

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2019

Pronounced on : 01.11.2019

Coram

THE HONOURABLE MR. JUSTICE SUBRAMONIUM PRASAD

WP Nos.25350 & 25923 of 2009

and M.P.Nos.1 and 1 of 2009

WP No.25350 of 2009

Tmt.R.Uma

... Petitioner

v.

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

2. The Secretary,
Tamilnadu Public Service Commission,
Chennai - 600 002.

3. The Engineer-in-Chief,
Water Resources Organisation and
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 600 005.

4. The Chief Engineer,
Public Works Department (WRO),
Madurai Region, Madurai - 625 002.

5. The Superintending Engineer,
Public Works Department (WRO),
Thamiraparani Basin Division,
Tirunelveli.

6. The Executive Engineer,
Public Works Department (WRO),
Thamiraparani Basin Division,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records relating to the impugned proceedings of the 6th respondent issued in No.E2/709/2009, dated 16.11.2009 and quash the same as illegal and to direct the 1st and 2nd respondents.

- (a) to restore the seniority of the petitioner as it was notified in the Tamilnadu Public Service Commission Bulletin dated 01.01.2002 (ie. Seniority No.170 of 1998-99 1st Batch).
- (b) to restore her appointment as on 10.12.2002 along with her junior Thiru.K.Subbiah, since the inordinate delay from 13.11.2001 to 01.08.2006 is unfair, unreasonable, malafide, illegal and unexplained by the authorities.

WP No.25923 of 2009

D.Parthasarathy

... Petitioner

v.

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

2. The Secretary,
Tamilnadu Public Service Commission,
Chennai - 600 002.

3. The Engineer-in-Chief,
Water Resources Organisation and
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 600 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus, directing the 1st and 2nd respondents to restore the original Tamilnadu Public Service Commission's seniority of the Petitioner (No.192) in the 1998-99 Batch of Junior Assistants based on the Medical Board Recommendation dated 13.11.2001, and consequently admit the petitioner in the General Provident Fund Scheme and Pension Scheme as applicable to his juniors in the 1998-99, Batch of Junior Assistants.

For Petitioners : Mr.Karthick Rajan
in both WPs. for Mr.R.Parthiban

For Respondents : Mr.Akhil Akbar Ali
(for R1 & R3)
Government Advocate in
WP.No.25923/2009
(for R1, R3 to 6 in
WP.No.25350/2009
Dr.M.Devendran (for R2)
Standing Counsel for TNPSC
in both WPs

C O M M O N O R D E R

WP No.25923 of 2009 is one for directing the respondents to restore the original seniority given by the Tamil Nadu Public Service Commission (TNPSC) on his appointment as Junior Assistant 1998-99 batch and consequently, admit the petitioner to the General Provident Fund Scheme and Pension Scheme applicable to his juniors in the 1998-99, Batch of Junior Assistants.

2. WP No.25350 of 2009, is for a certiorarified mandamus, to quash the impugned proceedings of the 6th respondent issued in No.E2/709/2009, dated 16.11.2009, directing the petitioner to join in the new pension scheme and for a consequential direction to the respondents to restore the seniority as it was notified in the Tamilnadu Public Service Commission Bulletin dated 01.01.2002 (ie. Seniority No.170 of 1998-99 1st Batch), by restoring her appointment as on 10.12.2002 along with her junior Thiru.K.Subbiah, since the inordinate delay from 13.11.2001 to 01.08.2006, is unfair, unreasonable, malafide, illegal and unexplained by the authorities.

3. The 2nd respondent Tamil Nadu Public Service Commission (TNPSC) notified recruitment for the post of Junior Assistant cum Typist in the Tamilnadu Ministerial Service during 1998-99. Among the 219 candidates petitioners' seniority were placed at 170 and 192 respectively. The petitioners were directed to submit the medical certificate obtained from a Civil Surgeon. The petitioners also submitted all other relevant documents. The petitioners got intimation from TNPSC that they have been provisionally selected against Physically Handicapped quota and allotted to Public Works Department (General), Chennai for appointment to the post of Junior Assistant-cum-Typist in the Tamil Nadu Ministerial Service.

