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Writ Appeal No.358 & 359 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2023

Delivered on : 12.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal Nos.358 & 359 of 2014

W.A.No.358 of 2014

1.Association of Tamil Nadu
Highways Engineers represented
by its General Secretary,
No.35, Taluk Office Road,
Saidapet, Chennai – 600 015.

2.C.Saikumar
3.J.Kumaresan
... Appellants

Vs

1.The Government of Tamil Nadu
Represented by its Commissioner
and Secretary,
Highways Department,
Fort St. George, Chennai – 9.

2.The Chief Engineer (General),
Highways Department,
Chepauk, Chennai – 5.

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- 3.K.Shanmughasundram
- 4.S.Asokan
- 5.D.Relton Chandrakumar
- 6.S.Veluswamy
- 7.V.Vijaya
- 8.C.Satish
- 9.K.Monoharan
- 10.R.Jayachandran
- 11.V.Arunachalam
- 12.Panneer Selvam
- 13.M.Shanmugavel
- 14.E.Rajamohan
- 15.D.Naterajan
- 16.A.Achuthan
- 17.G.Natarajan
- 18.T.Raju

... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent against the order dated 03.01.2014 made in W.P.No.1327 of 2005.

For Appellants : Mr.N.Subramaniyan

For Respondents : Mr.K.V.Sanjeev Kumar for R1 & R2
Special Government Pleader
No appearance of R3 to R18

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- 1.M.Someswaran
- 2.K.Lokanathan
- 3.M.Moahana Gandhi
- 4.R.Muthuchamy
- 5.P.Govindan
- 6.V.Uthaya Kumar
- 7.P.Chandra



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- 8.M.Ravi
- 9.B.Prabhakar
- 10.A.Matheswaran
- 11.K.Thangavel
- 12.M.Sathiaselvan
- 13.J.Muralikumar
- 14.V.Agila
- 15.T.Tharmaraj
- 16.M.R.Rajinikanth
- 17.A.Anaiappan
18. K.Mariappan
- 19.M.Chandra Sekaran
- 20.I.Prabaharan Prince
- 21.C.Sathiyamoorthi
- 22.M.Murugaboopthy
- 23.A.Kumanan
- 24.G.Murugan
- 25.R.Lakshmi
- 26.A.Thangapandi
- 27.P.Dhanabalan
- 28.U.Arumuga Nainar
- 29.C.Merlin Chirstal
- 30.A.Eugin
- 31.M.Xavier Therese
- 32.R. Viswanathan
- 33.P.N.A.Balamurugan
- 34.K.Karunakaran
- 35.S.Gangadaran
- 36.K.Kannan
- 37.K.G.Jayaprakash
- 38.T.Thiruvarulselvan
- 39.N.K.S.Sree Anbarasu
- 40.G.Sekar
- 41.S.Malliga
- 42.R.Jose Antony Syril
- 43.M.Lenin



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44.C.Arulnathan

45.K.Balaji

46.D.Krishnamurthy

47.C.Sivakumar

48.A.Arutselvam

49.R.Selvaraj

50.A.Ganesan

51.V.Veerappan

52.R.Ravi

53.J.Kannan

... Appellants

Vs

1.The Government of Tamil Nadu
represented by its Secretary,
Highways Department,
Fort St.George, Chennai – 9.

2.The Chief Engineer (General)
Highways Department,
P.W.D, Building,
Chepauk, Chennai – 5.

3.Tamil Nadu Public Service Commission,
Represented by its Secretary,
Government Estate,
Chennai – 2.

