

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Pronounced on : 25-11-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition Nos. 14244, 21364, 22704 and 37693 of 2015

WP No. 14244 of 2015

B.V. Babu

.. Petitioner

Versus

1. Government of Tamil Nadu
rep. by its Principal Secretary
Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009

2. Principal Secretary/Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003

3. N. Mahesan
Executive Engineer
Zone 12 (Alandur)
Corporation of Chennai
Alandur, Chennai

.. Respondents

WP No. 21364 of 2015

S. Kalimuthu

.. Petitioner

Versus

1. Government of Tamil Nadu
rep. by its Principal Secretary
Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009

2. Principal Secretary/Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003

3. N. Mahesan
Executive Engineer
Zone 12 (Alandur)
Corporation of Chennai
Alandur, Chennai

.. Respondents

WP No. 22704 of 2015

1. R. Ranganathan
2. S. Sakthimanikandan
3. R. Srinivasan
4. L. Nandakumar
5. P. Duraisamy
6. L. Kannan
7. S. Rajendran
8. K. Chinnachamy
9. M. Murugan

.. Petitioners

Versus

1. Government of Tamil Nadu
rep. by its Principal Secretary
Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009

2. Principal Secretary/Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003

3. N. Mahesan
Executive Engineer
Zone 12 (Alandur)
Corporation of Chennai
Alandur, Chennai

.. Respondents

WP No. 37693 of 2015

1. G. Tamil Selvan
2. S. Sudhakar
3. A.S. Murugan
4. R. Sureshkumar
5. P.S. Srinivasan
6. J. Jayakanth
7. B. Sivakumar
8. K. Sundaresan
9. R. Saravanan
10. M. Kamaraj
11. T.K. Ganesan
12. R. Senthilnathan

.. Petitioners

Versus

<https://hcservices.ecourts.gov.in/hcservices/>

1. Government of Tamil Nadu
rep. by its Principal Secretary

Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009

2. Principal Secretary/Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003

3. N. Mahesan
Executive Engineer
Zone 12 (Alandur)
Corporation of Chennai
Alandur, Chennai

.. Respondents

WP No. 14244 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Declaration declaring that the action of the respondents in considering the revision of seniority of the third respondent in the post of Assistant Executive Engineer, as if he got promoted in the said post on 08.10.1999 and consequently revise his seniority in the post of Executive Engineer and further promotion in the post of Superintending Engineer, as illegal, arbitrary and contrary to law.

WP No. 21364 and 22704 of 2015:- Petitions filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus, after calling for the concerned records from the first and second respondent, quash the proceedings of the second respondent dated 04.03.2015 bearing No.Po.Thu.Na.Ka.No. E1/9700/2012 and G.O. (D) No.445, Municipal Administration and Water Supply (MC-3) Department dated 13.07.2015 issued by the first respondent as illegal, arbitrary and contrary to law and consequently direct the 1st and 2nd respondent not to treat the third respondent to have joined the post of Assistant Executive Engineer as 08.10.1999 for the purpose of seniority, promotion etc.,

WP No. 37693 of 2015:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Declaration declaring the action of the second respondent in so far as placing the third respondent in panel dated 21.12.2012 bearing Po.Thu.Na.Ka.No.E1/19852/2012 and proceedings of the second respondent dated 04.03.2015 bearing No.Po.Thu.Na.Ka.No.E1/9700/2012 seeking approval from the first respondent to treat the third respondent has joined the second respondent corporation as Assistant Executive Engineer on 08.10.1999 as illegal, arbitrary and contrary to law and consequently direct the respondents 1 and 2 to treat the third respondent had joined the second respondent Corporation as Assistant Engineer in May 1998 being the date of re-designation and on that basis fix the seniority of the third respondent in the post of Assistant Engineer and promoted posts or in the alternative treat the third respondent to have joined the post of Assistant Executive Engineer on 25.10.2011 being the date of merger and fix his seniority on that basis in the post of

Assistant Executive Engineer and promoted posts.

For Petitioners : Mr. Balan Haridas
in all the Writ Petitions

For Respondents : Mr. S. Gunasekaran
Additional Government Pleader for R1
in all the Writ Petitions

Miss. Karthika Ashok for R2
in all the Writ Petitions

Mr. B. Singaravelan, Senior Advocate
for Mr. V.S. Jagadesan for R3
in all the Writ Petitions

COMMON ORDER

The issue involved in all these writ petitions are inter-connected and inter-twined and therefore, with the consent for counsel on either side, the writ petitions are taken up for final disposal and are disposed of by this common order.

