

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 15TH DAY OF MARCH 2011

BEFORE:

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

WRIT PETITION No.80845 OF 2010 (S-RES)

Between :

Ramesh
S/o Arjun Auradkar,
Age: 36 years,
Occ: Nil,
R/o. Aurad (B),
Taluk & Dist. Bidar.

..Petitioner

(By Sri Veresh B Patil, Adv.,)

And:

1. The Director (Admn. & HR),
Karnataka Power Transmission
Corporation Ltd.,
Corporate Officer,
Kaveri Bhavan,
Bangalore.
2. The Secretary,
Karnataka Power Transmission
Corporation Ltd.,
Corporate Office,
Kaveri Bhavan,
Bangalore.

3. The Executive Engineer (Elcl).,
Karnataka Power Transmission
Corporation Ltd., (O & M) Division,
Post: Yadgir,
Dist: Gulbarga.

..Respondents

(By Sri R.S. Patil Adv., (Absent) for R1 to R3)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to issue a writ of certiorari, quashing the impugned endorsement dated 22.10.2009 passed by the 1st Respondent in No. LPTCL/B16/7960/2009-10 as at Annexure-M to the writ petition, in the interest of justice and equity.

This Writ Petition coming on for Prl. hearing this day, the Court made the following :

ORDER

Heard the learned counsel for the petitioner and perused the records. Learned counsel appearing for the respondent is absent. However, the statement of objections filed by the respondents are perused.

2. The petitioner filed an application seeking appointment to the post of Assistant Lineman pursuant to the Notification issued by the respondent. The petitioner was called for interview as per Annexure-`A` dated 29.11.1997.



He was also a rural candidate as is clear from the document vide Annexure-`B'. Totally 36 persons were selected to the post of Assistant Lineman. In addition to the same, a waiting list was prepared containing 16 names, out of which, the name of the petitioner is at Sl.No.15. He belongs to scheduled caste category. These facts are not in dispute.

3. Nine persons out of selected 36 persons did not opt to join for duties. Hence, the 9 vacancies so remained were filled up by 9 persons whose names find place in the waiting list from Sl.Nos.1 to 9. Since the petitioner was not selected, he filed Writ Petition No.36022/2000 before this Court. The writ petition came to be allowed by observing thus :

" In these circumstances, accepting the submission of the learned counsel for the petitioners these petitions are allowed. Orders issued to the contesting respondents are set aside. The Board is directed to consider the case of the petitioners from the waiting list and provide benefits in accordance with law. The respondent scheduled candidates are to be considered if any back-log vacancy is available

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*as on today to render justice to them as well.
Parties are to bear their respective costs."*

The order of the learned Single Judge in writ petition is confirmed by the Division Bench of this Court in Writ Appeal No.2966/2003, disposed of on 12th June 2009. Thereafter, the entire selection process was re-done and the impugned endorsement is issued as per Annexure-`M' dated 22nd October 2009 intimating the petitioner that he cannot be appointed. The impugned endorsement reiterated the earlier order made by the respondents which was questioned before this Court in Writ Petition No.36022/2000, which came to be allowed.

4. The impugned order suffers from non-application of mind. The authority concerned has proceeded casually while passing the order. He has merely quoted Regulation 6 (c) (iii) and 6 (c (iv) of KEB R & P Regulations and has abruptly come to the conclusion. The respondents have not cared to read the order passed by this Court in Writ Petition No.36022/2000.



5. It is not in dispute that 9 selected persons did not join for duty. Thus, those 9 posts will have to be filled up in accordance with the roaster from among the candidates in the waiting list. On the contrary, the persons whose names find place on the top of the waiting list are selected in total disregard to the roaster. Admittedly, the reservation provided for various categories during the selection process was as under :

Category	No. of posts
SC	6 (WQ-2)
ST	1
GM	18 (WQ-6, XMP-1)
Cat.I	2
Cat.IIA	5
Cat.IIB	2
Cat.IIIA	1
Cat.IIIB	1
Total	36

Thus, it is clear that six vacancies are reserved for scheduled caste category. In the matter on hand, one of the scheduled caste selected candidate viz., Topanna Naik, D. who was at Sl.No.27 in the selected list and who belongs to



scheduled caste, did not opt to join duties. Thus, the said post of Topanna Naik, D. ought to have been filled up by appointing the petitioner who also belongs to scheduled caste category. But, the 9 persons whose names find place at the top of the waiting list, were selected though no person belonging to scheduled caste is there in these nine persons. Admittedly, the post was reserved for scheduled caste category. Hence, appointment should be made from the scheduled caste category only. It cannot be filled up from any other category of people.

6. Mr.Gangadhar Naik and Mr.Niranjana Murthy C. Talavar, whose names find place at Sl.Nos.10 and 15 respectively in the select list though belong to scheduled caste, they cannot be treated as scheduled caste candidates, inasmuch as, they were appointed for the posts which are meant for general merit category. They were meritorious and they are selected under general merit category. Thus, though they belong to scheduled caste, their appointments cannot be treated as the appointment under the reserved

category of scheduled caste. Out of the remaining scheduled caste candidates, the selected scheduled caste candidate Topanna Naik, D. has not joined and consequently that post should go to scheduled caste category only. The contention of the respondents that the reservation ends with the first list and will not extend to second list cannot be accepted. The similar contention was raised before this Court in Writ Petition No.36022/2000 at an earlier point of time, which was not accepted. This Court has specifically ruled that the reservation will apply to the waiting list also.

7. It is unfortunate that certain group of people in this country have been suffering without any fault of them. The Government by realising the pitiable condition of this category of people thought it fit to render social justice by way of reservation. In the case of scheduled caste and scheduled tribe, constitutional reservation is permissible. Though six posts are reserved for scheduled caste category in the matter on hand, only five posts are given to scheduled caste candidates. It is most unfortunate that despite the



order of this Court dated 30th January 2003 passed in Writ Petition No.36022/2000, the impugned endorsement is issued ignoring the said order. Hence, the attitude of respondent No.1 who has issued the impugned endorsement is deprecated. In view of the same, the impugned endorsement cannot be sustained and the same is liable to be quashed. Accordingly, the following order is made :

The endorsement vide Annexure-`M' dated 22nd October 2009, passed by the respondent stands quashed. The petitioner shall be appointed to the post of Assistant Lineman in the post reserved of scheduled caste which fell vacant pursuant to non-joining of duties by Mr.Topanna Naik, D. – appointee.

Writ petition is **allowed** accordingly.

Sd/-
JUDGE

*bk/