4.V.Srinivasan

5.N.Subramanian

6.T.Relton Chandrakumar

7.R.Kandasamy

8.R.Lakshmanan

9.N.Kannappan

10.J.K.Paulraj

11.K.Suriya Prabakaran

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- 12.R.Jayachandran
- 13.R.Adhinathan
- 14.P.Guruvarettiyar
- 15.V.Puthiyanayagam
- 16.P.Sengottuvan
- 17.P.Chinnasamy
- 18.R.Kesavakannan
- 19.N.Nagarajan
- 20.G.Sathish
- 21.M.Shanmugavelu
- 22.K.Manoharan
- 23.K.Arumugasamy
- 24.R.Thangaraj
- 25.N.Rengaraj
- 26.K.Shanmugasundaram
- 27.G.Natarajan
- 28.M.Subramanian
- 29.V.Vijaya
- 30.Ramachandran
- 31.S.Bharathi
- 32.D.Natarajan
- 33.E.Rajmohan
- 34.P.Panneer Selvam
- 35.S.Veluchamy
- 36.A.Muthuchamy
- 37.M.M.Chakravarthy
- 38.V.Jayakumar
- 39.K.Thirumaran
- 40.Veerapandian
- 41.S.Vijayakumar
- 42.R.Sakthivel
- 43.S.Ashokan
- 44.M.Shanmugam
- 45.P.Vaiyapuri
- 46.P.Saraswathi
- 47.C.Gnanamurugan



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48.R.Vedaraniyan
49.A.C.Murugesan
50.R.Thangamuthu
51.T.Elangovan
52.R.Sundararajulu
53.T.Thamaraiselvan
54.M.Arumugam
55.P.Arunachalam
56.T.Raju
57.A.Achuthan
58.S.Jayanthi
59.M.Selvam
60.C.Ravi
61.M.Xavier Jayaseelan

... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent against the order dated 03.01.2014 made in W.P.No.40220 of 2005.

For Appellants : Mr.N.Subramaniyan

For Respondents : Mr.K.V.Sanjeev Kumar for R1 & R2
Special Government Pleader

: Mr.R.Bharanidharan for R3
: R4 and R5 died
: No appearance – R6 to R61

COMMON JUDGMENT

K.KUMARESH BABU.,J.

These Intra Court Appeals have been preferred by the unsuccessful petitioners being aggrieved against the common order passed by the learned



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Single Judge in W.P.Nos.1327 & 40220 of 2005 and W.P.No.19732 of 2006. The petitioner in W.P.No.19732 of 2006 has not preferred any appeal.

2. The issue involved in these Intra Court Appeals is with regard to the validity of G.O.Ms.No.265 Highways (HK2) Department, dated 24.09.2004 in which services of about 67 Assistant Engineers working in the Highways Department were regularised from various dates particularly from the date on which they were appointed as Assistant Engineers. On such regularisation, on the dates from which they were regularised, they were also directed to be placed in the seniority list below the last directly recruited Assistant Engineers in that particular year.

3. Heard Mr.N.Subramaniyan, learned counsel appearing for the appellants in both the appeals and Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents 1 and 2 in both the appeals and Mr.R.Bharanidharan, learned counsel appearing for 3rd respondent in W.A.No.359 of 2014.



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4. Mr.N.Subramaniyan, the learned counsel appearing for the appellants at the outset would submit that the order of regularisation is wholly illegal, arbitrary and is contrary to the principles governing the fields. He would submit that the private respondents are all working as Draftsman and Overseers in the Highways Department. They were all only Diploma holders. During the year 1991 to 1995, in contravention with the Special Rules to Tamil Nadu Highways Engineering Subordinate Service and Tamil Nadu Highways Engineering Service Rules, the private respondents were all appointed as Assistant Engineers. He contended that as per the provisions of the aforesaid Rules, the method of recruitment for the category of Assistant Engineer was by direct recruitment through Tamil Nadu Public Service Commission or by recruitment by transfer from Junior Engineers who were also known as Supervisors prior to 22.02.1977. Such persons who were working as Junior Engineers to be recruited as Assistant Engineers should necessarily possess a B.E. Degree. He would submit that admittedly in the case of private respondents when they were appointed as Assistant Engineers, they were not holding a B.E. Degree. He would submit that the appellants/petitioners were all holding B.E. Degree and were dir-



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ectly recruited as Assistant Engineers through the Tamil Nadu Public Service Commissions for the vacancies that had arisen during the years between 1989 to 1990 and 1997 to 1998.

