REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1144 OF 2022
(ARISING OUT OF SLP (C) NO. 19059 OF 2019)

R. MUTHUKUMAR & ORS. ...APPELLANT(S)

VERSUS

THE CHAIRMAN AND MANAGING DIRECTOR TANGEDCO & ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NOS.1145-1155 OF 2022
(ARISING OUT OF SLP (C) NOS. 15629-15639/2019)

AND

CIVIL APPEAL NOS.1156-1179 OF 2022
(ARISING OUT OF SLP (C) NOS. 22044-22067/2019)

AND

CIVIL APPEAL NOS.1180-1187 OF 2022
(ARISING OUT OF SLP (C) NOS. 22036-22043/2019)

AND

CIVIL APPEAL NOS. 1188-1214 OF 2022
(ARISING OUT OF SLP (C) NOS. 3183-3209/2020)

ORDER

S. RAVINDRA BHAT, J.

1. Special leave granted. With consent of counsel for parties, these appeals were heard finally. The appellants (hereby also referred to as "the aggrieved candidates") in four sets of appeals[1] are aggrieved by a common judgment and order dated 02.08.2018 of the Division Bench of the Madras High Court. In another appeal[2] the management of Tamil Nadu Generation and Distribution Corporation Ltd. (hereafter "TANGEDCO") is aggrieved by another judgment of the said High Court, whereby it was directed to appoint the respondents (writ petitioners who had approached the court, hereby called "respondent applicants") as ITI Helpers based on a previous order dated 14.10.2015 in W.A. No. 81/2015.

Brief facts

2. In proceedings before this court[3], orders were issued appointing late Mr. Justice Khalid, a former Judge of this court, to consider and recommend better methods for filling up of vacancies by accommodating existing workers on the one hand, and skilled workers on the other. Justice Khalid's report stated, *inter alia*, that:

> *"110. How to select the remaining workers and where to place the ITI workers is the next question to be answered. Throughout my report, I have emphasized the fact that my function is to evolve a workable method to accommodate the existing workers without seriously affecting the Board's decisions and activities. It is not my intention to completely ignore the skilled helpers. They should find a place in the scheme of*

[1] SLP(C) 19059/2019; SLP(C) 15629-39/2019; SLP(C) 22044-67/2019 and SLP(C) 22036-43/2019 – directed against a common judgment and order dated 02.08.2018 (in WA No.574/2017; WA Nos. 1450/ 2017, 1452/ 2017, and 1454-1462/ 2017; W.P. Nos. 36656/ 2016, 36658/ 2016, 36890/ 2016, 42792-94/2016, 39782-85/ 2016, 42613-14/ 2016, 35135-37/ 2016, 35926-30/ 2016, 35932-35/ 2016; WA Nos.990/ 2016 and WA Nos. 1696-1702/ 2018), delivered by the Madras High Court.

[2] Arising from SLP(C) 3183-3209/2020 (directed against a common judgment dated 29.04.2019 of the Madras High Court in Writ Appeal Nos. 1071, 1072 of 2016, Writ Petition Nos. 8150,10266, 10267, l7997, 17998, 29113, 29114, 29115, 29116, 33743, 33744, 33745, 39292, 39673, 41609, 41610 of 2016, and Writ Petition Nos. 13948 13949, 13950, 13951, 13952, 13953, of 2017, Writ Petition Nos. 1808, 18576, 18624 of 2018.

[3] S.L.P. No. 1820/1990

things. 7,000 ITI helpers have already been recruited. Others are waiting. The Supreme Court has appointed me to give a final decision which shall be binding on the parties. It is therefore necessary in the interests of fair play and justice that I take into account the claims of not only the existing workers but also the skilled workers who are not before me. After giving my anxious consideration, I decide that after the issue of appointment orders to 7,000 existing workers, the Board shall thereafter appoint the remaining existing workers from the lists and skilled workers in the ratios of 1:1. The existing workers will be selected by the Selection Committee and the ITI helpers by the Board."