2. Out of the four writ petitions, the prayer in WP No. 21364 and 22704 of 2015 are one and the same. These two writ petitions have been filed praying to quash the proceedings of the second respondent dated 04.03.2015 as well as the order passed by the Government in G.O. (D) No.445, Municipal Administration and Water Supply (MC-3) Department dated 13.07.2015 and to issue a consequential direction to the respondents 1 to 2 to desist from treating the third respondent to have joined the post of Assistant Executive Engineer as 08.10.1999 for the purpose of reckoning his seniority, promotion etc.,

3. The prayer in WP No. 14244 of 2015 is also similar to that of the relief sought for in WP No. 21364 and 22704 of 2015. In WP No. 14244 of 2015, the petitioners therein prayed for issuance of a Writ of Declaration to declare that the action of the respondents 1 and 2 in considering the revision of seniority of the third respondent in the post of Assistant Executive Engineer, as if he got promoted in the said post on 08.10.1999 is unsustainable and consequently revise his seniority in the post of Executive Engineer and further promotion in the post of Superintending Engineer.

4. In the other writ petition namely WP No. 37693 of 2015, which was filed by petitioners who are 12 in number, a similar relief of declaration has been sought for to declare the action of the second respondent in so far as it relates to placing the third respondent in panel dated 21.12.2012 and proceedings of the second respondent dated 04.03.2015 seeking approval from the first respondent to treat the third respondent as having joined the second respondent corporation as Assistant Executive Engineer on 08.10.1999 as illegal, arbitrary and contrary to law. A consequential prayer has also been sought for by the petitioner to the effect that the respondents 1 and 2 be directed to treat the third respondent

as having joined the second respondent Corporation as Assistant Engineer in May 1998 being the date of re-designation and on that basis fix his seniority in the post of Assistant Engineer and promoted posts or in the alternative treat the third respondent to have joined the post of Assistant Executive Engineer on 25.10.2011 being the date of merger and fix his seniority on that basis in the post of Assistant Executive Engineer and promoted posts.

5. In other words, in all the writ petitions, the prayers have been focused as against the third respondent with respect to his date of promotion to the post of Assistant Engineer and in the promoted post of Assistant Executive Engineer etc.,

6. The facts leading to the institution of WP No. 14244 of 2015 is that the petitioner would contends that he is a B.E. Graduate in Civil Engineering and also a holder of M.E. Degree in Urban Engineering. He joined the second respondent corporation in the year 1993 and thereafter he was promoted as Assistant Executive Engineer in 2003. Subsequently, on 11.01.2013, he was promoted to the post of Executive Engineer and presently he is working as Executive Engineer in Special Projects Department. According to the petitioner, the third respondent, who is only a Diploma Holder in Civil Engineering joined the Municipality as a Water Works Overseer in 1984, promoted as Junior Engineer in 1990 and during May 1996, he was appointed as Assistant Executive Engineer in Chennai Corporation on deputation basis. During the course of his employment, the third respondent completed his B.E. Degree during 1998. While so, in the year 2001, the third respondent was repatriated to his parent department and on such repatriation, he was re-designated as Assistant Engineer. The third respondent was employed in Alandur Municipality from 03.11.2006 as Assistant Executive Engineer. In the year 2011, Alandur Municipality got merged with the second respondent corporation and consequently, the services of the third respondent was absorbed with effect from 25.10.2011 in the Corporation. At the time of such merger, the third respondent was working as Assistant Executive Engineer. While so, on 21.12.2012, a panel was drawn for promotion to the post of Executive Engineer for the year 2012-2013 in which the name of the petitioner was placed at Serial No. 31 and the third respondent was included in serial No.49. On 11.01.2013, the petitioner was promoted to the post of Executive Engineer, while the third respondent was given promotion to such post on 21.03.2013.

7. According to the petitioner in WP No. 14244 of 2015, he is senior than the third respondent. However, a representation dated 09.10.2014 has been submitted by the third respondent seeking to reckon his seniority in the post of Assistant Executive Engineer from 08.10.1999 instead of 03.11.2006. The respondents 1 and 2, considering the same, revised the seniority of the third respondent and while reckoning the seniority of the third respondent treated him to have been holding the higher post of Superintending Engineer

and Chief Engineer, when in fact, he has not even held the post of Superintending Engineer. Immediately, the petitioner submitted his objection on 26.12.2014 to the first respondent. According to petitioner, the first respondent did not consider his objection in the proper perspective, with the result, a situation has been created whereby the petitioner will be made to work under the third respondent. In such circumstances, the petitioner has filed the present writ petition No. 14244 of 2015.