5. He would also rely upon various Government orders to contend that the appointment of the private respondents as Assistant Engineers itself is a violation of such Government orders. When such appointments were all illegal appointment orders, the private respondents did not have any right to seek for regularisation. But, however, the Government without considering all aspects have not only regularised the services of the private respondents by G.O.Ms.No.265, dated 24.09.2004, but also regularised them retrospectively and further directed them to be placed in the seniority list below the Tamil Nadu Public Service Commission candidates of the respective year.

6. In that context, he would submit that the private respondents are all persons who have been appointed without following the relevant Recruitment Rules and therefore, they have gained a back door entry into the services which have been deprecated by the Hon'ble Apex Courts in



various judgments. He would further submit that without admitting that such regularisation, even though could have been made, the private respondents ought not to have been placed in the seniority list of the year which they been retrospectively regularised and they should have been placed in the seniority list of the last candidate who was holding the post of the Assistant Engineer as on the date of the issuance of the Government order namely G.O.Ms.No.265, dated 24.09.2004. He would submit that such placement of seniority is in violation of the Rule 35(aa) of the General Rules of Tamil Nadu State Subordinate Rules governing the subject.

7. He would also place reliance upon judgment of the Hon'ble Apex Court reported in **2006 (6) SCC 558** and **2009 (6) SCC 428** and contended that even though they could be retrospectively regularised, their seniority should not have been retrospectively fixed. He would submit that by fixing such seniority, they had marched over the appellants herein who have been regularly appointed as per the Rules through Tamil Nadu Public Service Commission. He would submit that these aspects have not been considered by the learned Single Judge and the learned Single Judge had totally misplaced his reasonings and findings to deny the appellants' rightful



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claim and therefore sought interference with the orders of the learned Single Judge and prayed to allow these Writ Petitions.

8. Countering his arguments, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing on behalf of the respondents 1 and 2 would submit that private respondents have all been working in the Feeder category at the relevant point of time and were promoted as Assistant Engineers from such Feeder category. The relaxation was issued by the Government to regularise their services by taking into account that the private respondents have been working in the aforesaid posts for a very long time and have been regularised, also taking into consideration the experience that have been gained by them. He would submit that the impugned Government order regularising the services of the private respondents have been issued by the Government after taking into consideration the various earlier Government orders issued and only after obtaining concurrence of the Tamil Nadu Public Service Commission.

9. He would contend that the private respondents were initially work-



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ing as Draftsman and Overseer in the Highways Department and have been regularly appointed. They had not gained any back door entry into the services of the Highways. They have been promoted as Assistant Engineers during such relevant years temporarily. In certain cases the incumbent had a B.E. Degree. But in other cases, they did not possess a B.E. Degree on the date of promotion, but they had subsequently, obtained a B.E. Degree and qualified themselves to hold the post of the Assistant Engineer. Therefore, as a Policy decision, the Government had decided to regularise their services from the date of their joining as Assistant Engineers. In issuing the Government orders, the Government had also relaxed the Rule 3 of the Subordinate Rules to Tamil Nadu Highways Engineering Services and they have been retrospectively regularised and directed to be placed in the order of seniority below the last Assistant Engineer in the list of Assistant Engineers selected by the Tamil Nadu Public Service Commission in that year, in which they were regularised.

10. He would also submit that the seniority list that was published after the regularisation order impugned in this Writ Petition was subject



matter of challenge before this Court in W.P.No.31101 of 2005 which had been dismissed by the learned Single Judge and had not been appealed against and therefore, the entire issue of seniority had been already decided by this Court cannot be sought to be revoked by the petitioners.

11. We have considered the rival submissions of the respective counsels appearing on either side and perused the materials placed on record.

12. Before proceeding any further, it is relevant to take note of the relevant fact namely all the private respondents whose services were regularised under the Government Order impugned in these Writ Petitions had attained the age of superannuation while these appeals were taken up for hearing. The appellants are as on this day working.

