

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 10.04.2017

Delivered on :: 21.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. Nos.5637, 5638 of 2017

W.P.No.5637 of 2017

1 Union of India
Rep by Chief Secretary to Government
Puducherry

2 The Chief Engineer
Public Works Department Puducherry

versus

1 R.Uma Maheswari
2 G.Perarasi
3 S.Latchoumy

4 The Registrar
Central Administrative Tribunal Madras
Bench Chennai-104 ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating the Order dated 23.03.2016 made in O.A. No.614/ 2012 and order dated 16.11.2016 made in M.A. No.310/ 0894/ 2016 in O.A. No.310/ 00614/ 2012 on the file of the 4th respondent and to quash the same.

W.P.No.5638 of 2017

1 Union of India
Rep by the Government of Puducherry Through
the Secretary to Government Public Works
Department Puducherry

2 The Chief Engineer
Public Works Department Government of
Puducherry Puducherry

3 The Chief Secretary to
Government Chief Secretariat Government of
Puducherry Puducherry

versus

- 1 Puducherry State Public Works
Dept. Work Asst. Asson. affiliated to the
Puducherry State Govt. Emp. Central
Federation 65 Amman Koil St Puducherry
rep by Secretary Er.Shunmougam
- 2 P.Elango Arasan
- 3 The Registrar
Central Administrative Tribunal Madras
Bench Chennai-104 ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating the Order dated 24.02.2016 made in O.A. No.725/ 2014 and order dated 20.01.2017 made in M.A. No.310/ 00043/ 2016 in O.A. No.310/ 00725/ 2014 on the file of the 3rd respondent and to quash the same.

For petitioner : Mr.R.Syed Musthafa,
Special Government Pleader (Puducherry)

For Respondents : Mr.Vijay Narayan, Senior counsel,
for M/s.Menon Karthick,
for respondents 1 and 2 in
W.P.No.5638/2017
Mr.P.Gandhi,
for respondents 1 to 3
in W.P.No.5637 of 2017

K.K.SASIDHARAN, J.

Introductory:-

The Government of Union Territory of Puducherry, without resorting to any kind of transparent selection process, engaged 131 casual labourers as Technical Assistants, for undertaking certain project works. When the Government have taken steps to regularize the services of casual labourers as "Group D" Mazdoors, those 131 employees approached the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") claiming absorption against "Group C" post, taking into account their qualification. The Government of Union Territory of Puducherry complied with the direction given by the Central Administrative Tribunal by issuing an order dated 23 October 2013, for creation of 131 body constituted temporary posts of Work Assistant Group C, for absorption of 131 Technical Assistants conferred with temporary status, making it clear that the proposed Body Constituted posts are personal to the

individual concerned and shall be deemed to be abolished in the event of promotion of incumbent to the higher post or resignation or retirement or death.

2. The 131 Technical Assistants accepted "Group C" posts of "Work Assistant" without framing recruitment rule, as it was a dying post, meaning thereby, the post would be abolished after the retirement of the 131 employees. Subsequently, they made a further claim for promotion, even in the absence of recruitment rule, to the post of Junior Engineer by filing O.A.No.51 of 2007 before the Tribunal. The original application was dismissed. The order has become final. The association and some of the employees, without disclosing the earlier order dismissing the original application, filed two other original applications for the very same relief. The Tribunal, notwithstanding the earlier order dismissing the original application for the very same relief, and without making the Union Public Service Commission (hereinafter referred to as "UPSC") as a party to the proceedings, issued a direction to the Government of Puducherry, and UPSC to consider the case of the employees positively.

Conspectus of facts:-

3. The respondents 1 and 3 in W.P.No.5637 of 2017 and third respondent in W.P.No.5678 of 2017, who are members of the Pondicherry State Public Works Department Work Assistants Association, the first respondent in W.P.No.5638 of 2017, were initially engaged as casual labourers by the Public Works Department on need basis. The engagement was made directly by the Public Works Department, without publication of notification in newspapers or calling for sponsorship from the employment exchange. It is the case of the Government of Puducherry that since the appointments were made for the purpose of executing various projects and development works for the welfare of the people, Public Works Department dispensed with the practice of engagement through employment exchange or giving paper publication, inviting applications from eligible candidates.