4.The Engineer-in-Chief, Water Resources Organisation and Chief Engineer (General), Public Works Department, Chennai directed the petitioners to appear before the medical board to certify that they are suffering from physical disability, entitling them to be appointment under the Physically Handicapped quota. The petitioners were referred to the medical board at Madurai, Rajaji Government Hospital. The petitioners appeared for the medical examination, but they have sent a report without any examination. So the petitioners were therefore directed to appear before medical board and get another medical report after re-examination.

5. Along with the certificates, the petitioners have given a disability certificate issued by a Civil Surgeon stating that

the petitioners had 75% and 60% hearing disability, respectively. They were asked to appear before the Medical Board. However, no report was sent and the petitioners were asked to appear for another medical examination on 22.08.2000. The petitioners received individual letters on 11.10.2000 that they should contact the Secretary, TNPSC, in regard to the selection. On 13.11.2001, medical certificates were issued by the Board. The Directorate of Employment Exchange gave a letter to the 3rd respondent stating that the certificates given on 13.11.2001 is not clear and therefore, the petitioners have to get a report ie., fit to be appointed.

6. When the petitioners were being sent back and forth, there was a ban, on recruitment. After the ban was removed, letters were received from the 3rd respondent to the office of the District Employment Officer stating that there were certain typographical mistakes in the medical certificates of the petitioners and therefore the Additional Director of District Employment Office was directed to obtain the correct medical certificates. Instead of correcting the certificates, the petitioners were asked to appear for another medical examination on 28.03.2006 and 11.04.2006, respectively. The petitioners received letters on 11.07.2006 stating that they have been reallotted to the Public Works Department, Madurai Region, Madurai, but their appointment was taken only from that date and not from the initial date.

7. The short issue which arises for consideration is as to whether the petitioners' appointment should be reckoned from the date of the allotment letter or from the date of joining service.

8. It is the petitioners' contention that the petitioners were all along eligible to be appointed as Junior Assistant and the delay has occurred due to the fault of the department and there was no fault on their part. Petitioners would state that at the first instance only, they have given the medical certificates submitted by them ought to have been taken into account. The petitioners have been wrongly being denied of their employment from 2000 to 2006 for no fault of theirs. The petitioners therefore state that they are entitled to General Provident Fund Scheme and Pension Scheme. The petitioners also states that the persons who were selected under the same examination were working from 2002. The petitioners were denied appointment only because of the fault of the respondents.

9. On notice, respondents have filed a detailed counter affidavit. The respondents have taken a stand that selection of a candidate does not clothe a person with any seniority and his appointment can be reckoned only from the date on which he

actually joined service. It was stated that the petitioners would be entitled to General Provident Fund Scheme and Pension Scheme only if they have joined the actual service prior to 01.04.2003.

10. Heard the learned counsel for both sides and perused the materials available on record.

11. The learned counsel for the petitioners restricted the argument only for the purpose of counting the period from 2002 for pensionary benefits. He states that the petitioner will not claim any other benefits.

12. G.O. Ms.259, Finance (Pension) Department, dated 06.08.2003 which states that which of the employees would be governed by the new pension scheme, reads as under.

FINANCE (PENSION) DEPARTMENT
G.O. No.259, DATED 6th August, 2003

(Subhanu, Aadi-21, Thiruvalluvar Aandu 2034)

Pension - Pension Scheme - Introduction of Contributory Pension Scheme to Tamil Nadu State Government employees with effect from 1.4.2003 - Amendment to Tamil Nadu Pension Rules, 1978 - Issued.