3. Acting in compliance with the report, TANGEDCO, by order dated 12.07.2012 called applications to fill up 4000 ITI Helper (Trainee) vacancies, by direct recruitment through Employment Exchange. A notification was sent to the Commissioner, Employment Exchange, Guindy, to sponsor ITI Candidates in each category, according to their ratio with the Trade of Electrician and Wireman in the ratio of 1:5. The proceeding dated 12.07.2012 reads, *inter alia*, as follows:

"2. Accordingly, the TANGEDCO hereby approved the following orders:

a) 4000 ITI Helper (Trainee) with NTC/NAC (ITI) qualification in the trade of Electrician and Wireman be appointed by Direct Recruitment through Employment Exchange, to minimize the large number of Helper vacancies in TANGEDCO. The 4000 ITI Helper (Trainee) will be given 2 years training with the consolidated pay of Rs.3250/- per month and after completion of training they will come under the regular pay band of Rs.5400-20200 - 1900 (Grade Pay)

b) Considering the large number of persons to be recruited within the short span of time and that the fact the recruitment is for the lowest level category in TANGEDCO, the Board directs that there may not be any need for interview excepting for testing their job fitness criteria. Hence, the TANGEDCO directs that a list may be drawn from the employment exchanges and all eligible candidates subject to their physical fitness required for the job specification, be recruited duly following other rules and regulations in force, so as to improve field level performance of the TANGEDCO."

4. Some writ petitions[4] were preferred for a direction to relax the upper age limit while filling up the vacancies to the post of ITI Helper (Trainee) in TANGEDCO by direct recruitment. These writ petitions were disposed of by the Madras High Court by a common order dated 01.11.2012. The court was of the opinion that since the vacancies had existed for long, and an abortive attempt was made earlier to fill them, it was in the interests of justice that TANGEDCO should relax the upper age limit.

[4] W.P. Nos. 24128/ 2012.

Accordingly, by the common order dated 01.11.2012, TANGEDCO was directed *"to relax the upper age limit for these I.T.I. Trade Certificate Holders so far as the current selection is concerned."*

5. By an order/proceedings dated 04.07.2013, TANGEDCO relaxed the upper age limit for the on-going selection process in relation to the said 4000 vacancies of ITI Helper (Trainee). As a result, a list was drawn from the Employment Exchange and the selection was subject to physical fitness required for job, and fulfilment of other requisite criteria. Another order of this court[5] had directed grant of preference by calling candidates who have undergone apprenticeship training in the Tamil Nadu Electricity Board to attend only the interview for the post of ITI Helper (Trainee) along with the other candidates sponsored through the Employment Exchange. No marks were given to the candidates who had undergone apprenticeship training by way of preference for selection. Accordingly, an advertisement was given in two daily newspapers for apprenticeship candidates to enrol their names for the purpose of attending the interview. In the said decision, Apprentices/Trainees were exempted from the requirement of having to appear in the written examination as they had acquired training under the same management. However, they had to go through the process of viva-voce test. The preference was exercisable *"when other things being equal"*, over direct recruits. Consequently apprentice-trainees had no right *per se,* for appointment as a matter of course.

6. The Employment Exchange concerned sponsored about 13560 ITI candidates, of which only the qualified candidates were called for interview. TANGEDCO, by proceedings (No. 15), dated 04.07.2013, directed as follows:

> *"A list may be drawn from the Employment Exchange and all eligible Candidates subject to their physical fitness required for the job specification be recruited duly following other rules and regulations in force."*

[5] In C.A. Nos. 5285-5328/1996 dated 03.10.1996.

7. Candidates who appeared for interview were evaluated with 85% weightage for academic marks and 15% towards performance in viva-voce/interview. The process of interview was for assessing the candidate's ability to do pole climbing and cycling with respect to physical fitness. The ratio of 1:5 was followed in terms of G.O.Ms. No. 18, Labour and Employment (N2) Department dated 25.02.2008, by which the list of ITI qualified candidates were called for, from the Employment Exchange. The candidates were required to have the qualification of ITI (NTC/NAC). Appointments by direct recruitment were resorted to by following the ratio of 1:1,in terms of the Justice Khalid Commission Report, as between contract workers and qualified ITI holders. 1455 candidates - who had completed one years' apprentice training in TANGEDCO with ITI qualification - were called for the interview. Among 15015 candidates, 10,728 candidates attended the interview. On scrutiny, based on their ITI/National Trade Certificate, 10357 candidates were found to be eligible and 351 candidates, rejected as ineligible since they did not possess the ITI Electrician/ Wireman Trade qualification, apart from not possessing National Trade Certificate (NTC) issued by the National Council for Vocational Training, New Delhi (NCVT).