4. The Government of Puducherry took a policy decision to confer temporary status on casual labourers by issuing an order in G.O.Ms.No.20 dated 5 April 1995. The scheme was extended to all the labourers irrespective of the educational and technical qualification and nature of works performed by them in Group "D" posts that were existing in the Public Works Department. The scheme provided that the casual labourers irrespective of their educational qualification would be treated on par with temporary Group D employees.

5. The casual labourers holding Diploma and Degree in Civil Engineering filed original applications before the Tribunal in O.A.Nos.1129 of 1996 and 781 of 1999 to direct the Government of Union Territory of Puducherry to regularize their services

against the existing vacancies of Technical Assistants and Draughtsman. The Tribunal by order dated 9 December 1999 and 17 November 2001 directed the Government of Union Territory of Puducherry to evolve a scheme to absorb them, if necessary, on the lines of the scheme framed by the Government of Tamil Nadu.

6. The scheme framed by the Government of Tamil Nadu mandates that casual labourers should have been engaged through the employment exchange as a condition precedent for absorption.

7. Even though none of these 131 casual labourers were engaged through employment exchange, still the Government of Puducherry, with a view to comply with the order passed by the Tribunal, issued an order in G.O.Ms.No.56 dated 23 October 2013, creating 131 Body Constituted temporary posts of Work Assistants (Group C), to accommodate the educated casual labourers. The Government in the said Order made it very clear that the posts would be abolished in the event of promotion of the incumbent to the higher post or resignation or retirement or death. The casual labourers accepted the Government Order and joined the posts as Work Assistant. Since it was a dying cadre, Government have not framed recruitment rules for the post of Work Assistant.

8. The Work Assistants individually and through Association filed O.A.No.917 of 2006 to direct the Government of Puducherry to implement them the pay scale on par with Draughtsmen. The original application was dismissed by the Tribunal by order dated 10 June 2009. The Writ Petition challenging the order in O.A.No.917 of 2006 was allowed by a Division Bench of this Court by order dated 25 January 2011 in W.P.No.20377 of 2009. Accordingly, the work assistants were given higher scale.

9. The Puducherry State Public Works Department Work Assistant Association along with S.Anbajagane, Work Assistant, filed O.A.No.51 of 2007 before the Central Administrative Tribunal, Madras Bench to direct the petitioners herein to include the post of Work Assistant as feeder cadre in the recruitment rules for the post of Junior Engineer and to consider the Work Assistants for promotion to the post of Junior Engineer on the basis of their service in the post of Technical Assistant/ Work Assistant and other consequential benefits.

10. The Tribunal dismissed the original application in O.A.No.51 of 2007 by order dated 28 July 2009. The said order has become final.

11. Since there was no avenue of promotion for the work assistants, Government have given them the benefits of Modified Assured Career Progression Scheme (hereinafter referred to as

"MACP") on completion of 10/20/30 years of service. The financial upgradation under the MACP was made applicable to all the work assistants on completion of the required number of years of service. The Work Assistants who were appointed by the Government Order in G.O.Ms.No.56 dated 23 October 2003, received the benefits under the Modified Assured Career Progression.

12. The Puducherry State Public Works Department Work Assistants Association and some of the employees working as Work Assistants once again filed O.A.Nos.614 of 2012 and 725 of 2014 to direct the Government of Union Territory of Puducherry to frame recruitment rules or amending the rules for the post of Junior Engineer, by including the post of Work Assistant as the feeder category, for appointment to the post of Junior Engineer. The employees made a further claim to promote them to the post of Junior Engineer based on the service rendered by them as Work Assistant. The original applications were filed without disclosing the dismissal of the similar original application in O.A.No.51 of 2007.