8. The petitioner in WP No. 21364 of 2015 would contend that he is a holder of Civil Engineering Degree and he joined the services of the second respondent corporation as Assistant Engineer on 17.08.1990. On 28.06.2000, the petitioner was conferred with promotion to the post of Assistant Executive Engineer and further promotion was given to him on 10.01.2013 as Executive Engineer. Presently, the petitioner is working as Superintending Engineer, having been conferred with such promotion on 17.04.2015. The petitioner in WP No. 21364 of 2015 also questions the manner in which the third respondent, who was his junior, was given promotion to the higher post to his detriment. The petitioner also furnished the service particulars of himself as well as the third respondent in a tabular column to contend that at the time when he was promoted as Superintending Engineer on 17.04.2015, the third respondent was only working as Assistant Engineer, while so, the promotion conferred on the third respondent on 03.11.2006 to the post of Assistant Executive Engineer and also the promotion given to him to the post of Executive Engineer on 21.03.2013 are untenable.

9. The petitioners, who are nine in number, have filed WP No. 22704 of 2015. Another WP No. 37693 of 2015 has been filed by the petitioners, who are 12 in number. Both WP No. 22704 of 2015 and 37693 of 2015 have been filed with very same averments as that of the other two writ petitions mentioned above. Apart from such averments, it is stated that the services of the third respondent was deputed to the second respondent corporation on 22.05.1996 as Assistant Executive Engineer and at that point of time, he did not fulfil the qualification prescribed for holding the post of Assistant Engineer. In fact, in the parent department, the third respondent was made to wait from 19.05.2001 till 13.09.2001 and only on 14.09.2001, when he has acquired the B.E. Degree in 1998, he was given posting and allowed to hold the re-designated post of Assistant Engineer. The petitioners have also furnished the tabulated form of the service particulars relating to their date of joining and further promotion. The petitioners therefore filed the WP No. 22704 of 2015 challenging the proceedings dated 04.03.2015 of the second respondent and the order passed by the first respondent in GO (D) No.445 dated 13.07.2015.

10. The learned counsel appearing for the petitioners would vehemently contend that the third respondent was given promotion to the post of Assistant Executive Engineer only on 03.11.2006, whereas, even prior to that date, the petitioners

were holding the post of Assistant Executive Engineer from various dates in the year 2003. Therefore, for the purpose of further promotion to the post of Executive Engineer, the petitioners have to be construed as seniors than the third respondent. That is the reason why in the panel drawn for promotion to the post of Executive Engineer, the petitioner in WP No. 14244 of 2015 was placed in Serial No.31 and the third respondent was placed in serial No.49 of the very same panel. While so, the official respondents ought not to have altered and/or revised the seniority of the petitioner. Therefore, the revision of seniority of the third respondent in the cadre of Assistant Executive Engineer from 08.10.1999 and conferment of promotion to the further post of Superintending Engineer is opposed to service law jurisprudence. The official respondents, without even calling for objection from the persons who are likely to be affected, has revised and/or re-fixed the seniority of the third respondent from 08.10.1999 which has caused grave prejudice to the petitioners.

11. The learned Additional Government Pleader appearing for the first respondent, by placing reliance on the counter affidavit of the first respondent, would oppose the writ petition. According to the learned Additional Government Pleader, the third respondent was appointed as Junior Engineer in Alandur Municipality (now merged with the Corporation) and he was appointed as Assistant Executive Engineer on deputation in the Corporation of Chennai from 21.05.1996. On completion of deputation, he was reverted to his parent department viz., Alandur Municipality on 18.05.2001. At the time of deputation, the name of the third respondent was not considered for promotion to the post of Assistant Executive Engineer in the parent department and therefore, the third respondent submitted a representation on 25.10.2007 to consider his name for promotion on par with his junior. On examination of such representation, the Government passed GO (D) No.242, Municipal Administration and Water Supply Department dated 09.06.2008 revising the seniority of the third respondent and conferred him with promotion as Assistant Executive Engineer with effect from 08.10.1999 on par with his immediate junior R.Sundaramoorthy. The challenge made to such revision in WP No. 18651 of 2008 was also dismissed by this Court on 05.06.2012. In the meantime, the juniors to the third respondent were further promoted to the post of Executive Engineer. While so, 42 adjoining urban local bodies came within the fold of the Corporation of Chennai on merger with effect from 25.10.2011 and the employees in those local bodies, including the third respondent, were absorbed in the service of the corporation. After merger, the willingness of the staff of the 42 urban local bodies which were merged with the corporation of Chennai, has been obtained and proposals were sent to the Government by the Corporation. The Government, taking note of the interest of the employees of the Corporation of Chennai as well as the merged local bodies, has issued orders absorbing 2165 staff within the fold of the corporation service by giving them due pay protection. The Government also fixed the inter-se seniority among the merged staff of the

