

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice N.SATHISHKUMAR

W.A.NO.373 OF 2017

&

CMP.5717, 6826 & 6686 of 2017

- 1 G.D.Vijayaraghavan
2 S.Vetrivel
3 S.Pradeesh
4 P.Palanikumar
5 J.John Devakumar .. Appellants/Petitioners
- versus
- 1 The Government of Tamilnadu
rep. by its Secretary,
Public Works Department,
Secretariat Chennai-9
- 2 The Engineer-in-Chief (WRO) &
Chief Engineer (General),
Public Works Department
Chepauk Chennai-5
- 3 The Tamilnadu Public Service Commission,
rep. by its Secretary,
Frazer Bridge Road, Chennai 600 003
- 4 Tamilnadu Engineering Association,
Rep. by General Secretary
Public Works Department Campus,
Chepauk, Chennai 600 005
- 5 R.K.Shanmugam
- 6 K.R.Kumaraguru ..Respondents/Respondents

Prayer: Writ Appeal is filed against the order of the learned single Judge dated 14/02/2017 passed in WMP No.3650/2017 in WP No.3617/2017.

Prayer in WMP.3650 of 2017: Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the impugned

orders namely G.O. Ms.No.155 Public Works (D2) Department dated 13.8.2015 issued by the 1st respondent impugned proceedings of the 2nd respondent in No.S2(2)/ 29148/2004 dated 6.11.2015 and impugned Letter of the 2nd respondent in S2(2)/ 59620/2015 dated 18.1.2017 in so far as fixing the seniority of the private respondents in the category of Assistant Engineers above the petitioners so as to be considered for promotion to the category of Assistant Executive Engineer in Tamil Nadu Engineering Service within the 75% quota earmarked for the Assistant Engineers pending disposal of the above writ petition;

W.P.No.3617 of 2017: Petition filed under Article 226 of the constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in respect to G.O. Ms.No.155 Public Works (D2) Department dated 13.8.2015 and on the file of the 2nd respondent in respect of proceedings in No.S2(2)/ 29148/2004 dated 6.11.2015 and in respect of Letter in S2(2)/ 59620/2015 dated 18.1.2017 and quash the same and consequently direct the respondents 1 and 2 not to consider the private respondents regularized in the impugned orders as Assistant Engineers for any purpose including for fixing their seniority in the category of Assistant Engineers so as enabling them to be considered within the 75% quota earmarked for Assistant Engineers for promotion to the category of Assistant Executive Engineer in Tamil Engineering Service.

For Appellants : Mr.AR.L.Sunderasan, SC for
Mr.N.Subramaniayan

For Respondents : Mr.K.Venkataramani, AAG,
assisted by
Mr.P.S.Sivashamugasundaran,
Spl.G.P. for R1 to R3
Mr.P.Rajendiran for R4
Mr.R.Thigarajan, SC for
M/s.M. Muthappan for R5
Ms.Niraimathi for R6

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JUDGMENT

(Judgment of the Court was delivered
by HULUVADI G.RAMESH, J.)

This Writ Appeal is directed against the order of the learned Judge, dated 14.02.2017 made in WMP No.3650/2017 in WP No.3617/2017.

2. There are two sets of Assistant Engineers. One is by way of direct recruitment through the Tamil Nadu Public Service Commission and another one is by way of recruitment by transfer from Draughting Officers, Junior Draughting Officers, Overseers and Technical Assistants, who have put in 5 years of service with educational qualification of BE Degree/AMIE. As regards the Junior Engineers are concerned, the Technical Assistants who acquired B.E. Degree were promoted as Junior Engineers and while working as such, they were re-designated as Assistant Engineers by the Government by issuing G.O.Ms.No.155, dated 13.08.2015 while relaxing the Rule 2(a) and Rule 5 of the Tamil Nadu Engineering Services, retrospectively from 24.02.2006. Based upon the said G.O.Ms.No.155, the 2nd respondent/Engineer-in-Chief/Chief Engineer (General), PWD, issued proceedings dated 6.11.2015 regularizing their promotion as Assistant Engineer subject to certain conditions. The next promotion for the Assistant Engineers is to the post of Assistant Executive Engineers.