13. Before the Tribunal, the Chief Engineer, PWD Puducherry filed a counter affidavit for and on behalf of the Union Territory of Puducherry, indicating the steps so far taken to redress the grievances of the employees. According to the Chief Engineer, taking into account the representation submitted by the Puducherry State PWD Work Assistants' Association, the Government initiated a proposal for framing recruitment rules for the post of Work Assistant. The proposal submitted to the UPSC was pending as on the date on which the reply statement was filed before the Tribunal. The Chief Engineer in his reply statement further contended that the recruitment rules for the posts of Junior Engineer provides for filling up 80% of the post by transfer from Draughtsman Grade-I, failing which by promotion from Draughtsman with three years of regular service and Overseer with three years of regular service or eight years of combined service as Senior Grade and Junior Grade Overseer in the ratio of 19:1. The recruitment rules provide for filling up 20% of posts by direct recruitment. It was further submitted that the Department has made a proposal for re-designation of the Body Constituted post of Work Assistant as Draughtsman and it was pending before the Competent Authority.

14. The Tribunal, without considering the merits of the matter, issued a direction to the Government of Puducherry and UPSC to consider the matter positively, within a period of six months. Since the matter was pending before the UPSC, the petitioners filed application for extension. The Tribunal extended the time for compliance. In the meantime, UPSC returned the proposal. The petitioners thereafter filed these Writ Petitions challenging the positive direction given by the Tribunal.

Summary of submissions :-

15. The learned Special Government Pleader appearing on behalf of the petitioners contended that the Government have shown concern to the case of the casual employees by framing the scheme pursuant to the direction given by the Tribunal. The Government Order was issued creating 131 posts of Work Assistant, to accommodate the casual employees possessing Diploma or Degree in Engineering, making it very clear that there would not be any recruitment rule for the post, and it would be abolished after the service period of 131 employees. According to the learned Special Government Pleader, the employees were well aware that there would not be any more promotion and their entitlement is only to receive the benefits under MACP. The employees received MACP and thereafter, made a claim for amendment of the recruitment rule for the purpose of promotion to the post of Junior Engineer. The learned Government Pleader contended that the feeder category for the post of Junior Engineer is Draughtsman. The Draughtsman were all selected through employment exchange and by a transparent selection process, which includes written test. None of these 131 employees were subjected to such selection process and as such, they are not entitled to be considered for promotion to the post junior engineer by amending the recruitment rule. The learned Special Government Pleader contended that in spite of taking up a contention that UPSC is a necessary party, the employees have not impleaded UPSC. It was further contended that the Tribunal committed a jurisdictional error by directing UPSC to consider the matter positively, without making the said body as a party to the proceeding. The learned Special Government Pleader by producing a copy of the order in O.A.No.51 of 2007, contended that the subsequent original applications are not maintainable in view of the dismissal of similar original application in O.A.No.51/2007, filed for the very same relief.

16. The learned Senior Counsel for the respondents 1 and 2 in W.P.No.5638 of 2017 contended that a positive direction was given by the Tribunal, taking into account the submission made by the Government of Puducherry that they have taken up the issue with the Competent Authority. The learned Senior counsel fairly submitted that it is not possible for the Union Territory of Puducherry to create post or to amend the recruitment rules, without the concurrence of UPSC. According to the learned Senior counsel, UPSC wanted certain clarification, to consider the case of the employees for amendment of the recruitment rule. It is for the Union Territory of Puducherry to submit the particulars so as to enable the UPSC to take a decision in the matter. The learned Senior Counsel further contended that the Writ Petitions are not maintainable because of the applications filed for extension of time. The learned Senior counsel contended that the employees are entitled for at least one promotion. Since there

is no promotional avenue for Work Assistants, they have rightly moved the Tribunal for amendment of the recruitment rule to consider them for further promotion to the post of Junior Engineer.

17. The learned counsel for the respondents 1 to 3 in W.P.No.5637 of 2017, contended that the employees were denied promotion on account of the absence of recruitment rule. The employees are all qualified for promotion to the post of Junior Engineer. The Government of Puducherry taking into account the stagnation, took up the matter for amendment of recruitment rule. It was only on account of the action taken by the Union Territory of Puducherry, the Tribunal directed the petitioners to consider the matter positively. The learned counsel therefore submitted that the Government is estopped from contending otherwise.