urban local bodies and the existing staff of the Corporation. It is on the basis of the order passed by the Government in GO Ms. No.242, Municipal Administration and Water Supply Department dated 09.06.2008, the inter-se seniority of Assistant Executive Engineers of the merged local bodies and the Corporation of Chennai has been fixed by the Commissioner of Corporation. Further the proposal for revision of seniority was also placed in the council meeting of the Corporation. Therefore, according to the learned Additional Government Pleader appearing for the first respondent, the revision of seniority of the third respondent is in accordance with law especially when the junior of the third respondent Sundaramoorthy was given promotion ahead of the third respondent. The learned Additional Government Pleader would further contend that the relief of declaration sought for by the petitioners is not maintainable inasmuch as the action of the official respondents has been made in accordance with law and it warrants no interference by this Court.

12. The learned standing counsel appearing for the respondents/ Corporation, while reiterating the above submissions made by the learned Additional Government Pleader for the first respondent and by relying on the counter affidavit of the second respondent, would contend that as per GO (D) No.242, Municipal Administration and Water Supply Department dated 09.06.2008, the seniority of the third respondent was fixed in his parent department in the post of Assistant Executive Engineer with effect from 08.10.1999. The seniority of the third respondent was restored inasmuch as his junior Sundaramoorthy was promoted as Assistant Executive Engineer on 08.10.1999. Therefore, in order to ensure equality in the matter of conferment of promotion to the post of Assistant Executive Engineer, the seniority of the third respondent was restored by the Government and following the same, the seniority of the third respondent was re-fixed. According to the learned counsel for the second respondent, the petitioners were conferred with promotion to the post of Assistant Executive Engineer on various dates during the year 2000 whereas the third respondent was conferred with such promotion even on 08.10.1999 by virtue of the order passed by the Government. The challenge made to the order passed by the Government before this Court also ended in dismissal of the writ petition and therefore, the learned counsel for the second respondent prayed for dismissal of the writ petition.

13. The learned Senior counsel appearing for the third respondent would vehemently contend that the third respondent joined as Overseer in the year 1984 in the Tamil Nadu Municipal Engineering Service and subsequently, even in the year 1990, he was promoted as Junior Engineer. In the year 1996, the third respondent was further promoted to the post of Assistant Executive Engineer. However, since the third respondent was deputed to the services of the second respondent Corporation as Assistant Executive Engineer, his name was not included in the panel prepared by the Commissioner of Municipal Administration in the Tamil Nadu Municipal Engineering Service. Thereafter,

the Government passed orders in GO (D) No.242, Municipal Administration and Water Supply Department dated 09.06.2008 restoring the name of the third respondent in Serial No.14 (a) thereof. Subsequent to revision of his original seniority in the category of Assistant Executive Engineer, the petitioner was promoted as Executive Engineer on 27.12.2007 on par with the date on which his junior was given such promotion by issuing GO (Rt) No.247, Municipal Administrative and Water Supply Department dated 26.12.2009. While so, Alandur Municipality was amalgamated with Chennai City Municipal Corporation 25.10.2011 as per the order passed in GO (Ms) No. 256, Municipal Administration and Water Supply Department dated 26.12.2009. Thereafter, the Government, by extraordinary notification in the Tamil Nadu Government Gazette No.51 dated 23.02.2012 issued an amendment to the Chennai City Municipal Corporation Act, 1919 ordering that the terms and conditions applicable to such officer or employee consequent on his absorption in the service of the corporation shall be deemed to be an officer or employee of the corporation. Therefore, according to the learned Senior counsel for the third respondent, the seniority of those who were absorbed in the service of the Chennai Corporation from the municipalities has to be re-fixed on 25.10.2011. Therefore, pursuant to the amendment effected to Chennai City Municipal Corporation Act, 1919 Government issued GO Ms. No.67, Municipal Administration and Water Supply Department dated 18.07.2012 thereby inter se seniority between incumbents of the 42 merged Urban Local Bodies and staff of Corporation of Chennai was fixed by taking into account the date of joining in a particular post/categories.