8. 4000 ITI Helpers (Trainee) were selected in terms of the Government Order in G.O.Ms. No. 65 Personnel and Administrative Reforms (Personnel) Department, dated 27.05.2009. Appointment orders were consequently issued to the selected candidates. Their selection was based on marks scored by such candidates in ITI National Trade Certificate/National Apprenticeship Certificate (85% weightage), and interview marks (15% weightage). The appointments also adhered to the relevant prescribed reservation ratios and roster. The selection combined eligible candidates sponsored by the Employment Exchange as well as Apprenticeship candidates.

9. Candidates who were not selected approached the Madras High Court, in a batch of writ petitions.[6] Their main grievance was that TANGEDCO acted contrary to law, and arbitrarily, by introducing a viva-voce test, which it had in the first instance, resolved not to follow. It was urged, in this regard, that introduction of interview/viva

[6] W.P. Nos. 8829, 9125, 9126, 9319, 9923, 9927, 10589, 10598, 11785, 12003, 12004, 15512, 15636 & 15873/ 2014: S. Vijayakumar vs. Tamil Nadu Generation and Distribution Corporation Limited.

voce amounted to changing the rules of the game after its commencement. TANGEDCO resisted the petitions, contending that conduct of interview/viva voce was not arbitrary. It urged that interview was conducted for assessing the candidates' physical fitness, and was done in relation to the job requirements. TANGEDCO said that the procedure was followed in all recruitments from 2005 onwards. In terms of its proceedings in Per.B.P.(FB) No. 40, dated 14.12.2005 and the Tamil Nadu Electricity Board, Administrative Branch Memo No. 100459/265/G.57/G.572/2007 dated 03.02.2009, guidelines for the process of recruitment required viva voce; the extract of those guidelines are as follows:

> *"3) The following guidelines may be adopted in the interview.*
>
> *a) Verification of ITI qualification NTC/NAC Certificates in the field of Electrician and Wireman Trade.*
> *b) Verification of Transfer Certificate for proof of age.*
> *c) Proficiency test in Cycling and Pole Climbing.*
> *d) Weightage may be given for those with 2 Wheeler licence.*
> *e) Weightage may be given to those who are already engaged as Contract Labourers in the Board, if sponsored by the Employment Exchange."*

The single judge who heard the writ petitions, reasoned that the guidelines of 2005 had been followed previously; they were in accord with the Khalid Commission Report, and that testing physical fitness was a part of the job requirement, which TANGEDCO was competent to insist. It was further held that the candidates had willingly participated in the written test and interview, and therefore, could not allege arbitrariness. On the strength of this reasoning, the single judge, by a common judgment[7], dismissed the writ petitions. The unsuccessful candidates appealed to the Division Bench. Other unsuccessful candidates, who had not approached by filing writ petitions, did so later on. The appeals against the single judge's order, as well as the fresh writ petitions, were taken up by the Division Bench.

10. Before the Division Bench, TANGEDCO indicated a willingness to accommodate all the writ petitioners. This resulted in a compromise between the parties. The terms of the compromise are extracted below:

[7] Dated 04.12.2014

"MEMO OF COMPROMISE

The Appellants and petitioners filed writ petitions in W.P. Nos. 9125, 9126, 9319, 9923, 9927, 10589, 10598, 11785, 12003, 12004, 15512, 15636 and 15873 of 2014 challenging the selection process to the post of 4000 ITI Helpers recruited by the TANGEDCO Per (Per.) FB (TANGEDCO) Proceedings No. 14, dated 12.07.2012 and the same were dismissed by the learned single Judge by an order dated 04.12.2014. Aggrieved by the same the Appellants have filed the above Writ Appeals in W.A. Nos. 81, 193, 194, 195, 196, 197, 1018, 1019, 1020, 1021, 1022, 1023 and 1301 of 2015. Further abovesaid three writ petitions in W.P. No. 22095, 33097 & 33098 of 2014, challenging the same selection of ITI Helper (Trainee) came up for admission and this Hon'ble court has directed the registry to post the same along with the batch of cases in W.P. No. 9125 of 2014 etc., But the said writ petitions were not posted along with W.P. No. 9125 of 2014 etc., batch cases during final hearing and the same are pending and now posted along with the above writ appeals.

