

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.1301 of 2018

and

W.M.P.Nos.1634 to 1636 of 2018

1 C.Geetha
2 R.Kirankumar
3 C.Sureshkumar
4 C.Balamurugan
5 A.Gopi
6 R.Rajalekshmi
7 R.Rajeswari
8 R.Malarvizhi
9 T.Sasiendran
10 A.Manivannan
11 J.Bhuvaneswari
12 N.Sivashankar ...Petitioners

Vs

1 The Government of Tamil Nadu
Rep. by its Secretary,
Public Works Department,
Secretariat, Chennai-9
2 The Engineer in Chief (Buildings) &
Chief Engineer (Buildings) Chennai Region
cum Chief Engineer General
Public Works Department Chepauk, Chennai-5
3 The Tamilnadu Public Service
Commission, Rep. by its Secretary, Frazer
Bridge Road, Chennai-03

- 4 N.Manickarajan,
Assistant Engineer, PWD, Electrical Section-1,
Tallakulam PWD Campus, Madurai-625 002.
- 5 P.Sakthivel
- 6 S.Jeyaganesan
- 7 A.Natarajan
- 8 M.Sampathkumar
- 9 Douglas E
- 10 E.Balan
- 11 Anatharamakrishnan A
- 12 T.Saravanan
- 13 R.Shanmuganathan
- 14 R.Manoharan
- 15 T.Ayyanarappan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in respect of impugned 2nd respondent's proceedings No.S2(2)/31607/2013/ dated 24.02.2016 and quash the same and consequently direct the respondents 1 to 3 not to treat the respondents 4 to 15 as Assistant Engineers appointed regularly and accordingly to prepare the seniority list of Assistant Engineers as well as the panel of Assistant Engineers fit for promotion to the category of Assistant Executive Engineer without including the names of the respondents 4 to 15, or at any cost, not earlier to the petitioners.

For Petitioners :Mr.N.Subramaniyan

For Respondents :Mr.V.Jayaprakash (for R1 & R2)
Special Government Pleader

Dr.M.Devendran (for R3)
Standing Counsel

O R D E R

This Writ Petition has been filed questioning the impugned proceeding issued by the Engineer-in-Chief (Buildings) & Chief Engineer (Buildings) Chennai Region cum Chief Engineer General, 2nd respondent herein in No.S2(2)/31607/2013/ dated 24.02.2016, to quash the same and consequently direct the respondents 1 to 3 not to treat the respondents 4 to 15, as Assistant Engineers appointed regularly and accordingly to prepare the seniority list of Assistant Engineers as well as the panel of Assistant Engineers fit for promotion to the category of Assistant Executive Engineer without including the names of the respondents 4 to 15.

2.Mr.N.Subramaniyan, learned counsel appearing for the petitioners submitted that the petitioners, who were appointed as Assistant Engineers in the year 2011 are hugely aggrieved by the action of the 2nd respondent in regularising the service of the private respondents 4 to 15, in the post of Assistant Engineers from the date of their initial appointment, viz., 2005.

3.Adding further, it is stated by the counsel appearing for the petitioners that when the private respondents were appointed by the 2nd respondent on temporary basis under Rule 10(a)(i) of the General Rules, during the year 2005 to 2008 based on the executive orders issued in the G.O.409 and G.O.1, they have not been appointed in accordance with the Rules till this date. While so, the private respondents 4 to 15 cannot be appointed as Assistant Engineers on temporary basis from the categories, which are not the feeder categories. The feeder category to the Assistant Engineer, under the Special Rules to Tamilnadu Engineering Service, is the category of 'Junior Engineer' only. Although, the private respondents have chances to appear before the Tamilnadu Public Service Commission, Chennai / 3rd respondent herein, to get regularly selected along with the petitioners for appointment to the category of Assistant Engineer, in accordance with Rules, during the years viz., 2009 and 2013, they failed to appear in the examination conducted by the Tamilnadu Public Service Commission / 3rd respondent or must have failed to pass the test held by the 3rd Respondent. In view of the same, the 2nd respondent cannot appoint the respondents 4 to 15 as Assistant Engineers. Moreover, the 2nd respondent has no power to regularise their services, but, the same has been done through the impugned proceedings dated 24.02.2016.