14. The learned Senior counsel for the third respondent would further contend that when the seniority of the third respondent was restored by including his name in Serial No.14 (a) of the panel, it was challenged by filing WP No. 10943 of 2008, 18651 of 2008 and 591 of 2009 and the said writ petitions were dismissed on 05.06.2012. According to the learned senior counsel for the third respondent, the seniority of the third respondent has been reckoned and revised as per GO (D) No.242 dated 09.06.2008 and therefore, the petitioners have no locus standi to question the same. The learned Senior counsel for the third respondent also submits that the seniority of the third respondent has been revised on par with his immediate junior R. Sundaramurthy by conferring him promotion as Assistant Executive Engineer on 08.10.1999. When the junior of the third respondent has marched him over in the matter of fixation of seniority, the third respondent, who is senior to the said Sundaramurthy was rightly conferred with revision of seniority as on 08.10.1999. On the basis of the revision of seniority in favour of the third respondent, the third respondent was placed in serial No.1 in the panel for promotion to the post of Executive Engineer as on 01.04.2012 in the Chennai Corporation Council Agenda. In fact, for revision of seniority in favour of the employees of the amalgamated Alandur Municipality, several objections have been made by the employees of the corporation. In order to consider the said

objection, the Corporation Council conducted a meeting on 27.12.2012 during which they have eventually approved the panel drawn for promotion as Executive Engineer. In the said panel, the name of the petitioner in WP No. 14244 of 2015 was included in Serial No.31 and the name of the third respondent was in Serial No.49. However, by giving effect to the revision of seniority ordered by the Government in GO Ms. No.242, Municipal Administration and Water Supply Department dated 09.06.2008, the third respondent was placed in Serial No.14 (a) of the said panel. Even the outcome of the meeting conducted by the corporation on 27.12.2012 was subjected to challenge before the Commissioner of Corporation by filing a statutory appeal on 03.08.2012 and it was forwarded to the Government for passing appropriate orders as per the Rules. The Government after careful examination of above proposal passed GO (D) No.445 dated 13.07.2015 by fixing the inter-se seniority of the third respondent as Assistant Executive Engineer on 08.10.1999 for which the petitioners cannot have any qualm or grievance over the re-fixation of seniority of the third respondent in any manner. The learned Senior counsel for the third respondent therefore prayed for dismissal of the writ petition.

15. I heard the learned counsel on either side and perused the materials placed on record. In all these writ petitions, the grievance expressed on behalf of the petitioners is as to the re-fixation and/or restoration of the seniority of the third respondent by reason of which the third respondent will hold the post of Superintending Engineer ahead of the petitioners. Whether the restoration of seniority of the third respondent by the Government is bad or not has to be seen.

16. The third respondent originally joined the Tamil Nadu Municipal Engineering Services as an Overseer on 30.07.1984 under the Commissioner of Municipal Administration, which is the parent department of the third respondent. Subsequently, the third respondent was promoted to the post of Junior Engineer on 25.07.1991. Thereafter, on 22.05.1996, the third respondent was posted in the Corporation of Chennai as Assistant Executive Engineer on deputation. While the third respondent was working in the Corporation of Chennai, he was reverted back to his parent department on 19.05.2001 as an Assistant Engineer. Thereafter, the petitioner was once again given regular promotion as Assistant Executive Engineer in his parent department itself on 03.11.2006. According to the third respondent, he has given various representations and one such representation was made on 22.12.2007 to re-fix his seniority by taking note of the B.E. degree qualification he has acquired while on deputation in the Corporation of Chennai. The Commissioner of Municipal Administration, who is the appointing authority of the third respondent has recommended to the Government for fixing his seniority by considering his degree qualification and service rendered on deputation in the Corporation of Chennai. On examination of the recommendations so made by the appointing authority of the third respondent, the Government issued GO Ms. No.242, Municipal Administration and Water Supply Department dated 09.06.2008 by which the