The core issues:-

18. (a) Whether a second round of litigation is maintainable in view of the dismissal of the original application in O.A.No.51 of 2007 filed for the very same relief by a competent Tribunal on merits.

(b) Whether the 131 employees who were regularized as a one time measure by evolving a scheme are entitled to direct the Government to amend the recruitment rule for promotion to the post of Junior Engineer.

Analysis:-

19. The admitted case of the parties indicate that 131 employees were engaged as casual labourers by the Public Works Department. There was no selection process undertaken by P.W.D. to engage those employees. The list was not drawn from employment exchange. It was thus a selection by "first come first served basis" or otherwise, selection by the method of "walk in".

20. The Government of Puducherry evolved a scheme to grant temporary status to the casual labourers. The Government therefore initiated action to give temporary status to all the casual labourers including 131 casual labourers involved in the present litigation. Since these 131 employees were in possession of engineering qualification, original application was filed by them before the Central Administrative Tribunal to regularize their services in Group C post. It is worth mentioning here that there was no rule, regulation or scheme to give them absorption in Group C post. It is also a matter of record that all other casual labourers were regularized only as Group D employees.

21. The Central Administrative Tribunal directed the Government of Puducherry to evolve a scheme. The Government therefore framed a scheme for absorption of 131 casual labourers

as Work Assistant. It was constituted as a dying cadre without their being a recruitment rule. The question of framing recruitment rule would arise only in case there is a necessity to operate recruitment rule for further appointment or promotion.

22. The scheme framed by the Government of Puducherry as per G.O.Ms.No.56 dated 23 October 2013 clearly shows that posts were personal to the individuals and it would be abolished stage by stage. The employees whole heartedly accepted the order regularizing their services and worked as Work Assistant all these years.

Res judicata:-

23. The Work Assistants individually and through the association, filed O.A.No.917 of 2006 for the grant of higher scale, taking into account the nature of work and scale of pay given to Draughtsmen. Similarly, the Association and an individual Work Assistant filed O.A.No.51 of 2007 for inclusion of Working Assistant as feeder cadre in the recruitment rule for the post of Junior Engineer and to consider them for promotion as Junior Engineer.

24. The original application in O.A.No.917 of 2006 was dismissed on 10 June 2009.

25. The original application in O.A.No.51 of 2007 was dismissed by the Tribunal on 28 July 2009.

26. The applicants in O.A.No.917 of 2006 filed W.P.No.20377 of 2009 challenging the order dated 10 June 2009. The Writ Petition was allowed by order dated 25 January 2011. The Work Assistants were given the higher pay scale ultimately.

27. The applicants in O.A.No.51 of 2007, for reasons best known to them or probably on account of the relief granted in W.P.No.20377 of 2009, failed to challenge the order in O.A.No.51 of 2007. The order dated 28 July 2009 in O.A.No.51 of 2007 has thus become final.

28. The Puducherry State Public Works Department Work Assistant Association and its members filed two original applications in O.A.No.614 of 2012 and 725 of 2014, claiming the very same relief, which was claimed in O.A.No.51 of 2007, by giving cosmetic changes to the prayer.

29. The following table would prove the similarity of the reliefs claimed in O.A.No.51 of 2007 and subsequently in O.A.Nos.614 of 2012 and 725 of 2014.

Relief in O.A.No.51 of 2007	Relief in O.A.Nos.614 of 2012 and 725 of 2014
To direct the respondents to include the post of Work Assistant as feeder cadre in the recruitment rules for the post of Junior Engineer and to consider the Work Assistants for promotion to the post of Junior Engineer on the basis of their service in the post of Technical Assistant/ Work Assistant with other consequential benefits.	O.A.No.614 of 2012 : To direct the respondents to frame recruitment rules for the post of BCWA body constituted Work Assistant as contemplated under G.O.Ms.No.56 dated 23.10.2003 and as per the noting, or the recruitment rules for the post of Junior Engineer be amended forthwith by including the post of Work Assistant as Feeder post for the post of Junior Engineer and further direct the respondent to promote the applicants to the post of Junior Engineer on the service rendered. O.A.No.725 of 2014 : to direct the respondents to provide adequate promotional avenues to the post of Work Assistants held by the applicants by including them in the hierarchy of posts available in the Public Works Department on par with Draughtsman and by suitably amending the recruitment rules for the next higher post of Junior Engineer and including the post of Work Assistants as a feeder cadre for promotion and further consider the case of the applicants for such promotion with all consequential benefits flowing therefrom.