13. The learned counsel for the appellant had vehemently contended on the validity of the Government orders regularising the service of the private respondents. The learned counsel for the appellant also do not dispute the fact that all the private respondents have superannuated from



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services. Even though the learned counsels for the appellants had raised very many issues pertaining to the regularisation of the private respondents having been in violation of the earlier Government orders and also in violation of the General Service Jurisprudence (gaining back door entry), considering the fact that all the private respondents from the date of their regularisation have continuously worked and were holding B.E. Degree on the date of their regularisation, we do not now propose look into the issue as their services were properly regularised. One main bone of the contention of the appellants to assail the said Government Order was that the appellants been regularly appointed through Tamil Nadu Public Service Commission were being dislodged from the seniority list by placing the private respondents senior to them in view of such retrospective regularisation. The learned Single Judge had unsuited the relief even in respect of the seniority by holding that it was the delay in part of the Government in regularising the services of the private respondents for which they could not be held to be at fault to deny their seniority. According, to the learned Single Judge, had such regularisation been made by the Government within a reasonable time, this issue would not at all have cropped.



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14. It is not the case of the appellants that at the date of regularisation the private respondents did not possess a B.E. Degree to hold the post of a Assistant Engineer in the Highway Department. It is their case that had all been regularly appointed as Assistant Engineers on the basis of the Rules of recruitment through the Tamil Nadu Public Service Commission and by placing the private respondents who were temporarily working as Assistant Engineers above them is causing serious prejudice to their career advancement and monetary benefits.

15. As already noted supra that all the private respondents have superannuated. The list annexed to the impugned Government Order in these Writ Petitions, the date of birth of the respective private respondents have been noted against their names. A casual perusal of the same would reveal that some of the private respondents are all in their 80's, most of them are in their 70's and some of them in their 60's. Even the cause list indicates that two of the respondents are no more. In spite of notice being tried to be served upon them to their last known address, the private respondents were



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unserved and hence a paper publication had been directed to be issued by this Court. It was also been complied with by the appellants. In spite of which they had not chosen to appear before this Court.

16. Be that as it may, we are of the opinion that there would be no useful purpose now to look into the validity of the said Government Order as much water had flown over as of today. We also feel that there will be no useful purpose in now setting aside the aforesaid order on the grounds that have been raised by the learned counsel for the appellants.

17. But, however, the fact is that the Assistant Engineers who have been appointed, by following the Rules of Recruitment through the Tamil Nadu Public Service Commission between the years 1989 to 1990 and 1997 to 1998 were sought to be dislodged in their seniority list in view of the Government Order in the year 2004. In that respect we are in agreement with the application of the ratio laid in the judgment reported in 2009 (6) SCC 428. Therefore, we are of the view that the impugned Government Order in so far as relates to placing the private respondents in the



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seniority list on the strength of the year of regularisation to be placed below the Assistant Engineers appointed through TNPSC for that year alone is bad.

18. Therefore, these Writ Appeals are allowed in part and the Government Order in G.O.Ms.No.265 Highways (HK2) Department dated 24.09.2004 in so far as the directions fixing the seniority alone is set aside and the order of the learned Single Judge to that aspect alone is held to be bad.

19. In sequel, we issue the following directions:

(a) The appellants seniority ante to G.O.Ms.No.265 Highways (HK2) Department dated 24.09.2004 shall stand restored.

(b) The appellants and other Assistant Engineers working as on the date of the Government Order shall be given notional promotions based upon the aforesaid seniority and they are also entitled to notional re-fixation of



their salary on basis of such notional promotion. They are entitled to receive such revised salary only from the date of this order and they would not be entitled to any backwages.

20. We are also conscious about the fact that in view of the present order, the private respondents seniority could have to be re-fixed and their salary & pensionary benefits would also have to be revisited. As already in clear terms we have found that all of the private respondents have already superannuated and they had pensionary benefits which have already been calculated and is being paid to them, we do not propose to direct the Government to re-fix their seniority and also their pensionary benefits. If such an exercise is made it would amount to disturbing the rights that have been vested in them for no fault of theirs. They shall continue to receive their pensionary benefits as available to them on the date of their superannuation as may be revised from time to time.

21. With the aforesaid directions, these Writ Appeals are disposed of. However, there shall be no order as to costs.



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(R.S.K.,J.) (K.B., J.)
12.12.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba



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represented by its Secretary,
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- 2.The Chief Engineer (General)
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- 3.Tamil Nadu Public Service Commission,
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