeded his jurisdiction in giving directions and hence, the same are hereby set aside.

18. Even though the 3rd respondent, the Engineers association has not challenged the ratio, had supported the contention of the petitioner regarding 3:1 ratio contending that Engineers by virtue of their qualification form a different class do not fall within the classification of ''workmen'' and in view of specific regulations, the 18(1) and 12(3) settlements under the Industrial Disputes Act would not bind them as

they were not parties to it. The learned senior counsel also pointed out the necessity to give prominence to qualified Engineers.

19. The above arguments have been countered by the learned senior counsel for the 4th respondent by relying upon the following judgments to contend that the agreement by one union is binding upon other unions and also on other employees and that the terms of settlement cannot be questioned in a writ petition under Article 226 of the Constitution of India.

(i) To substantiate his claim that the settlement arrived at between workmen and management under Section 12(3) read with Section 18 of the Industrial Disputes Act is binding on all the workmen whether they were members of the union or not, the learned counsel relied upon the decision in 1994(6) JT 26 (Ram Pukar Singh Versus Heavy Engineering Corporation), in which, the Apex Court has held as follows:
"6. The case of the appellants is that they were not members of the Union with which the settlements dated 14-5- 1987 and 13-9-1990 were entered into and, therefore, the said settlements were not binding on them. They contended that in terms of Dr Binod Kumar's report they were entitled to the post of Assistant Personnel Officer w.e.f. 1-1-1986 and hence to the arrears of salary in the said post from that date till they were appointed to the said post on 13-10-1990 in terms of the settlement of 13-9-1990.

7. We are not impressed by this contention. It is true that Dr Binod Kumar had recommended the abolition of one of the two Supervisory posts and retention of only one Supervisory post in between that of the Assistant Grade I and Assistant Personnel Officer. However, he had also recommended that one of the Supervisory posts should be phased out over a period of 10 years. The management had devised its own way of removing one of the Supervisory posts by converting it into the Non-Supervisory post. That could be one of the ways of implementing the said recommendations. However, when this step was taken by the management, it resulted in discontentment among the employees. Some of the employees had approached the High Court and thereafter this Court and this Court directed, as pointed out above, the appointment of the appellants in that case, to the post of Assistant Personnel Officer from 30-12-1985. A settlement was, however, arrived at between the management and the Union thereafter, whereunder it was, among other things, agreed that the employees who were holding the post of Office Superintendent (Non-Supervisory) would be deemed to have been appointed to the post of Assistant Personnel Officer from the date they were appointed as Office Superintendent (Non-Supervisory) and that the services rendered by them both in the post of Office Superintendent (Non-Supervisory) as well as in the post of Assistant Personnel Officer would together be taken into consideration as a qualifying period for promotion to the post of the Junior Executive Officer. It was further agreed that the employees concerned would not, however, claim any arrears of pay. This was done because the respondent-Corporation was in a bad financial shape. The contention that the settlement of 13-9-1990 is not binding on the appellants because they were in a Supervisory category and were not workmen and hence the Union had no right to represent them, has no substance in it for two reasons. Firstly, in the settlement of 14-5-1987 arrived at with the Union they had not only received the benefit of the arrears of salary of Rs 1600 but also of the revised pay scales since then. They could not have had this benefit if they were not workmen and, therefore, considered themselves as belonging to the Non-Supervisory category. They had continued to be workmen, i.e., in Non-Supervisory category till the next settlement of 13-91990. Admittedly, there was only one Union representing all workers during all the relevant period. The settlement dated 13-9-1990 was admittedly under Section 12(3) read with Section 18 and other provisions of the Industrial Disputes Act. The settlement was, therefore, binding on all the workmen whether they were members of the Union or not. In the circumstances, we are of the view that the said settlement of 13-9-1990 is binding on the appellants. Under the said settlement it is solemnly agreed that they will not claim any arrears of salary, till

13-10-1990 on which day they were appointed to the post of Assistant Personnel Officer. According to us, the High Court has taken the correct view of the matter."
(ii) In the decision in AIR 1966 SC 305 (All India Reserve Bank Employees Association Versus Reserve Bank of India), the Hon'ble Apex Court while dealing with the different classes of workmen, distinguished the nature of works and has held as follows:
"23. Mr. Chari next contends that considering the duties of Class II employees, it cannot be said that they are employed in a supervisory capacity at all and in elucidation of the meaning to be given, to the words 'supervisory' and 'capacity' he has cited numerous. dictionaries, Corpus Juris etc. as to the meaning of the words. "supervise", "supervisor", "supervising", "supervision" etc. etc. The word "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others. It is, therefore, necessary to see the full context in which the words occur and the words of our own Act are the surest guide. Viewed in this manner we cannot overlook the import of the word "such" which expressly links the exception to the main part. Unless this was done it would have been possible to argue that cl. (iv) indicated something, which, though not included in the main part, ought not by construction to be so included. By keeping the link it is clear to see that what it excluded is something which is already a part of the main provision.

