

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.11.2014

Delivered on : 23.12.2014

CORAM:

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Writ Petition Nos.11148 and 21344 of 2007

&

M.P.No.2 of 2007

Writ Petition No.11148 of 2007

Association of Engineers
Tamil Nadu Public Works Department
Chepauk
Chennai - 600 005
Rep. By its General Secretary
D.Arumugam ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government
Public Works Department
Fort. St. George, Chennai-9

2.The Engineer in Chief W.R.O. &
Chief Engineer (General)
Public Works Department
Chepauk
Chennai - 600 005

3.P.Sekar

4.T.Venkatesan

5.T.Arivumani

6.C.K.Gnanasekaran

7.S.S.Shanthi

8.R.Chandrasekar

9.T.Thangarathinam

10.M.Muthukrishnan

11.M.Thanumoorthy

12.D.Elangovan

13.G.Balasubramanian

14.S.Jeganathan

15.M.Pandi Selvi

16.J.Amutha

17.P.Thiagarajan

18.N.Murugesan
19.A.Singaravadivelu
20.P.S.Sivakumar
21.T.Chellam
22.P.Karthikeyan
23.C.Balamuralitharan
24. Tamilnadu Engineering Association
Public Works Department
Chepauk, Chennai-5
Rep by its Secretary (Organisation & Legal)
Mr.D. Murugesn
R24 impleaded as per order dated 8.8.07 in M.P.No.3/07 in
W.P.11148/07 ... Respondents

Prayer in W.P.No.11148 of 2007: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent in proceeding No.S2(2)/29148/2004-24 dated 27.02.2006 and quash the same and consequently set aside the appointments of respondents 3 to 23 as Assistant Engineers and revert them back to the post of Technical Assistants.

Writ Petition No.21344 of 2007

Association of Engineers
Tamil Nadu Public Works Department
Chepauk
Chennai - 600 005
Rep. By its General Secretary
D.Arumugam Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government
Public Works Department
Fort. St. George
Chennai - 600 009

2.The Engineer in Chief W.R.O &
Chief Engineer (General)
Public Works Department
Chepauk
Chennai - 600 005

3.Tamil Nadu Engineering Association
Public Works Department
Chepauk, Chennai - 600 005
Rep. By its General Secretary

4.Thiru S.M.Muruganatham
Junior Engineer
Lower Vaigai Basin Sub Division, Thiruvadanai
Ramnad District ... Respondents
R3 & R4 impleaded as per order dated 4.7.2007
in M.P.No.2 & 3 o 2007 in W.P.21344/07

Prayer in W.P.No.21344 of 2007: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus to forbear the respondents from promoting any technical Assistants as Assistant Engineers through recruitment by transfer in violation of the orders of the High Court dated 06.11.2006 in W.P.No.7523 of 1997 and also that of the Tamil Nadu Administrative Tribunal dated 17.04.1997 in O.A.No.3348 of 1994.

For Petitioner : Mr.Navin Kumar
for M/s.S.T.S.Murthi

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader
for R1 and R2

Mr.M.Rajasekhar for R3
Mr.S.Ravi for R11 to 16,21,23 and 24
M/s.Malarvizhi Udayakumar
for R3 to R10, 17 to 20 and 22

COMMON O R D E R

The Association of Engineers, Tamil Nadu Public Works Department, Chepauk, Chennai, represented by its General Secretary D.Arumugam has filed W.P.No.11148 of 2007 praying for the issue of Writ of Certiorarified Mandamus to quash the order of the Engineer-in-Chief, W.R.O & Chief Engineer (General), Public Works Department, Chepauk, Chennai (second respondent in W.P.No.11148 of 2007) issued in his proceedings No. S2(2)/29148/2004-24 dated 27.02.2006 and to set aside the appointment of respondents 3 to 23 in the said writ petition (private respondents) as Assistant Engineers by way of recruitment by transfer from the post of Technical Assistant and revert them back to the post of Technical Assistant.