30. It is now clear that including the post of Work Assistant as feeder category for the post of Junior Engineer and promotion of Work Assistant as Junior Engineer were the prayer earlier in O.A.No.51 of 2007 and the same is the substantial prayer now in O.A.No.614 of 2014 and O.A.No.725 of 2014.

31. The principle of res judicata under section 11 of CPC was evolved to put an end to the litigation. The idea behind this salutary principle is that litigation must attain finality at one point of time and dead claims cannot be given fresh life by initiating fresh proceedings. This principle is applicable to civil service as well as writ proceedings.

32. The Supreme Court in Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187, indicated that Section 11 would operate even if reopening the matter is on the ground if it being violation of Article 14 of the Constitution of India.

The Supreme Court said :-

"28. The doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates the equality clause under the Constitution. There is no question of overruling the provision of Article 14, as contended by the learned Attorney General. The judgment which is binding between the parties and which operates as res judicata between them, cannot be said to overrule the provision of Article 14 of the Constitution even though it may be, to some extent, violative of Article 14 of the Constitution."

33. There is no question of entertaining fresh original proceedings even on account of additional reasons in view of the doctrine of Constructive Res Judicata as contained in explanation IV to Section 11 of the Code of Civil Procedure.

34. The second round of litigations were initiated without disclosing the dismissal of the original application in O.A.No.51 of 2007. In any case, the subsequent original applications for the very same relief is legally not maintainable.

35. We therefore decide the first issue against the applicants in O.A.No.614 of 2014 and 725 of 2014.

Second issue :-

36. The Puducherry State Public Works Department Work Assistant Association and its individual members seek a direction to amend the recruitment rule for the post of Junior Engineer and include the post of "Work Assistant" as the feeder category.

37. The casual labourers, who are the beneficiaries of the order in G.O.Ms.No.56 dated 23 October 2013, were well aware that the 131 posts of work assistants were created only to accommodate them and that there would not be any further promotion. Since there was no recruitment rules and no scope of promotion, the employees and association filed original application in O.A.No.917 of 2006 and finally secured higher scale of pay.

38. The Government of Puducherry having found that there was no avenue of promotion for these employees, granted them the benefit of MACP on completion of 10/20/30 years. It is a matter of record that all these employees have obtained the benefit of MACP. The MACP benefit is given to compensate the employees on account of stagnation in a particular post. In the subject case, the Work Assistants received the benefits of MACP and thereafter initiated legal proceedings for promotion.

39. The Government of Union Territory of Puducherry taking into account the representation submitted by the Association of 131 Work Assistants initiated proposal for amendment of the recruitment rule for the post of Junior Engineer by making the post of Work Assistant as feeder category. There was also a proposal to frame recruitment rule for the post of Body Constituted Work Assistant. It was only during the currency of these proposals, the employees and the association filed original applications before the Tribunal.

40. The Tribunal instead of directing the petitioners to proceed with the proposal, issued a positive direction.

41. There is no Public Service Commission in the Union Territory of Puducherry. The Government of Union Territory of Puducherry is not empowered to create posts or frame recruitment rules without the concurrence of UPSC.

42. In case, the Tribunal was of the view that the employees have made out a case for framing or amending the recruitment rules, for promotion to the post of Junior Engineer, the issue ought to have been decided on merits. The petitioners in the reply statement filed before the Tribunal, indicated the steps taken till date. The proposals mooted by the administration have to be placed before the UPSC. The Government have to consult all

the stakeholders before deciding the issue raised by the Work Assistants. There was no assurance given by the Government in the reply statement that promotion would be given to the employees without following the due process.