3. While so, the 2nd respondent issued proceedings dated 18.1.2017 fixed the seniority of the re-designated Engineers above the regular Assistant Engineers/writ petitioners, who were appointed by direct recruitment. Aggrieved by these orders, the writ petitioners have filed the Writ Petition. Along with the Writ Petition, they also filed WMP 3650 of 2017, praying for grant of stay of the impugned proceedings, viz., G.O.Ms.No.155 dated 13.8.2015 issued by the 1st respondent and the proceedings dated 6.11.2015 issued by the 2nd respondent and letter dated 18.1.2017 issued by the 2nd respondent. While admitting the Writ Petition, by order, dated 14.2.2017, the learned Judge of this Court passed the following:

"The impugned order is consequent upon the relaxation granted in G.O.Ms.No.155 of the first respondent Department, dated 13.8.2015 and the said order is put to challenge only now in the form of the present writ petition.

In the light of the same, the interim order, sought for by the petitioners, cannot be granted.

Hence the miscellaneous petition is dismissed."

4. Aggrieved by the above, the writ petitioners have come forward with the present Writ Appeal.

5. Heard the learned senior counsel appearing for the appellants and the Addl.Advocate General for the respondents 1 to 3 and the learned senior counsel appearing for respondent No.5 and the respective learned counsel appearing for the other respondents.

6. The Government of Tamil Nadu issued G.O.Ms.No.1 Public Works Department dated 2.1.1990, stating that with effect from the date of the issuance of the G.O., Junior Drafting Officer, Drafting Officer, Overseers and Technical Assistants, who have put in five years of service would be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.E.E. degree qualification and consequently, recommended for amendment to the Special Rules for the Tamil Nadu Engineering Service/Tamil Nadu Engineering Subordinate Service for giving statutory effect to the orders passed above.

7. It is the vehement contention of the learned senior counsel for the appellants that the Assistant Engineers re-designated from the category of Junior Engineers on acquiring B.E.Degree, without following any selection process, shall not be considered as Assistant Engineers on par with the regular Assistant Engineers by direct recruitment and stake their claim for promotion to the post of Assistant Executive Engineer within 75% quota earmarked, but they should be considered only as Junior Engineers under Tamil Nadu Engineering Subordinate Service, to be entitled for promotion to the post of Assistant Executive Engineer only within 25% quota fixed for them. As such, the view of the learned Judge that as if the G.O.Ms.No.155 dated 13.08.2015 re-designating the Junior Engineers as Assistant Engineers was not challenged at first instance, will have no relevance since in the said G.O., no seniority was fixed, but only by way of impugned proceedings, the 2nd respondent fixed the seniority, placing them above to the appellants. Therefore, it is contended that the order of the learned Judge is liable to be set aside.

8. On the other hand, it is contended on behalf of the respondents that although the Junior Engineers who were appointed as Technical Assistants were in possession of BE degree even at the time of their initial appointment, they were later promoted as Junior Engineers and thereafter, they were re-designated as Assistant Engineers with effect from 24.2.2006, whereas, the appellants were subsequently appointed by direct recruitment only on 01.11.2007 and as such, they are juniors to them and their status as Assistant Engineers is not mere re-designation, but factually, it is a case of appointment by transfer. Keeping in view of this, the Government of Tamil Nadu has issued G.O.Ms.No.155 dated 13.8.2015 regularizing the services of the re-designated Assistant Engineers who were 72 in number with retrospective effect, i.e. w.e.f. 24.2.2006 and consequent to the same, the 2nd respondent has rightly issued proceedings dated 6.11.2015 and 18.1.2017 fixing the seniority at appropriate place and thereby, they are entitled to the promotion to the post of Assistant Executive Engineer under 75% quota as their appointment to the post of Assistant Engineer by transfer.

9. It is stated that the Draughting Officers, Junior Draughting Officers, Overseers and Technical Assistants, who have put in 5 years of service with educational qualification of BE Degree/AMIE are eligible for appointment by transfer as Assistant Engineers including Junior Engineers, are governed by Tamil Nadu Engineering Subordinate Service. The Assistant Engineers who were appointed by direct recruitment through the Tamil Nadu Public Service Commission are governed by Tamil Nadu Engineering Service. The Assistant Engineers being empanelled for promotion to the post of Executive Engineers. 25% quota was reserved for the members of the Tamil Nadu Subordinate Engineering Service, while 75% quota was reserved for the members of the Tamil Nadu Engineering Service.