2. W.P.No.21344 of 2007 has been filed by the very same Association praying for the issue of writ of mandamus forbearing the State of Tamil Nadu and Engineer-in-Chief, W.R.O & Chief Engineer (General), Public Works Department, Chepauk, Chennai, (the respondents 1 and 2 in the said writ petition) from promoting any Technical Assistant as Assistant Engineer through the method of recruitment by transfer in violation of the orders of the High Court dated 06.11.2006 made in W.P.No.7523 of 1997 and also that of the Tamil Nadu Administrative Tribunal dated 17.04.1997 made in O.A.No.3348 of 1994.

3. Tamil Nadu Engineering Service Special Rules govern the posts of Assistant Engineer, Assistant Executive Engineer, Executive Engineer including Deputy Chief Engineer, Superintending Engineer including Senior Deputy Chief Engineers and Chief Engineer. The post of Assistant Engineers in Public Works Department comes under Category 5 of Branch-I-Public Works. The methods of appointment to the post of Assistant Engineer as stipulated in the said rule are as follows:

- 1) Direct recruitment; and
- 2) Recruitment by transfer from Junior Engineers, Head Draughtsman and Civil Draughtsman of the Tamil Nadu Engineering Subordinate Service.

4. The question of appointment of Assistant Engineers through Public Service Commission by direct recruitment is not an issue in these writ petitions. The issue involved in these writ petitions is confined to the second method of appointment, namely recruitment by transfer from the cadres of Tamil Nadu Engineering Subordinate Service. The rule provided Junior Engineers, Head Draughtsman and Civil Draughtsman Grade I alone as the feeder categories for the post of Assistant Engineers to be filled up by the method of recruitment by transfer. The qualification for such appointment through recruitment by transfer from the Tamil Nadu Engineering Subordinate Service are as follows:

- 1) Should have obtained a degree in Civil Engineering after having entered into the service as Junior Engineer; or
- 2) Should have passed Sections (A) and (B) of the institution of Engineers examination under Civil Engineering branch subject to certain conditions. The conditions are
 - (i) he should furnish evidence of having undergone practical training for a period of not less than one year; or
 - (ii) should have been in service for a period of not less than one year in Public Works Department as Overseer or Junior Engineer;
 - (iii) should hold the LCE Diploma issued by the College of Engineering Guindy; or
 - (iv) LCE or Diploma awarded by the State Board of Technical Education and Training, Madras.

The post of Technical Assistant did not figure as a feeder category for appointment as Assistant Engineer by recruitment by transfer.

5. However, when an advertisement was made by Tamil Nadu Public Service Commission inviting applications through Advertisement No.9/94 dated 31.05.1994 for direct recruitment of Assistant Engineers, a batch of original applications, namely O.A.No.3348 of 1994, 3631 of 1994, 3983 of 1994, 4563 of 1994, 4564 of 1994, 55 of 1995 and 2774 of 1995 came to be filed before the then Tamil Nadu Administrative Tribunal challenging the said notification and praying for a direction to consider the willingness of the applicants therein for appointment as Assistant

Engineers on the basis of G.O.Ms.No.1, Public Works Department dated 02.01.1990 and G.O.Ms.88, Public Works Department dated 22.01.1991 towards the vacancies that arose from 1986 onwards. In the said Original Applications, the notification was challenged on the ground that the ratio of 3:1 fixed between the direct recruits and the recruits by transfer from the Tamil Nadu Engineering Subordinate Service was not followed and it was sought to be given a go by. On that ground the prayer for quashing the advertisement and preventing publication of results had been sought for. O.A.Nos.4563 of 1994 and 4564 of 1994 came to be filed by the Technical Assistants praying that they should be promoted as Junior Engineers on their acquiring B.E degree in Electrical and Electronics for their re-designation as Assistant Engineers.