The above first writ appeal came up for hearing before this Hon'ble court on several occasions and finally on 02.09.2015 and in view of the judgement of the Apex court, the respondents corporation accepted the proposals of the Appellants and Petitioners numbering 84 who have filed the Writ Appeals/Writ Petitions before this Hon'ble court challenging the ITI Helper (Trainee) and have stated that they will be accommodated in the post of ITI Helper (Trainee) in the 1st & 2nd respondents corporation under the following

TERMS AND CONDITIONS

1. The respondent corporation and the appellants & petitioners mutually agreed that the respondent corporation shall appoint the Appellants and Petitioners in the post of ITI Helper (Trainee) in TANGEDCO Service within a time frame fixed by this Hon'ble court.

2. The respondent corporation and the appellants & petitioners mutually agreed that the appointment to the appellants and petitioners shall be given only after verification of the original certificates.

3. The respondent corporation and the appellants & petitioners mutually agreed that the Appellants and petitioners shall be appointed in the post of ITI Helper (Trainee) on production of original certified copy of the judgment of the Hon'ble court along with covering letter affixing the concerned appellant/Petitioner photograph from the counsel on record in order to avoid any impersonation and future litigation. No request for seniority, service & other benefits will be entertained.

4. As per the respondent corporation's request, this order will not apply to the persons, who did not approach this Hon'ble court in time challenging the selection process and that this compromise cannot be treated as a precedent as this order is binding as between the parties on the basis of the consensus reached.

5. The respondent corporation and the appellants & petitioners mutually agreed to bear their respective cost in the above cases."

The above compromise became the basis of a direction by the Division Bench which required the appellants and petitioners before it, to be offered employment. The order of the Division Bench[8] (hereafter "the compromise order"), thus did not decide the *lis* or the dispute, on its merits; it merely recorded the terms of the compromise and directed TANGEDCO to recruit the appellants/petitioners. The compromise order reads as follows:

> *"3. Having considered the facts and circumstances of the case and the submissions made by both the learned counsel, we find it just and reasonable to pass orders in terms of memo of compromise.*
> *4. In view of the joint memo of compromise filed by both the parties, all these appeals and petitions are disposed of in terms of the compromise memo. The memo of compromise shall form part of the judgment and we direct the respondents 1 and 2 to comply with the stipulations in the memo of compromise within a period of six weeks from the date of receipt of a copy of this order. No order as to costs.*
> *Consequently, connected MPs are closed."*

11. After the compromise order, several other unsuccessful candidates approached the High Court, claiming parity with the petitioners and appellants, who were parties to, and had benefited from the order. A single judge dismissed several of those writ petitions, holding that such candidates could not avail the benefit of the compromise order. In another set of writ petitions, however, the single judge allowed the claims; this led to TANGEDCO's appeal before the Division Bench. By its common judgment and order dated 02.08.2018 (the first set of appeals herein)[9] the candidates' appeals were dismissed and TANGEDCO's appeals[10] were allowed. The first set of appeals by aggrieved candidates is directed against that common order. The second set of appeals, by TANGEDCO, is directed against the order which required it to offer employment to similarly placed candidates who had not approached the court earlier, but filed writ petitions in 2016, 2017 and 2018.

Contentions of the aggrieved appellants

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[8] In W.A. No. 81/ 2015 and batch of cases dated 14.10.2015.
[9] In W.A. Nos. 574/ 2017, 990/ 2016 and 1696-1702/2018.
[10] W.A. Nos. 1450-1462/ 2017.

12. On behalf of the aggrieved appellants, Mr. Gautam Narayan, and Mr. T.B. Sivakumar, learned counsels urged that TANGEDCO acted unfairly and in a discriminatory manner, in refusing to employ those who were not parties in the proceedings that led to the compromise order. It was highlighted that in terms of performance, the aggrieved candidates might well have secured better ranking than those 84 unsuccessful candidates who were offered employment, by the compromise order.

13. The aggrieved appellants urge that there is no distinction between them and those who were offered employment under the compromise order. It was submitted that the only difference- and wholly immaterial one, is that the other candidates had approached the court earlier. Counsel submitted that the initiation of litigation cannot be the basis of any intelligible, or indeed legitimate *differentia*, as is sought to be projected by TANGEDCO. Once it decided to offer employment to unsuccessful candidates, despite their alleged poor performance in the interview, that policy decision had to be implemented fairly and evenly. Restricting the benefit of employment to those who approached the court earlier, amounted to a violation of Article 14 of the Constitution.