43. Before the Tribunal, the Government contended that UPSC is a necessary party. According to the petitioners, it is for the UPSC to decide as to whether the recruitment rule for the post of Junior Engineer should be amended or separate recruitment rule should be framed. Even then, the employees have not impleaded the UPSC as a party. The Tribunal issued a direction to the Union Territory of Puducherry and UPSC to attend to the grievances of the employees positively. The Tribunal was not correct in issuing a positive direction to the UPSC without making the expert body as a party to the Writ Petition.

44. The learned Senior counsel for the respondents in W.P.No.5638 of 2017 challenged the maintainability of the Writ Petition on the ground that the petitioners have earlier filed an application before the Tribunal for extension of time. We do not find any merit in the said contention. The fact that the petitioners made an application before the Tribunal for extension of time would only show that they have continued the process undertaken earlier pursuant to the representation submitted by the Association. The direction given by the Tribunal to consider the case positively alone made the petitioners to file the Writ Petitions. We are therefore of the view that initiation of application for extension of time would not preclude the petitioners from challenging the order passed by the Tribunal, directing consideration of the case of the employees, in a positive manner.

45. It is trite that creation of avenue of promotion is essentially an executive function. The executive has to consider variety of factors before framing recruitment rules or amending the existing recruitment rules. Before making amendment to the existing recruitment rules, Government have to consult all the other stakeholders. The Courts have no expertise in a matter of this nature. The Tribunal has acted as if it is the authority empowered to frame recruitment rules.

Legal position:-

46. When an executive authority exercises a legislative power by way of subordinate legislation, no direction could be given by the Courts prescribing the manner of exercise. This was indicated by the Supreme Court in State of Jammu and Kashmir vs. A.R.Zakki, AIR 1992 SC 1546.

"A Writ of Mandamus cannot be issued to a legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation."

47. The legal position regarding the jurisdiction of the State in the matter of creation/abolition of post and avenue of promotion and criteria to be fulfilled for such promotion was indicated by the Hon'ble Supreme Court in P.U.Joshi and others vs. Accountant General, (2003 (2) SCC 632), and others, in the following words:-

10. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/ posts and creating new cadres/posts. There is no right

in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

48. The Hon'ble Supreme Court in Union of India vs. Pushpa Rani and others, 2008(9) SCC 242 indicated the limits of judicial review in matters relating to service.

The Supreme Court said:-

Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source/ mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.

49. The employees in the subject case received the benefits of MACP and thereafter, claimed promotion. This aspect was also not considered by the Tribunal.

50. The Tribunal by issuing a positive direction to the petitioners to amend the recruitment rules and promoting the employees to the post of Junior Engineer, virtually acted as the executive as well as the body constituted for giving concurrence to amend the recruitment rules besides the authority to fill up Group B posts. We are therefore of the view that the impugned orders are liable to be set aside.

Disposition:-

51. In the result, the order dated 24 February 2016 and the connected order dated 23 March 2016 are set aside. The original applications in O.A.Nos.614 of 2012 and 725 of 2014 are dismissed.

52. In the upshot, we allow the Writ Petitions. No costs. Consequently, W.M.P.No.6022 and 6023 of 2017 are closed.

-s/d-

Assistant Registrar(CSVIII)

True Copy

Sub-Assistant Registrar

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To

- 1 The Secretary to Government
Government of Puducherry
Public Works Department, Puducherry
- 2 The Chief Engineer
Public Works Department Government of
Puducherry Puducherry
- 3 The Chief Secretary to Government
Chief Secretariat
Government of Puducherry, Puducherry
- 4 The Registrar
Central Administrative Tribunal
Madras bench Chennai-104

+1 cc to Mr.V.Raghavachari Advocate sr 24154
+1 cc to M/s.Menon Karthik & Mukundan Advocate sr 24154
+2 ccs to the Government Pleader Puducherry
High Court Madras sr 24694 &24697

Order in
W.P. Nos.5637, 5638 of 2017

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