6. The Tribunal, after considering the rival contentions made therein, chose to hold that the ratio of 3:1 prescribed between the direct recruits and recruits by transfer from the Engineering Subordinate service was not maintained and accordingly quashed the Service Commission's Advertisement No.9/94 dated 31.05.1994 and the results published thereto. The Tribunal also directed that out of the 15 vacancies notified by the Tamil Nadu Public Service Commission in the advertisement impugned therein, the applicants in the concerned original applications should be considered along with other feeder categories in tune with Rule 2(a)(5) of Tamil Nadu Engineering Service Special Rules for recruitment by transfer by allotting one out of four vacancies to such persons. A further direction was also issued to fill up the future vacancies in the same ratio till the statutory rule shall be amended. However, the Tribunal dismissed the claim made by the Technical Assistants on the ground that the post of Technical Assistant was not a feeder category for appointment as Assistant Engineer by recruitment by transfer from the Tamil Nadu Engineering Subordinate Service.

7. That part of the order of the Tribunal dismissing the Original Application filed by the Technical Assistants was not challenged by taking up the matter either to the High Court or to the Supreme Court. On the other hand, the Association of Engineers, Tamil Nadu Public Works Department, Chepauk, Chennai (the writ petitioner in the present writ petitions) chose to file a writ petition in W.P.No.7523 of 1997 challenging the order of the Tribunal dated 17.04.1997 made in O.A.No.3348 of 1994. A Division Bench of this Court by order dated 06.11.2006 confirmed the order of the Tribunal and dismissed the said writ petition holding that Junior Engineers, Overseers, Head Draghtsmen and Civil Draghtsmen of the Tamil Nadu Engineering Subordinate Service were the feeder categories for appointment to the post of Assistant Engineer by the method of recruitment by transfer from the Tamil Nadu Engineering Subordinate Service, as per Rule 2(a)(5) of the Special Rules for Tamil Nadu Engineering Service. It was also held therein that the Special Rules did not provide for the ratio between the direct recruits and the appointees by transfer from the Tamil Nadu Engineering Subordinate Services, it

was a field unoccupied by the statutory rules capable of being supplemented by administrative instructions and that hence, till a rule is framed fixing the ratio, the ratio fixed by the Government by its Administrative order made in G.O (Ms) No.1, Public Works Department dated 02.01.1990 prescribing the ratio of 3:1 would apply.

8. Thereafter, on the basis of a representation made by the persons in the Tamil Nadu Engineering Subordinate Service including Technical Assistants, who possessed decree or equivalent qualification in Engineering, the Government in Public Works Department Letter No.51043/B2/97-4 dated 01.04.1998, issued instructions that the personnels in the categories of Junior Draughting Officers, Draughting Officers and Overseers, except Technical Assistants, were eligible to be appointed as Assistant Engineers by recruitment by transfer against the vacancies apportioned to be filled up by recruitment by transfer subject to the outcome of the writ petition W.P.No.7523 of 1997. However, the representation of the Technical Assistants for their inclusion in the feeder categories was not favourably considered.

9. During the years 1999, 2000, 2001 and 2002, a total number of 491 vacancies in the post of Assistant Engineers were notified to be filled up. Out of the same, 369 were to be filled up by direct recruitment and the remaining 122 were to be filled up by recruitment by transfer. Out of the said 122 vacancies referable to the feeder categories for appointment by recruitment by transfer, 29 vacancies alone had been filled up by 27.02.2006. Stating that there was dearth of eligible candidates for the remaining 93 vacancies and thus, they remained vacant, the Government issued directions to the second respondent under Government Public Works Department Letter No.26642/B2/03-10/ dated 24.02.2006 to issue proceedings appointing persons in the category of Technical Assistant, who possessed B.E/A.M.I.E qualification in Civil Engineering and have rendered 5 years of service on temporary basis under Section 10(a)(i) of the General Rules for the Tamil Nadu Engineering Subordinate Service, subject to the result of the writ petition in W.P.No.7523 of 1997 then pending on the file of the High Court of Madras. Accordingly, 21 Technical Assistants, who are the respondents 3 to 23 in W.P.No.11148 of 2007, were promoted (recruited by transfer) as Assistant Engineer by the above said impugned order. The said order is impugned in W.P.No.21344 of 2007 on the ground that such an order was issued in violation of the orders of the Tamil Nadu Administrative Tribunal dated 17.04.1997, which was also confirmed by a Division Bench of this Court by its order dated 06.11.2006 made in W.P.No.7523 of 1997. It is contended that the impugned order is against the statutory rules governing the methods of appointment to the post of Assistant Engineer in Public Works Department. W.P.No.21344 of 2007 is the offshoot of W.P.No.11148 of 2007 as it has been filed for a writ of mandamus forbearing the respondents from making any further appointment to the post of Assistant