14. It was further argued by the aggrieved appellants, that TANGEDCO did not fill the vacancies in question for an inordinately long period. The ratio of 1:1 prescribed by the Khalid Commission also meant that timely recruitment had to be undertaken. The appellants were placed at a disadvantage; some of them had to approach the court earlier, to challenge TANGEDCO's refusal to grant relaxation of the upper age limit. That relief granted, TANGEDCO resorted to recruitment by introducing the alien procedure of interview, which it had committed earlier to not following. Counsel relied on the decision of this court, in *State of Uttar Pradesh & Ors. v. Aravind Kumar Srivastava & others*[11] where it was held that a public employer is bound to extend non-discriminatory treatment to all candidates, regardless of

[11] (2015) 1 SCC 347

whether they approach the court or not, and offer employment to similarly situated candidates and employees.

TANGEDCO's arguments

15. TANGEDCO, which was represented by Mr. Joydeep Gupta, learned senior counsel, submitted that the compromise order was not based on the merits of the case. The Division Bench merely followed the compromise memo, and embodied it in its order. Thus, the order could not have any precedential value; it was binding only on the parties, and not those who had not approached the court. It was submitted that though interviews were conducted in 2013 and the present appellants' candidature was rejected, they waited till the compromise order, and then approached the court belatedly.

16. It was urged that the compromise order was based on an aberration, because TANGEDCO was bound to appoint only those candidates who were successful. It could not have conceded and issued appointment to the 84 candidates. That error could not be the basis for a mandamus or direction in a later case. Counsel stressed that courts can only grant relief, based on legal provisions and their application of the concerned laws and rules. In the present case, the compromise order was not based on any rule or law, but on a mere concession. It did not have any precedential value. Mr Gupta stressed upon the fact that the compromise order was not one *in rem;* thus, it was devoid of any legal basis. The rejection of the appellants' representation, which was purely based on the compromise order, was justified.

17. Counsel urged that unless it is shown that the concession made before the court was based on merit, and the court upon its independent consideration, was satisfied that such concession was justified, such an order could not be the basis to compel a public employer to extend identical relief. It was also urged that this court has held in numerous decisions that a wrong committed on the basis of a wrong order, cannot compel the performance of an act which is not justified in law: there is no question of parity or negative equality.

Analysis and conclusions

18. The facts of this case show that the advertisement or notification, calling for eligible candidates, to apply for the post of Helper/trainee was issued in 2012. The first round of litigation, as it were, was initiated on the ground that TANGEDCO wrongly denied relaxation of upper age limit (to apply, for the candidates). This grievance was held to be justified; the High Court directed grant of such exemption, which TANGEDCO in turn, complied. When the recruitment process started, TANGEDCO clarified that it would conduct an interview, for which it proposed to grant 15% weightage. Candidates including the present appellants, and respondent applicants, participated. Those eligible, and found to be suitable on a combined assessment of the marks obtained and the viva voce, were appointed. Now, for the first time, *some* unsuccessful candidates approached the High Court. The single judge rejected their writ petitions. The candidates appealed; others who had not filed writ petitions in the court, did so, at that stage (in 2015). The Division Bench, by its compromise order dated 14.10.2015, *purely based on the compromise terms between the aggrieved candidates and TANGEDCO*, directed appointment of 84 persons. The compromise order was not based on the merits, nor based on an independent assessment of the merits of the case.

19. The present aggrieved candidates and several others sought piggyback on the basis of the compromise order, arguing that they were similarly situated. They approached the High Court, from 2016 onwards. These aggrieved candidates' petitions were rejected, and their claim for parity was turned down. They are now here before this court. Another set of candidates was more successful; their petitions were allowed; TANGEDCO is here before this court, in its appeal.

20. A feature that stares at the face of the record before this court, is that the Division Bench, in its compromise order, proceeded to accept the terms proposed by the parties. The court did not examine - at least its order does not disclose any such consideration - the merits of the case, and why such proposal was justified in the facts

of the case. It is one thing for a public employer, to concede in the course of proceedings, to an argument, which it had hitherto clung to, but was untenable. Fairness demands that public bodies, as model employers, do not pursue untenable submissions. In such cases, a concession, which is based on law, and accords to a just interpretation of the concerned law and/or rules, is sustainable. However, it is altogether another thing for a public employer, whose conduct is questioned, and who has succeeded on the merits of the case before the lower forum (in this case, the single judge) to voluntarily *agree, in an unreasoned manner, to a compromise.* The harm and deleterious effect of such conduct is to prioritize the claim of those before the court, when it is apparent that a large body of others, waiting with a similar grievance (and some of whom probably have a better or legitimate claim on merits to be appointed) are not parties to the proceedings. In such cases, a compromise is not only unjustified, it is *contrary to law and public interest.*