25. It may be mentioned here that Mr. Chari attempted to save the employees in Class 11 from the operation of the exceptions in cl. (iv) by referring to their duties which he said were in no sense 'supervisory' but only clerical or of checkers. He also cited a number of cases, illustrative of this point of view. Those are cases dealing with foremen, technologists, engineers, chemists, shift engineers, Asstt. Superintendents, Depot Superintendents, godown-keepers etc. We have looked into all of them but do not find it necessary to refer to any except one. In Ford Motor Company of India v. Ford Motors Staff Union, ([1953] 2 L.L.J. 444.) the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within or without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law. . . . " and " will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set-up of the particular unit of industry and like factoe". The Labour Appellate Tribunal pertinently gave the example that "the nature of the work in the banking industry is in many respects obviously different from the nature and type of work in a workshop department of an engineering or automobile concern." We agree that we cannot use analogies to find out whether Class 11 workers here were supervisors or doing mere clerical work-. No doubt, as Mr. Chari stated, the work in a Bank involves layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision. In Llyods Bank Ltd. v. Pannalal Gupta ([1961] 1 L.L.J. 18.), the finding of the Labour Appellate Tribunal was reversed because the legal inference from proved facts was wrongly drawn. It is pointed out there that before a clerk can claim a special allowance under para 164(b) of the Sastry Award open to Supervisors, he must prove that he supervises the work of some others; who are in a sense below him. It is pointed out that mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision and the work done in the audit department of a bank is not supervision."

(iii) In 2004 (10) SCC 460 (Mukand Ltd., .vs. Mukand Staff and Officers' Association), the Hon'ble Apex Court has held that non-workmen cannot be given the status and protection available to workmen under the Industrial Disputes Act. The relevant portion reads as follows:

" 53. Section 2(k) and Section 18 are reproduced hereunder:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons"

18. Persons on whom settlements and awards are binding.- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunalor National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

62. The above submission of learned counsel for the appellant is well founded under the Act. Disputes can be raised only by the workmen with the employer. The workmen, however, can in appropriate cases espouse the cause of NON-WORKMEN if there is community of interest between the workmen and the NON-WORKMEN. In the instant case, it is an admitted fact that the community of interest or estoppel has never been pleaded and the findings rendered by the High Court on this issue is in the absence of pleadings. If the NON-WORKMEN are given the status and protection available to the workmen, it would mean that the entire machinery and procedure of the Act would apply to the NON-WORKMEN with regard to their employment/non-employment, the terms of employment, the conditions of labour etc. This would cast on the appellant-Company the onerous burden of compliance with the provisions of the Act in respect of the NON-WORKMEN. In our view, the situation is not envisaged by the Act which is solely designed to protect the interests of the workmen as defined in Section 2(s) of the Act."

20. To substantiate his claim that the petitions are not maintainable, the learned counsel relied on the judgment reported in 2006 III LLJ 255 (Chairman and Managing Director, Metal Box India Ltd., and Metal Box Company Workers'Union represented by its President .vs. Metal Box Company Workers Union represented by its President and others) in which the Division Bench of this Court has held that as follows:

"17. It is not possible for us to accept the submissions made by the learned counsel for the first responodent/union that the malafide nature of the impugned settlement, and the questions whether there was a closure or not and whether the first respondent was given a reasonable opportunity can be decided from the materials and therefore, it was not necessary for the workmen to be driven to the Tribunal for establishing these issues. We have aready seen that there are disputed questions of fact and therefore, we are inclined to accept the objection raised on behalf of the appellant that the writ petition is not maintainable and therefore, no interim order should have been granted."

21. The Division Bench of this Court in W.P.Nos.23245 of 2001 and 11754 of 2002 while dealing with the ratio regarding the recruitment to the post of Assistant Engineers has held as follows:

"6. The fact remains that the respondent Electricity Board issued proceeding in B.P.Ms.No.635 (Administrative) dated 22.11.1982 fixing the ratio of 2: 1 for internal selection and external recruitment of Engineering Graduates respectively for the post of Assistant Engineer. Subsequently, B.P.Ms (F.B) No.80 dated 21.07.1984 was issued directing to adopt the ratio of 1 : 3 for internal selection and external selection of Engineering Graduates respectively. In suppression of the above proceedings, another proceeding in B.P.Ms (F.B) No.5 (Administrative Branch) dated 01.02.1985 was issued fixing the ratio of 1 : 3 for internal selection and external selection of Engineering Graduates respectively for the post of Assistant Engineer.