Engineer by recruitment by transfer from the cadre of Technical Assistant.

10. It is the contention of the learned counsel for the petitioner Association that though the Government is entitled to issue administrative orders and administrative directions in implementation of the statutory rules framed under Article 309 of the Constitution of India, such orders should not be repugnant to the statutory rules and to the extent of repugnancy, such administrative orders / directions shall be invalid as being ultravires the statutory rules. It is the further contention of the learned counsel for the petitioner Association that though initially the post of Junior Engineer, Overseer and Senior Draghting Officer (Draghtsman Grade I) alone were included in the feeder categories for the post of Assistant Engineer for recruitment by transfer, subsequently by an amendment to the statutory rule, Draghtsman Grade II and III were also included in the feeder categories, leaving the cadre of Technical Assistant out of the feeder categories for appointment as Assistant Engineers by way of recruitment by transfer from the Tamil Nadu Engineering Subordinate Services and that since the rule excluded the category of Technical Assistant from the feeder categories, no administrative order/direction falling short of amendment to the rule can cloth them with the right to be included in the feeder categories for appointment to the post of Assistant Engineer by way of recruitment by transfer. It is the further contention of the learned counsel for the petitioner that instead of making the rule making authority to amend the rule and awaiting till such amendment, the Government chose to adopt a bypass route by issuing an administrative direction for appointing Technical Assistants possessing decree/A.M.I.E qualification with 5 years experience to the post of Assistant Engineers by way of recruitment by transfer; that such an approach is squarely against the statutory rule; that hence, the order dated 27.02.2006 impugned in W.P.No.11148 of 2007 is liable to be quashed and that the petitioner Association is entitled to the issuance of the Writ of Mandamus forbearing the respondents 1 and 2 in W.P.No.21344 of 2007 from making any further appointment by way of recruitment by transfer from the post of Technical Assistant unless and until the post of Technical Assistant is included as a feeder category by amending the statutory rule. Learned counsel for the petitioner has also contended that since the appointment of respondents 3 to 23 in W.P.No.11148 of 2007 were made in violation of the statutory rules, the order promoting them as Assistant Engineers has got to be set aside and the respondents 3 to 23 are liable to be reverted back as Technical Assistants.

11. In this regard, the learned Government Pleader, representing the State and the Official respondents, has not supported either the case of the petitioner or the case of the private respondents. On the other hand, the learned counsel for the private respondents has submitted that due to the conditions

prevailing in the Department, the Government had already taken a policy decision to include the cadre of Technical Assistant as a feeder category for appointment to the post of Assistant Engineer by way of recruitment by transfer; that accordingly the second respondent had been directed to send necessary proposal for amending the service rule to bring it in tune with the policy decision; that till the consideration of such a proposal by the rule making authority, inclusion of the category of Technical Assistant in the feeder category shall be considered to be in accordance with the administrative direction issued in respect of a field unoccupied and that therefore, the recruitment by transfer made based on the Government order supplementing the statutory rule cannot be said to be obnoxious or illegal.