21. This court, many years ago, in *C. Channabasavaiah v. State of Mysore*[12] faced a somewhat analogous situation. In that case, the state government had appointed sixteen persons pursuant to a compromise, which invited a charge of unfairness by it, from others who did not secure such a benefit. The court held that:

> *"1. By a notification dated September 26, 1959, the Mysore Public Service Commission announced that a competitive examination would be held for direct recruitment for Class I and Class II posts relating to certain Administrative Services and numerous applicants including the petitioners themselves as candidates. On September 5, 1960, the Public Service Commission modified the earlier notification and instead of holding an examination announced that the selection would be made solely on the results of a viva voce test. The petitioners characterised this change as opposed to the Mysore Administrative Service Recruitment Rules, 1957 but during the hearing of these petitions this ground of attack was abandoned perhaps in view of what happened later.*
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> *2. The Public Service Commission duly held the viva voce interviews and on July 29, 1961 they published a list of ninety-eight candidates who they announced were selected. After the announcement of the results the State Government sent for the consideration of the Commission a list of twenty-four candidates and as the Commission approved of them they were also appointed on March 7, 1962. In giving their concurrence the Commission purported to take power from a foot-note added to sub-rule (3) of r. 4 of the Mysore Public Service Commission (Functions) Rules, 1957. Sixteen candidates, who were not selected, filed petitions under Articles 14, 15 and*

[12] 1965 (1) SCR 360

16 of the Constitution in the High Court of Mysore. On November 26, 1962 there was a compromise and the Government undertook to appoint the petitioners before the High Court. Of these thirteen had attended the viva voce test but three had not been called for it. In this way there were three sets of appointments: the first of ninety-eight candidates, the second of twenty-four candidates and the third of sixteen candidates. There were in all 1,777 applicants who were called for the viva voce test. A very large number of the applicants was not called for the test and the High Court of Mysore in the petition of the three petitioners who had not been called for the viva voce test directed the Commission to call them and the Commission then called 203 candidates who were in the same category as the three petitioners in the High Court. It may be pointed out that at the first viva voce test eighty-eight candidates and at the second test ten candidates were selected, thus making the total number ninety-eight.

3. Encouraged by what had happened to those who had petitioned to the High Court, the other candidates who had not succeeded applied for writs under Articles 14, 15 and 16 of the Constitution. Their petitions were summarily dismissed by the High Court.

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9. Taking the case of the sixteen candidates first, it appears to us, that since most of these candidates had obtained fewer marks than some of the rejected candidates it is impossible to sustain their selection. To begin with it was wrong of the High Court to allow a compromise of this kind to be effected when it was patently obvious that three candidates had not attended the viva voce test at all and there was nothing before the High Court for comparing the remaining thirteen candidates with those who had failed in the selection. There were allegations of nepotism which had not been abandoned and find now that most of these candidates do not rank as high as some of the rejected candidates. In such a case the court should be slow to accept compromises unless it is made clear that what is being done dose not prejudice anybody else. To act otherwise opens the court itself to the charge that it did something just as bad as what was complained against. In our opinion, the appointment of these sixteen candidates cannot be accepted and the petitioners are entitled to claim that their marks should be compared with those obtained by the petitioners and the selection made on merit and merit alone. For this purpose, of course, the three candidates who were not called for the test would have to be called and marks given to them. Otherwise they cannot be considered at all."

In a more recent judgment, *Ahmedabad Municipal Corporation & Ors. v. Rajubhai Somabhai Bharwad & Ors.*[13] the question was whether a *sarpanch* could enter into a compromise and agree to take back an employee. This court decisively held that such a compromise was not legal:

"17. The purpose of our referring to the same is that the parliament by the Constitutional amendment required the State Legislature to bring their State laws in conformity with Part IX of the Constitution, Power has been conferred on the Panchayats so that they are able to function as an institution of self-Government. The State Legislature has also been empowered to make provisions by which powers are

[13] 2015 (7) SCC 663

given to the Gram Panchayats. Once responsibility is given they are to be carried out with sanguine responsibility. A Sarpanch, as we perceive in this case, by entering into a settlement has not only acted contrary to the provisions of the Act and but also the spirit of the responsibility cast on the local self-Government.