10. It is to be noted that the Hon'ble Apex Court in "B.Thirumal versus Ananda Sivakumar and others (Civil Appeal Nos.10660-10662 of 2013)", has held as under:

"22. The upshot of the above discussion is that the degree holder Junior Engineers continue to be members of the Subordinate Engineering Service even after they are redesignated as Assistant Engineers upon them getting a degree qualification. They can, therefore, be considered only against the 25% quota reserved for the Subordinate Service and not against 75% reserved for the State Service members directly recruited to that service or appointed by transfer in terms of the Rules. To the extent the re-designated Assistant Engineers have been considered in the past for promotion in the quota reserved for Assistant Engineers in the State Service, the consideration was legally bad. Having said that, we do not propose to interfere with what has been done in the past especially when there is no challenge before us to the appointment of the re-designated Assistant Engineers as Assistant Executive Engineers against vacancies falling in 75% quota. The settled position need not, therefore, be unsettled at this stage in these proceedings. With the above observations and clarification these appeals fail and are hereby dismissed, but in the circumstances without any orders as to costs."

11. A perusal of the above, it would explicit that since there was no challenge before the Apex Court in respect of consideration of past promotions effected in favour of re-designated Assistant Engineers to the post of Assistant Executive Engineer against vacancies falling in 75% quota, though it was held to be bad, the Apex Court restrained to interfere with the same and further observed that the settled position need not, therefore, be unsettled. Both the parties relied upon the above observation made by the Apex Court in support of their claims.

12. It is also to be noted that by the impugned proceedings, dated 6.11.2015, the 2nd respondent regularized the services of 72 Assistant Engineers with retrospective effect from 24.2.006, subject to certain conditions, of which, the relevant one is that it is in anticipation of the issue of amendment to the G.O.Ms.No.1 Public Works Department dated 2.1.1990 envisaging the appointment by transfer to the category of Assistant Engineer and also it is subject to the outcome of the judgment to be made in Civil Appeal Nos.995/2009, 997/2009 and 998 of 2009 by the Hon'ble Supreme Court.

13. In the above factual matrix of the case, though we are inclined to delve upon and finalize the main issue itself involved in the matter, however, we are desisting ourselves from doing so since the subject matter has been sub judiced before the learned single Judge and any observation made in this regard would have a considerable impact on the conclusion being reached by the learned Judge. In such circumstances, without going into the merits of the case, we feel it appropriate to order status quo till the disposal of the Writ Petition by the learned Judge.

14. Accordingly, there shall be an order of status quo till the disposal of the Writ Petition. Considering the submission made by the learned Addl.Advocate General that in view of the pendency of the proceedings before this Court, number of promotions to the post of Asst.Executive Engineer, have become standstill by which, the Department is unable to run the administration effectively, we request the learned Judge to dispose of the Writ Petition as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order. Consequently, connected CMP Nos.5717, 6826, 6686 of 2017 are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

- 1 The Secretary to Government
Public Works Department,
Secretariat Chennai-9
 - 2 The Engineer-in-Chief (WRO) &
Chief Engineer (General),
Public Works Department
Chepauk Chennai-5
 - 3 The Secretary, Tamilnadu Public Service Commission,
Frazer Bridge Road, Chennai 600 003
 - 4 The General Secretary Tamilnadu Engineering Association,
Public Works Department Campus,
Chepauk, Chennai 600 005
 - 5 The Section Officer, Writ Section, High Court, Madras.
- + 1 cc to Mr.N. Subramaniyan, Advocate Sr.23607
+ 1 cc to Government Pleader Sr.24691
+ 1 cc to Mr.M. Muthappan, Advocate 23779
+ 1 cc to Mr.R. Jayaprakash, Advocate SR.24144

W.A.NO.373 OF 2017

SKV(CO)
EU 27.4.17

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