12. In this regard, learned counsel for the private respondents relies on the following authorities:

1.B.N.Nagarajan and Ors. Etc., appellants Vs. State of Mysore and Others etc., reported in AIR 1966 Sc 1942 equivalent to (1966) 3 SCR 682;

2.Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare and Others reported in (1999) 8 Supreme Court Cases 99;

3.Tamilaga Asiriyar Koottani rep. By the General Secretary V.Annamalai, No.52, Nallathambi Street, Triplicane, Chennai - 5, appellant/petitioner Vs. The Government of Tamil Nadu rep. By its Secretary, School Education Department, Fort St.George, Chennai - 9 and 19 ors., Respondents in both the writ appeal and the writ petitions reported in 2005 Writ L.R.389; and

4.Cable Operators Association of Tamizhagam rep. By its President, A.P.Murukadaasan, Kancheepuram Vs. Commissioner of Police/Authorized Officer, Greater Chennai, Egmore, Chennai and others reported in (2011) 6 MLJ 281.

The first of the above said authorities relied on by the learned counsel for the private respondents is the judgment of the Constitution Bench of the Supreme Court. In the above said case, the question that arose before the Constitution Bench of the Supreme Court was, whether the rules relied on by the State were statutory rules made under Article 309 of the Constitution of India or were mere Executive Rules (directions). In the said case, Karnataka High Court had held that there could be little doubt that to the extent the Rules dealt with the topic of regulating recruitment to Civil Services under the State, the source of the power could only be the proviso to Article 309 of the Constitution of India and that the rules relied on by the State therein were not rules made under Article 309 because the rules did not expressly say so and they dealt with the functions of the service commission rather than laying down the rules regarding recruitment to services or posts. However, on appeal to the Supreme Court, the Constitution Bench of the Supreme Court held that the Mysore State Civil Services (General

Recruitment) Rules, 1957 were no doubt statutory rules and that so far as they directed anything to be done in a particular way, the Government had to comply with such directions. In that case also, the method of recruitment to the State Civil Services, especially to the post of Assistant Engineer was in issue. Statutory Rule provided that recruitment to the State Civil Services should be made by competitive examination or by promotion and the method of recruitment and qualification for each State Civil Service was left to be set forth in the Rules of recruitment of such service to be specially made in that behalf. It was contended therein that since the statutory rule provided that the method of recruitment and qualification should be set forth in the rules of recruitment of such service to be specially made in that behalf, it would show that till the rules were made in that behalf, no recruitment could be made to any service. Disagreeing with the said argument, the Constitution Bench of the Supreme Court held that it was not obligatory under the proviso to Article 309 for the State to make rules of recruitment, etc., before a service could be constituted or before the creation of a post. It was clarified that the same was not to say that it was not desirable that ordinarily rules should be made on all matters, which were susceptible of being embodied in rules; that the State Government did have executive power in relation to all matters with respect to which the Legislature of the State had power to make laws; that it was not necessary that there must be a law already in existence before the executive was enabled to function and that the powers of the executive were not limited merely to carrying out those laws. Observing that usually it would take a long time to make rules, the Hon'ble Supreme Court made the following conclusion:

"In conclusion we hold that r. 3 of the General Recruitment Rules, 1957, did not prevent the State from exercising its executive power of appointing Assistant Engineers and determining their conditions of service by executive order."

13. It must be noticed that in the case before the Constitution Bench of the Supreme Court, there was a statutory rule in the skeletal form stating that the method of recruitment and qualifications for each State Civil Service would be as set forth in the Rules of recruitment of such service specially made in that behalf. That itself made it clear that no statutory rule in detail, specifying the qualification and the method of recruitment was framed. Under such circumstances, a novel plea came to be made to the effect that unless and until such statutory rules were framed, no appointment to the posts under the Civil Service of the State could be made. In short, the contention was that the Government could not function in the matter of appointment before ever making detailed rules regarding qualification and method of appointment. Under such circumstances alone, the Constitution Bench of the Hon'ble Apex Court held that

the rule framed under Article 309 of the Constitution of India dealt with the subject in general, leaving the detailed instructions to be issued by the Government by executive instructions. As such, the Constitution Bench was of the view that the method of recruitment and prescription of qualification was a field unoccupied by the statutory rule and that hence, the vacuum could be supplemented by executive instructions and administrative orders.