seniority of the third respondent was restored in the parent department itself and his name was included in serial No.14 (a) ahead of Tr. R. Sundaramoorthy, who is the immediate junior of the third respondent. In and by the said Government Order, the Government has ordered that the date of joining of the third respondent in the post of Assistant Executive Engineer shall be deemed as 08.10.1999, even though the third respondent was conferred with such post of Assistant Executive Engineer on deputation on 22.05.1996 itself. Since the seniority of the third respondent was restored in his parent department itself, the Government thought it fit to restore his seniority on par with his immediate junior in the parent department from 08.10.1999 only.

17. When the third respondent was working as Assistant Executive Engineer in Alandur Municipality, the Alandur municipality along with other local bodies got merged with the Corporation of Chennai on 25.10.2011. On such absorption, all the employees were absorbed into the service of the corporation from 25.10.2011 by bringing in an amendment to the Chennai City Municipal Corporation Act, 1919 by reason of which the all the employees of the local body, including the third respondent, was deemed to be an employee of the Corporation from 25.10.2011. The amendment so made was also published in the Tamil Nadu Government Gazzette on 23.02.2012 wherein it was stated that the service rendered by all the employees under the various town panchayat, municipality or Village Panchayat till the date of notification shall be deemed to be under the service of the corporation and they are entitled for counting the service rendered so far for the purpose of increments, leave, pension, provident fund and gratuity. Thus, by reason of the merger and/or amalgamation of the Municipalities, including Alandur Municipality where the third respondent was employed, with the corporation, the third respondent became one of the employees of the Corporation with the benefit of counting his past service rendered by him in various positions. As discussed earlier, the parent department of the petitioner is Municipal Administration Department and therefore, his seniority has to be reckoned, only in that department. It is pertinent to point out that even at the time when the third respondent was deputed to work in the Corporation of Chennai, he was given promotion as Assistant Executive Engineer on 22.05.1996. Subsequently, after completion of his deputation, he came back to his parent department as Assistant Engineer. Taking into consideration the above factors only, the Government issued GO Ms. No.242 dated 09.06.2008 restoring his seniority 08.10.1999 on par with the junior of the third respondent.

18. As regards the date of joining of the petitioner in WP No. 14244 of 2015 namely B.V. Babu, he joined the services of the Corporation in the year 1993. The petitioner in WP No. 21364 of 2005 namely Mr. Kalimuthu, he joined the services of the Chennai Corporation on 17.08.1990 as Assistant Engineer. Similarly, the petitioners in WP No. 22704 of 2015 have joined the services of the Corporation of Chennai on

various dates from 30.05.1987 till 08.04.1993. The petitioners in WP No. 37693 of 2015 have also joined the services of the Corporation as Assistant Engineer in the year 1993. Whereas, the third respondent originally joined the Tamil Nadu Municipal Engineering Services as an Overseer on 30.07.1984 under the Commissioner of Municipal Administration and subsequently, he came to hold the post of Assistant Executive Engineer on deputation in the Corporation of Chennai on 22.05.1996. Therefore, the seniority of the third respondent was reckoned in his parent department on par with his junior by issuing GO Ms. No.242 dated 09.06.2008 with retrospective effect.

19. It is also to be mentioned that the GO Ms. No.242 dated 09.06.2008 by which the seniority of the third respondent was restored, was challenged before this Court in WP No. 10943 and 18651 of 2008 at the instance of one A. Sethu Ravanth. In WP No. 10943 and 18651 of 2008 the very same contentions, which are urged in these writ petitions, have been made. Both these writ petitions were dismissed by this Court by a common order dated 05.06.2012. In Para No.7 of the order dated 05.06.2012, this Court, by referring to the decision of the Honourable Supreme Court in (H.S. Hakani vs. State of Gujarat and others) (2010) 4 SCC 301 held that when once a seniority of a person reached a finality, it should not be unsettled at the instance of the juniors in service. In the said order, this Court also taken note of the fact that even during the year 1996 to 2001, while the third respondent was working as Junior Engineer, he was deputed to the services of the Corporation by promotion as Assistant Executive Engineer, as per the provisions under Rule 4 of the Madras Corporation Engineering Service Rules, 1969 based on the orders of the Government.