7. As can be seen from the averments made in the affidavits, the Graduate Engineers are aggrieved of the 50% proportional representation given by the Board for internal selection without adopting any selection test / examination to testify the academic and technical competence of the candidates who come through internal selection. The main relief sought for by the Graduate Engineers in these petitions is for a direction to the respondent Board to conduct common selection examination for the post of Assistant Engineers both for External and Internal candidates.

8. Admittedly, there are two channels of recruitment, one is direct and another is for in-service candidates. For in-service candidates, there is no written examination and the challenge made is that written examination is also to be held to them on par with the direct recruits. The challenge made by the petitioners cannot be sustained as it is not upheld by the Court. It is not at all the case of the petitioners that the chances of selection of the direct recruitees is in any way affected because of the impugned proceedings providing for 1 : 1 ratio for in-services candidates. So long as the ratio is strictly maintained by the respondent Board, neither the prospective direct recruits nor the internal selectees could have any grievance.

10. The contention of the learned counsel for the petitioner is that the respondent Board did not prescribe a common or similar type of examination for external selection and internal selection is only to be rejected because selection of a candidate for a selection post is within the domain of the employer and the decision of the Board cannot be interfered with."

The above judgments have been relied upon by the Learned Senior Counsel for the 4th respondent to contend that since the nature of job of Assistant Executive Engineers or Assistant Engineers are one and the same, the settlement by the 4th respondent is binding on the 3rd respondent and the same cannot be challenged in a writ petition.

22. We do not concur with the arguments of the 4th respondent regarding the binding nature of the settlements and with regard to the powers of this court to entertain a plea against the validity of the settlement that too when the aggrieved party contends that they have not been provided any opportunity to put forth their case. It is settled law that availability of alternative remedy is not a bar to entertain a writ petition under Article 226 of the constitution of India. It is a self-inflicted bar depending upon the discretion and the circumstances of the case. One of the exceptions to the above is violations of principles of natural justice. In the present case, the Engineers by virtue of their superior qualification would fall under a different class and therefore they must have been heard before the settlement was concluded. Though it might seem that the functions performed by them would be similar, it is not the same. By virtue of their qualification and the technical knowledge, the Engineers would be not only be performing the regular administrative functions but would also be supervising the overall technical functions of lower level staff including the diploma holders. Therefore, the above judgments relied upon by the counsel for the 4th respondent would not come to his aid in the facts of the case.

23. At this juncture, it is relevant to take note of the ratio laid by the Hon'ble Apex Court in 1994 (6) SCC 282 (T. R. Kothandaraman and Others Versus Tamil Nadu Water Supply and Drainage Bd and Others) that there is no constitutional infirmity in the classification of workers in the Electricity Board and there is no necessity to interfer with the ratio because of the fact that any different view would create almost a chaotice situation in the working of the Board. The relevant paragraphs are as follows:-

"16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service

(1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend upon the facts and circumstances of each case

(2) Higher educational qualification can be and the basis not only for barring promotion, but also for restricting the scope of promotion

(3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this being indicated later

17. Keeping in mind the aforesaid legal position, we may now advert to the facts of the cases at hand and decide whether the restriction on the promotion as placed by the provisions concerned violated the mandate of Article 16 or fits in with the wavelength of Article 16

18. In the cases at hand, we are concerned with two different services and we propose to take each of them separately to find out not only the nature and duties of the promotional post(s) but also whether the higher educational requirements as prescribed is necessary to discharge those duties. We shall have to ascertain the historical setting as well of the services in question. We shall then see as to whether the restriction imposed is reasonable.

25. The writ petitioners and appellants, among whom is the Engineering Diploma-holders' Association, have challenged the decision of the Tamil Nadu Electricity Board which amended the Board's Service Regulations fixing ratio of 3 : 1 for promotion to the post of Assistant Engineers (Electrical) between the Junior Engineers (Electrical) and Supervisors (Electrical Grade - I) - the former being degree-holders and latter diploma-holders.