18. In this context, we cannot be oblivious of a very significant facet. The Labour Court as we find in a single line order has accepted the settlement and has not made any endeavour to even find out whether the Sarpanch was authorised with any kind of resolution to enter into compromise/settlement by the village panchayat. He should have borne in mind that it is not the Sarpanch who was the employer; that much of scrutiny was required on the part of the Labour Court. It will not be a hyperbole if it is said that it is the bounden duty on the part of the presiding officer of the Labour Court to do so and we say so without any hesitation, for court has a sacred duty to scrutinize whether a valid compromise has been entered into or not. He has to be satisfied that the compromise is lawful.

19. In view of the aforesaid analysis, we allow the appeals set aside the order passed by the learned Single Judge and that of the Labour Court and remit the matter to the Labour Court for fresh adjudication."

22. The lynchpin of the appellant's submission was their reliance on *Aravind Kumar Srivastava* (supra). In that case, this court after reviewing several cases cited by the parties, had summarized the correct approach in matters where concession-based orders could (or could not) be treated as precedent:

"23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the Appellants as well as the Respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all

> *similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma and Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."*

Before discussing the *ratio* of the judgment, it would be useful to extract the factual context from which the dispute arose:

> *"9. The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. Whereas the Appellants contend that the Respondents herein did not approach the Court in time and were fence-sitters and, therefore, not entitled to the benefit of the said judgment by approaching the judicial forum belatedly. They also plead some distinguishing features on the basis of which it is contended that the case of the Respondents herein is not at par with the matter which was dealt with by the Tribunal in which order dated June 22, 1987 were passed giving benefit to those candidates who had approached the Court at that time."*

23. It is thus, evident that in *Aravind Kumar Srivastava* (supra) the previous orders of the tribunal and the court were based on *merits adjudication*, and not based on concession; certainly not based on compromise. It was in the background of such facts that denial of relief to similarly situated claims, was held to be unjustified. Most importantly, for the purpose of this case, the court carved out an exception: that subsequent litigants, wishing to benefit from orders made in others' cases, had to approach the courts in time, without delay or *laches.* In the facts of this case, there is no question of any finality to the compromise order: it cannot be treated, by any stretch of the imagination, as an order *in rem*, or as a binding precedent. Also, the aggrieved appellants, and the contesting candidates (in TANGEDCO's appeal) *did not approach the court in time.* They woke up after the compromise order, claiming parity, and filed petitions in the court. Clearly, therefore, they cannot claim any benefit from the compromise order.

24. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In *Basawaraj & Anr. v. Special Land Acquisition Officer*[14], this court ruled that:

> *"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."*

Other decisions have enunciated or applied this principle (Ref: *Chandigarh Admn. v. Jagjit Singh*[15], *Anand Buttons Ltd. v State of Haryana*[16], *K.K. Bhalla v. State of M.P.*[17]; *Fuljit Kaur v. State of Punjab*[18], and *Chaman Lal v. State of Punjab*[19]). Recently, in *The State of Odisha v. Anup Kumar Senapati*[20] this court observed as follows:

> *"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."*

25. In view of the foregoing, it is held that the aggrieved appellants, and the respondent applicants (in TANGEDCO's appeal) could not claim the benefit of parity; their writ petitions were founded on the compromise order, which cannot be justified in law. The appeals of the aggrieved appellants, against the judgment and order of the Division Bench of the Madras High Court dated 02.08.2018, has to fail; it is accordingly dismissed. For the same reasons, TANGEDCO's appeals, (against

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[14] (2013) 14 SCC 81
[15] (1995) 1 SCC 745
[16] (2005) 9 SCC 164
[17] (2006) 3 SCC 581
[18] (2010) 11 SCC 455
[19] (2014) 15 SCC 715
[20] 2019 SCC Online SC 1207

the order of 29.04.2019 of the Madras High Court in Writ Appeal Nos. 1071, 1072 of 2016, Writ Petition Nos. 8150, 10266, 10267, l7997, 17998, 29113, 29114, 29115, 29116, 33743, 33744, 33745, 39292, 39673, 41609, 41610 of 2016, and Writ Petition Nos. 13948 13949, 13950, 13951, 13952, 13953, of 2017, Writ Petition Nos. 1808, 18576, 18624 of 2018) succeed and are allowed. In the circumstances of this case, there shall be no order as to costs.

.....J
[UDAY UMESH LALIT]

.....J
[S. RAVINDRA BHAT]

.....J
[BELA. M. TRIVEDI]

New Delhi,
February 07, 2022.