14. In the second authority relied on by the learned counsel for the private respondents, the very same principle was reiterated by holding that in the absence of statutory rules regarding service conditions, executive instructions and decisions taken administratively shall be operative and that appointments / promotions can be made in accordance with such executive instructions or directions.

15. The third authority relied on by the learned counsel for the private respondents is one decided by a Division Bench of this Court. The same has been cited in support of their contention that the petitioner Association did not have the locus standi to file the writ petition in a service matter. Of course, it was held therein that the Association of Teachers called Tamilaga Asiriyar Koottani did not have the locus standi to file the writ petition challenging the Government Order upgrading some Elementary Schools as Middle Schools. In the fourth authority cited by the learned counsel for the private respondents, Cable Operators Association of Tamizhagam filed a writ petition for a direction to the Commissioner of Police, Chennai to take appropriate action against the second and third respondents therein, based on the complaint of the petitioner Association, as the said respondents therein had supported airing certain pay channel into the free-to-air signal transmitted without the help of set top boxes in contravention to Section 4-A of the Cable Television Networks (Regulation) Act, 1995. A learned Single Judge of this Court held that a person would have no locus standi to file a writ petition if he was not personally affected by the impugned act or his fundamental rights were not either directly or substantially invaded, or there was no imminent danger of such rights being invaded or his acquired interests have not been violated ignoring the applicable rules. It was held further that the relief under Article 226 of the Constitution would be based on the existence of a right in favour of the person invoking the jurisdiction and that exception to the said general rule would be cases where the writ is filed for the issuance of writ of habeas corpus or quo warranto or the writ petition is filed in public interest.

16. A consideration of the above said judgments make it clear that normally a Public Interest Litigation will not lie in matters of appointment to Government Services, the exception being quo warranto. However, the case on hand is one in which an Association representing the engineers of Tamil Nadu Public Works

Department has chosen to challenge the recruitment of the private respondents by adopting the method of recruitment by transfer from Tamil Nadu Engineering Subordinate Service. This is not the first time the petitioner Association has approached this Court with such a writ petition. Earlier also, the petitioner Association filed a writ petition in W.P.No.7523 of 1997. The said writ petition was taken on file by this Court and it was disposed of by a Division Bench of this Court by order dated 06.11.2006. In the said writ petition, the Division Bench held the ratio between direct recruits and appointees by way of transfer from Tamil Nadu Engineering Subordinate Service to the post of Assistant Engineers was not maintained; that fixing a ratio between the two methods was a field unoccupied by the statutory rule and that till a rule is framed, the administrative rule/executive direction prescribing the ratio shall be valid. In view of the fact that the petitioner association was permitted to file and maintain such previous writ petition in the matter of appointment to the post of Assistant Engineers in Tamil Nadu Public Works Department, this Court is of the view that much importance need not be attached to the contention of the private respondents to the effect that the petitioner association does not have the locus standi to maintain the writ petition.

17. It is not in dispute that as per the statutory rules, namely the statutory rules governing the methods of appointment to the post of Assistant Engineer in Public Works Department, as it stands amended, does not prescribe the post of Technical Assistant as a feeder category for appointment to the post of Assistant Engineer by way of recruitment by transfer. It is also an admitted fact that a policy decision was taken to include the cadre of Technical Assistants also as one of the feeder categories for appointment to the post of Assistant Engineer by recruitment by transfer and a proposal has been sent to the Government to amend the rule and the Engineer-in-Chief has also been enjoined with the job of preparing the draft rule for the approval of the Government. However, the fact remains that till date, the rule has not been amended to include the cadre of Technical Assistant as a feeder category.