26. The aforesaid shows that the classification is based on higher educational qualification and the same has to receive our approval because for certain types of work the Supervisors are not sufficiently qualified, whereas Junior Engineers are. The nature of the work performed by the two classes of post holders and the higher educational qualification of the degree-holders did permit the Electricity Board to classify the two groups differently for the purpose of their promotion. As to the ratio of 3 : 1, we have applied our mind and we have come to the conclusion that we may not interfere with the same because of the fact that any different view would create almost a chaotic situation in the working of the Board as the Board's decision, which is of 1974 has held the field for about two decades and any disturbance at this stage would not to be conducive to the functioning of the Board inasmuch as the number of persons to be affected would be in thousands, as it has been stated in paragraph 22 of the counter-affidavit filed on behalf of the Board in CA No. 1991 that the number of qualified diploma-holders and degree-holders in all branches would be in region of 1000; Junior Engineers Grade - I about 2000 and Assistant Engineers also 2000.

27. The aforesaid being the position, we do not find any constitutional infirmity in the classification and would not interfere with the ratio as prescribed because of the aforesaid special facts.

28. None of the objections raised and contentions advanced having been accepted by us, all the writ petitions, appeals and special leave petitions stand dismissed. Parties are, however, left to bear their own costs."

24. Upon considering the rival contentions and the ratio in the above decisions, this court is of the view that the reservation of posts in favour of Graduate Engineers have been found to be in vogue for a long time. At the same time, the plight of Diploma Holders also cannot be ignored as held by the Hon'ble Apex Court in the Kothandaramans case. Though the observations may be considered while fixing of the ratio, the judgment of the Hon'ble Apex Court in Kothandaramans case does not put an end to the issue as it was delivered in the peculiar facts of the case existing at that point of time. Now there is a need to reconsider the same depending upon the requirements in all internal departments and different circles. It is claimed that the ratio of 2:1:2 and later 2:2:1 has been inexistence for a long time. In the present case, what was aimed at a challenge to the recruitment to the post of Assistant Executive Engineer has been diverted to other posts like Assistant Engineer/Junior Engineer Grade - I contending that the ratios fixed at entry level would affect the prospects of respective candidates at higher level. The ratio has to be fixed depending upon the need in specific fields. However, in view of their qualification, the Graduate Engineers would be more technically sound and would require adequate representation.

25. With regard to the validity of the settlement, the case of the 3rd respondent is that they were not party to the settlement. The 3rd respondent has relied upon the judgment of the Hon'ble Apex Court in 2004 (10) SCC 460 (Mukand Ltd., .vs. Mukand Staff and Officers' Association), in which the Hon'ble Apex Court has held that none of the said settlements contained any provision, or even a whisper thereof, of any waiver by the appellant-Company of its rights with regard to the status of the employees under the Act, wherein the Hon'ble Apex Court has held in paras 50, 96,97,98 as follows:
"50. In the instant case, the employer and the employees by their conduct in concluding settlements in the past could not create for, or confer upon, an adjudicating authority jurisdiction, where none existed, in respect of employees to whom the provisions of the Act are not applicable. This apart, the employer had not waived his right to raise the issue of the status of the employees under the Act in any of these settlements. The employer cannot held to have waived his rights regarding the issue of the status of the employees under the Act in the absence of any of the settlements concluded by them with their employees. The High Court has come to the conclusion that there are grave and fundamental errors, including the errors in assessing financial capacity, burden etc. in the award of the Tribunal. In the instant case, the Tribunal did not have the jurisdiction to adjudicate the present dispute inasmuch as it pertains to the conditions of service of NON-WORKMEN. The Division Bench has erred in holding that there is a community of interest between the workmen and the NON-WORKMEN and holding further that the workmen can raise a dispute regarding the service conditions of NON-WORKMEN. This reasoning, in the absence of any pleading regarding the community of interest, is fallacious.

96. The High Court further failed to appreciate that in order to secure revision of their own grades or other items of emoluments, it was not necessary for employees who are 'workmen' under the Act to agitate also for the revision of the emoluments of those who are not 'workmen', and that as such the 'workmen' in the present, have no direct or substantial interest in the revision of emoluments of employees who are not 'workmen', nor could the workmen be held to be vitally interested in the terms of employment of the NON-WORKMEN.

97. The High Court also failed to appreciate that 'workmen' as well as NON-WORKMEN being in the same grade did not imply that the distinction between the two categories ceased to exist, or that they belonged to the same class.