20. It is well settled proposition of law that every employee has an assertable right for claiming seniority on par with his junior when he or she has no disqualification or otherwise and is eligible for being considered for the post which his or her junior is holding. Keeping this in mind, the Government issued GO (D) No.242, Municipal Administration and Water Supply Department dated 09.07.2008 restoring the seniority of the third respondent in Serial No.14 (a) between his junior R. Sundaramoorthy and one S. Venkatesh who was in serial No.14 (a). By virtue of the aforesaid Government Order dated 09.07.2008, the seniority of the third respondent was restored with effect from 08.10.1999 with retrospective effect in the cadre of Assistant Executive Engineer, a post which was held by the junior of the third respondent. Resultantly, the third respondent was given further promotion to the post of Executive Engineer and as Superintending Engineer on par with his junior. In such view of the matter, the contention of the petitioners that the petitioner was working as Assistant Executive Engineer even as on 25.10.2011, being the date of amalgamation of the urban local bodies and the corporation does not merit acceptance. The claim of the third respondent for restoring his seniority above his junior, who was promoted as Assistant Executive Engineer on 08.10.1999 and as Executive Engineer on 27.12.2007 is proper. This is more so that even on

22.05.1996, the third respondent was conferred with promotion to the post of Assistant Executive Engineer while deputing him to the Corporation services. However, while restoring his seniority in his parent department namely Tamil Nadu Municipal Engineering Service, the Government though it fit, rightly, to reckon his seniority from 08.10.1999, with retrospective effect from the date on which his immediate junior namely Sundaramoorthy in the parent department was conferred with promotion to the post of Assistant Executive Engineer. This, in my considered opinion, does not call for any interference.

21. It is evident from the above order passed by the Government in GO Ms. No.242, Municippal Administration and Water Supply Department dated 09.06.2008 that seniority of the third respondent was restored in his parent department namely Commissioner of Municipal Administration on par with his junior Sundaramoorthy with effect from 08.10.1999 is valid and proper. Subsequently, on the basis of the aforesaid order dated 09.06.2008, Government passed another Order in GO (D) No.445 dated 13.07.2015 confirming the inter-se seniority of the third respondent as Assistant Executive Engineer on 08.10.1999. This Court also takes note of the fact that the petitioners are also presently working as Superintending Engineer after claiming the promotional ladder in the services of the Corporation of Chennai, whereas, the third respondent was initially appointed in the Municipal Administration Department and he could get his turn for promotion in his parent department which has got nothing to do with the petitioners, who were, all along, employed only in the services of the Corporation of Chennai. Merely because the Municipalities and the Corporation were merged from 25.10.2011, it will not give rise to any anomaly between the petitioners and the third respondent. In fact, after merger, the government considered the case of those who were absorbed from municipal service with that of the existing staff in the Corporation of Chennai and fixed their inter se seniority. The issue relating to the inter se seniority was also placed before the Corporation Council meeting on 27.12.2012 and based on the outcome of the meeting of the Corporation council, the third respondent was promoted to the post of Executive Engineer from 21.03.2013. The fact remains that the petitioners were also given such promotion on various dates. On and from 17.04.2015, the petitioners were holding the post of Superintending Engineer. At any rate, the seniority of the petitioners could only be reckoned from the services rendered by them in the Corporation of Chennai. On the contrary, the services of the third respondent has to be reckoned from his parent department namely Municipal Administration Department where he was initially employed. Of course, from 25.10.2011, several municipalities and other local bodies within the City of Chennai got merged with the Corporation of Chennai and on such merger, the service of the employees of so absorbed were ordered to be treated on par with those of the employees of the corporation of Chennai. While amalgamating the local bodies with the Corporation of Chennai, those who were in municipal services and were absorbed were given pay

protection with due seniority. In such view of the matter, I do not find any reason to interfere with the action of the respondents at the instance of the petitioners.

22. In the result, I hold that the relief of declaration sought for by the petitioners need not be granted. The restoration of seniority of the third respondent from 08.10.1999 as Assistant Executive Engineer is valid and proper and it does not calls for interference by this Court. Accordingly, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

1. Government of Tamil Nadu
rep. by its Principal Secretary
Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009
2. Principal Secretary/Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003

+4CC To M/s.Balan Haridas, Advocate SR.69358

+1CC To Mr.V.S.Jagadeesan, Advocate SR.69425

WP Nos. 14244, 21364,
22704 and 37693 of 2015

सत्यमेव जयते

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