18. The dearth of candidates in the feeder categories is sought to be projected as justification for appointing the private respondents as Assistant Engineers by way of recruitment by transfer from Technical Assistants. As pointed out supra, though the statutory rule provides two ways of recruitment, it does not provide for the ratio to be maintained between the direct recruits and appointees by way of transfer. When the said vacuum was supplied by the Government by executive directions, it was upheld as an administrative rule and the same shall be in force till a statutory rule takes it place. On the other hand, the question of appointment of Technical Assistants as Assistant Engineers by way of recruitment by transfer cannot be said to be a field unoccupied by the statutory rules. The statutory rule clearly enumerates the

feeder categories from which persons can be appointed as Assistant Engineers by way of recruitment by transfer from Tamil Nadu Engineering Subordinate Service. The cadre of Technical Assistants has been deliberately omitted by the statutory rule from the feeder categories. It shall also be noticed that despite the representations made by the Technical Assistants, they were not included in the feeder categories by making necessary amendment to the statutory rule. It is also pertinent to note that in the judgment of the Tamil Nadu Administrative Tribunal dated 17.04.1997 made in O.A.No.3348 of 1994 and the judgment of a Division Bench of this Court in W.P.No.7523 of 1997 dated 06.11.2006, it was held in clear terms that Technical Assistants were not in the feeder categories for appointment as Assistant Engineers by way of recruitment by transfer. The said position was also accepted by the Government by proposing an amendment to the statutory rule.

19. Under such circumstances, as rightly contended by the learned counsel for the petitioner, the appointment of the private respondents as Assistant Engineers by recruitment by way of transfer from the post of Technical Assistants is not only against the statutory rules, but also against the judgment of the Tamil Nadu Administrative Tribunal dated 17.04.1997 made in O.A.No.3348 of 1994 and the judgment of a Division Bench of this Court in W.P.No.7523 of 1997 dated 06.11.2006.

20. However, it is submitted on behalf of the official respondents and also the private respondents that steps are being taken to get the statutory rule amended so as to include the cadre of Technical Assistants also as a feeder category for appointment as Assistant Engineers by way of transfer from Tamil Nadu Engineering Subordinate Service and that a breathing time may be given within which the Government would be moved for the amendment of the rule. It has also been submitted that in the event of Government declining the proposed amendment or non-adoption of the proposed amendment within a time to be fixed by the Court, the private respondents shall be reverted to their original position as Technical Assistants.

21. The above said submission shows that a temporary protection pending a decision by the Government regarding the amendment of the rule alone is sought for. Such a protection can be given for a period of three months from the date of receipt of a copy of this order.

22. For all the reasons stated above, both the writ petitions are allowed. The Official respondents are restrained from making further appointments to the post of Assistant Engineers from the category of Technical Assistants by way of recruitment by transfer unless and until the statutory rule is amended making the post of Technical Assistants also as a feeder category. So far as the position of the private respondents 3 to 23 are concerned, they

shall be permitted to continue as Assistant Engineers for a period of three months from the date of receipt of a copy of this order. In case the Rule is amended making the post of Technical Assistants as a feeder category for appointment to the post of Assistant Engineers, then they shall not suffer any reversion and they will be allowed to continue as Assistant Engineers. In case the Rule is not amended within three months or in case of earlier rejection of the proposal for inclusion of the post of Technical Assistant in the feeder categories, the private respondents shall be reverted back to their original post, namely Technical Assistants. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gpa

To

1.The Secretary to Government
Public Works Department
Fort. St. George
Chennai-9

2.The Engineer in Chief W.R.O &
Chief Engineer (General)
Public Works Department
Chepauk
Chennai - 600 005

1 cc to mr. Malarvizhi Udayakumar, Advocate, Sr. 36
1 cc to Mr.S. Ravi, Advocate, Sr. 63328
1 cc to Government Pleader, SR. 63810

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Writ Petition Nos.11148 and 21344 of 2007 &
M.P.No.2 of 2007

SV (CO)
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