4.Again referring to the impugned order, Mr.N.Subramaniyan, learned counsel for the petitioners also submitted that one of the conditions imposed for regularising the service shows that 'subject to the result of the pending appeal on the file of the Apex Court'. As a matter of fact, the Hon'ble Apex Court also,

has already disposed of the pending Appeal on 14.09.2017 in Civil Appeal No.995 of 2009 [Association of Engineers V. Government of Tamilnadu and Others] and Civil Appeal Nos.997 and 998 of 2009 [T.Kannan V. Association of Engineers, Tamilnadu and Others]. He also contended that a mere perusal of the impugned order reflects non application of mind and pleaded to quash the same.

5. Heard the learned counsel on either side and perused the documents available on record.

6. Admittedly, there is no justification to entertain the Writ Petition on the following reasons:

7. The 1st Respondent has selected the Petitioners for the post of Assistant Engineers in Tamilnadu Engineering Service and then, they were appointed. In pursuant to their appointment, they also joined the service as Assistant Engineers on various dates, viz., 22.12.2011, 30.08.2012, 23.08.2012, 19.01.2012, 13.03.2013, 21.12.2011, 28.12.2011, 22.01.2014, 05.01.2012, 21.12.2011, 12.01.2012 and 30.01.2014. Whereas, the private respondents 4 to 15 were appointed by the Engineer-in-Chief (Buildings) and Chief Engineer (Buildings) Chennai Region cum Chief Engineer (General), Public Works Department, Chennai / 2nd respondent herein under Rule 10(a)(i) of the General Rules, based on the executive orders issued in the G.O.Ms.No.1 PW (B-2) Department dated 02.01.1990 and G.O.Ms.No.409 Public Works (D1) Department dated 25.08.2003. Considering their long and continuous employment for the period of 14 years, the 2nd respondent regularised the service of the private respondents 4 to 15 by the impugned order dated 24.02.2016 under General Rule 23(a) (1) of Tamilnadu State and Subordinate Services r/w instructions issued in Government Letter No.21037/B2/2013-4/Public Works Department dated 18.12.2014 and read with Tamilnadu Engineering Works [Part-V Minial] along with Tamilnadu Engineering Sub-ordinate Service [Part IX Minial]. Therefore, when the service of the private respondents 4 to 15 were regularised on the basis of their continuous employment in the post of Assistant Engineers from 2005, the petitioners cannot challenge the order of regularisation.

8. Further, when the petitioners were appointed only in the years 2011, 2012, 2013 and 2014 through Tamilnadu Public Service Commission, only after 5 years of service, they are entitled to be considered for promotion to the category of Assistant Engineer. The fact remains that on the date of appointment of petitioners for the post of Assistant Engineers, the private respondents have completed more than 6 years of their service in the post of Assistant engineer, in which the petitioners were not even born in the said post.

9. Hence, the present writ petition cannot be filed by the petitioners aggrieved by the order of regularisation with an apprehension that the private respondents would become competitors for their promotional post. While considering the similar issue, the Hon'ble Apex Court on 14.09.2017 in Civil Appeal No.995 of 2009, [Association of Engineers V. Government of Tamilnadu & Others], Civil Appeal Nos.997 and 998 of 2009 [T.Kannan V. Association of Engineers, Tamilnadu and others) has held that Rule 5 r/w Rule 2(a) of Rules of 1985 makes it clear that the incumbent, working at the post of Overseers and Civil Draftsmen, in case they had requisite qualification and experience, are to be promoted by way of transfer for the post of Assistant Engineer. Therefore, this Court, being bound by the said order passed by the Hon'ble Apex Court, is of the considered view that the private respondents, who are serving as HT operators, overseer and technical assistants, become eligible to be appointed as Assistant Engineers. When the private respondents 4 to 15 were appointed as Assistant Engineers and working for the last 14 years, continuously, this Court finds no merits in the contention, ie., not to regularise their service.

Therefore, for all the reasons mentioned above, this Writ Petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ssd/sai

To

- 1 The Government of Tamil Nadu
rep by its Secretary Public Works
Department Secretariat Chennai-9
- 2 The Engineer in Chief
(Buildings) & Chief Engineer (Buildings)
Chennai Region cum Chief Engineer General)
Public Works Department Chepauk Chennai-5
- 3 The Tamilnadu Public Service
Commission rep by its Secretary Frazer
Bridge Road Chennai-03

+1 CC to Govt. Pleader sr 6642.
+1 cC to Dr.M. Devendran, advocate sr 5063.
+1 CC to Mr.N. Subramanian, advocate sr 4871

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SP(20/02/2018)



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