98. The Division Bench has further erred in relying on the various settlements concluded between the parties in the past regarding the service conditions of the employees including the settlement of 1974 relating to welfare scheme. Both the Division Bench and the learned single Judge failed to appreciate that

none of the said settlements contained any provision, or even a whisper thereof, of any waiver by the appellant-Company of its rights with regard to the status of the employees under the Act. "

26. Even though as held by the Hon'ble Apex Court, the settlement entered into by one union would be binding on the other unions, no material is placed in the instant case as to which is the recognised union. The writ petition filed by the 3rd respondent was also dismissed on technical grounds that their association was unregistered at the time of filing the writ petition in W.P.No.2330 of 1994. Whereas, the members of the 3rd respondent union are Graduate Engineers.However, from the facts, it is clear that the members of the 4th respondent union are Diploma Holders and part time Engineering Graduates. We have already held that the Engineers by virtue of their superior qualification and technical know-how would form a different class, the Board must have heard the members of the Engineers association before entering into the settlement. Further, when the terms and conditions of recruitment are contemplated under the Board Regulations, entering into a settlement without hearing a group of persons who could be affected, the Board should not have entered into the 18(1) and 12 (3) Settlements. Applying the ratio laid down by the Hon'ble Apex Court in Mukunds case, this court is of the view that the plight of the members of the 3rd respondent association has not been properly addressed.

27. The service regulations in the Board with regard to the recruitment to the posts in Division II is as under:

28. It is also pertinent to mention here that without amending the regulations, the Board cannot continue to arrive at settlements so as to contribute to the litigations. It is also brought to our knowledge, that as early as on 21.11.2009, there was a proposal to review the existing ratio for promotion/appointment to various categories. Therefore, without setting aside the settlement entered into vogue, this Court directs the first and second respondents, to refix the ratio taking into consideration of all the existing contingencies involved and also by giving opportunity to both the diploma and engineers association. The ratio must be fixed in such a way to give equal scope to direct recruitment and internal selection at the entry level posts. The decision so arrived shall be implemented prospectively by amending the service regulations. The respondents 1 and 2 are directed to implement the directions within six months from today.

29. With the above directions, both the writ appeals are partly allowed. The order of the learned single Judge in W.P.No.1307 of 1997 is set aside. Connected Miscellaneous Petitions are closed. No costs.

30. In writ petition No.34843 of 2003, the challenge is to the notification inviting applications for internal selection to the post of Assistant Engineers/Electrical during the pendency of the appeals without any opportunity to the graduate engineers for appointment through direct recruitment. In view of the directions issued above in the writ appeals, there is no necessity to pass separate orders in this writ petition. Hence the writ petition is closed. No costs.

31. In Writ Petition No.1846 of 2004, the challenge is to the order rejecting the request of the petitioner to follow the 1:1 ratio while filing up the post of Assistant Engineer. The impugned order therein was passed when there was a ban in direct recruitment. We are informed that the ban has been lifted and the petitioner has already been issued with a call letter dated 29.08.2005. Hence, the writ petition has become infructuous and the same is hereby dismissed as so. No costs.

32. In writ petition No.33479 of 2005, the challenge is to the requisition to forward the list of eligible candidates fit for promotion to the post of Junior Engineers Grade I without scope for direct recruitment.

The contentions and relief sought are similar to in writ petition No.34843/03. In view of the directions issued above in the writ appeals, there is no necessity to pass separate orders in this writ petition. Hence the writ petition is closed. No costs.

33. In writ petition No.8534 of 2006, the challenge is to the decision to continue the then existing ratio of 2:3 between Assistant Engineers and Junior Engineers Grade I posted at distribution sections and existing ratio (2:2:1) adopted in other areas, pending the writ appeals. We do not find any irregularity in the stand of the Board as the matter was already sub-judiced. In any case, we have already directed the Board to refix the ratio after hearing all the parties concerned. Hence, no separate orders are necessary in this writ petition and therefore, the writ petition is closed. No costs.
All miscellaneous petitions are closed.

(S.K.K., C.J.) (R.M.D.J.)
.02.2015
Index : Yes/No. Internet : Yes/No.
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To
1. The Tamil Nadu Electricity Board
represented by its Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.
2. The Tamil Nadu Electricity Board
represented by its Secretary
800, Anna Salai, Chennai- 600 002.
3. The Chief Engineer / Personnel
The Tamil Nadu Electricity Board
800, Anna Salai, Chennai- 600 002.
4. The Section Officer,
V.R. Section,
High Court,
Madras.
THE HON'BLE THE CHIEF JUSTICE
and
R.MAHADEVAN, J.
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Pre-delivery Judgment in
Writ Appeal Nos.1176 and 2044 of 2000
and
Writ Petition Nos.34843 of 2003, 1846 of 2004,
33479 of 2005 and 8534 of 2006
and
connected M.Ps.
02.2015