

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.Nos.2141 and 2142 of 2012

M.Jawahar ... Appellant in
W.A.2141/2012
Su.Gangaatharan ... Appellant in
W.A.2142/2012

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 &
Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai-600 005.
- ... Respondents in
both appeals.

Writ Appeals are preferred under Clause 15 of the Letters Patent against the common order dated 18.3.2011 made in W.P.Nos.28964 of 2010 and 1490 of 2011.

Prayer in both petitions: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the respondents to fix the seniority of the petitioner from the day of initial appointment viz. 17.03.1984 & 27.8.1984 respectively without reference to the serial number assigned by the Tamil Nadu Public Service Commission.

For Appellant : Mr.M.Sriram
in both appeals

For Respondents : Mrs.A.Shrijayanthi
in both appeals Special Government Pleader

COMMON JUDGMENT
(Delivered by N.PAUL VASANTHAKUMAR, J)

Heard Mr.M.Sriram, learned counsel appearing for the appellants and Mrs.A.Shrijayanthi, learned Special Government Pleader appearing for the respondents.

2. These writ appeals are filed against the common order made in W.P.Nos.28964 of 2010 and 1490 of 2011, dated 18.3.2011 along with 9 other connected writ petitions.

3. Brief facts are that the appellant in W.A.No.2141 of 2012, who was graduate in Engineering was joined as Assistant Engineer in the 2nd respondent office on 17.3.1984 and the appellant in W.A.No.2142 of 2012, who was also graduate in Engineering joined as Assistant Engineer in the 2nd respondent office on 27.8.1984 under rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules. The post of Assistant Engineer will have to be filled up either by direct recruitment or by transfer from other posts belonging to the Tamil Nadu Engineering Service and the method of direct recruitment is by calling applications through Employment Exchange as well as through Tamil Nadu Public Service Commission. The vacancies notified by the Public Works Department were not filled up then and there was no direct recruitment from 1983 to 1986 for the said post. According to appellants, though they were appointed under rule 10(a)(i), they were holding regular posts. Hence, the appellants' services were sought to be regularised through Tamil Nadu Public Service Commission by direct recruitment under the Tamil Nadu Engineering Service. Thereafter, the services were regularised after getting concurrence from the Tamil Nadu Public Service Commission and the appellants were deemed to have been appointed on 17.3.1984 and 27.8.1984 respectively and they were assigned seniority and were given posting order prescribing the period of probation for holding the regular post of Assistant Engineer. Appellants have completed their probation period and became permanent member of the Tamil Nadu Public Works Department. The Government issued G.O.Ms.No.423, Public Works (A1) Department, dated 29.7.2004, in and by which, the appellants along with similarly placed persons were promoted to the post of Assistant Executive Engineers. Case of the appellants is that their appointment though irregular on the date of appointment, cannot be termed as illegal appointment. The irregularity having been rectified by retrospective regularisation, the appellants are entitled to the benefit of conferment of seniority from the date of initial appointment. Hence the appellants have filed the writ petitions.

4. The learned single Judge, after extracting the relevant rules and after referring to the decision reported in (2010) 6 SCC 791 (S.Sumnyan and others v. Limi Niri and others), dismissed the writ petitions holding that the appellants having kept the issue

alive by moving at appropriate stage have made an attempt for revival after two decades, in the absence of any legal claim in their favour.

5. The grievance of the appellants before the learned single Judge was to direct the respondents to fix the seniority of the appellants from the date of initial appointment. In the regularisation order, it is specifically stated that the seniority of the appellants and 33 others have to be counted from the date of concurrence given by the Tamil Nadu Public Service Commission i.e. from 23.3.2001.

6. Admittedly, the said condition imposed was not challenged by the appellants and the writ petitions were filed seeking for issuing writ of mandamus only in the year 2010 and 2011 respectively. The learned single Judge has dismissed the writ petitions on the ground of laches. Even on merits the appellants having been appointed under rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules, which will not confer any right to claim seniority and regularisation was also granted with a specific condition that the seniority shall be fixed only from 23.3.2001. We are unable to find any reason to interfere with the order of the learned single Judge. There is no merit in these writ appeals.

7. Hence, the writ appeals are dismissed. No costs.

Sd/-
Assistant Registrar
Dated:30.1.15

True Copy

Sub Assistant Registrar

To

1.The Secretary,
Public Works Department,
Fort St. George, Chennai-600 009.

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

+1 cc to M/s.M.Sriram, Advocate,SR.3114

+1 cc to Government Pleader,SR.3031.

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