ORDER:

In the Budget for 2001-2002, the Government of India have announced that a new Pension Scheme based on defined contributions will be introduced to those who enter Central Government service (Defence, Railways, Posts, Telecom, Autonomous Bodies and Scientific Organisations) after 1.10.2001. The Government of India had constituted a Committee with Thiru B.K. Bhattacharya, former Chief Secretary, Government of Karnataka as Chairman to go into pension reform with the specific reference of recommending a contribution scheme.

2. The Government of Tamil Nadu had announced in the Budget Speech 2003-2004 to introduce a new Pension Scheme based on defined contributions for the employees of this State, who are newly recruited after 1.4.2003. Under the new Contributory Pension Scheme, each employee has to contribute a certain amount and Government may contribute a certain amount.

3. Accordingly, the following orders are issued:-

i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003.

ii) The employee's contribution and the Government contribution, if any, towards the scheme shall be spelt

out separately.

iii) After issue of detailed orders from Government of India, introducing new scheme to their employees, the State Government will, if necessary, modify these orders and issue rules and regulations for the Contributory Pension Scheme for State Government employees recruited on or after 1.4.2003.

4. The following notification will be published in the Tamil Nadu Government Gazette :

NOTIFICATION

In exercise of the powers conferred by the proviso to Articles 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

2. The amendment hereby made shall be deemed to have come into force on the 1st April of 2003.

AMENDMENT

In the said Rules, in Chapter I, the following proviso shall be added to rule 2:-

"Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent.

(BY ORDER OF THE GOVERNOR)

N.NARAYANAN

DEVELOPMENT COMMISSIONER &
SECRETARY TO GOVERNMENT

(emphasis supplied)

13. A perusal of the above Government Order says that new pension scheme would be applicable to those persons who are newly recruited after 01.04.2003. Admittedly, petitioners were selected against the Physically Handicapped quota in the year 2000 itself. They were recruited after an advertisement for vacancies for the year 1998-99. They were asked to obtain fresh medical certificates, since the medical certificates submitted by them did not mention the nature of physically handicap and the degree of disability. The petitioners were repeatedly sent for medical examination. There was a ban in recruitment and after the ban was removed, the petitioners were appointed. In fact the order dated 26.07.2006 reads as under:

By Registered Post with Acknowledgment Due
Proceedings of the Chief Engineer, W.R.O., P.W.D.,
Madurai,

Division, Madurai - 625 002

Present: Thiru.R.V.S.Vijayakumar, M.E., M.I.E., M.B.A.,
Chief Engineer, W.R.O., P.W.D.

Proceedings No.A1/10575/2006 Date 26/07/2006

Sub: Establishment -T.N.G.S.-Service comprised in Group IV 1999-99 - List of person selected for the post of Junior Assistant-cum-Typist in Tamil Nadu Ministerial Service and sanctioned for the post of Junior Assistant-cum-Typist and allotted in Public Works Department - Issuance of a appointment order - Reg.

Ref:Proceedings No.S3(4)/47959/2000 Date 11/07/2006 from the Engineer in Chief, W.R.O. & Chief Engineer (General), Public Works Department, Chennai.

Persons who are selected by Tamil Nadu Public Service Commission in the competitive examination held for Group IV for the year 1998-99 for the post of Junior Assistant-cum-Typist and allotted for Public Works Department and vide letter under reference they were re-allotted to Water Resources Organisation, Madurai Division and below mentioned applicants are appointed temporarily as per Tamil Nadu State Subordinate Rules 10(A)(i) as Junior Assistant-cum-Typist with scale of pay Rs.3200-85-4000 and posted to the office mentioned against them.

Sl .N o.	Service Commission Serial No.	Name & Address	Date of Birth	Address
1	170	R.Uma 19-2A, Pudhu Village, 1st Street, Kovilpatti, Pincode: 628 501	28/05/78	Thamirabarana i Basin Division, Tamirabarana i Basin Circle, Thirunelveli
2	192	Thiru.D.Parthasarathy, Plot No.9, Anbu Nagar, S.Alangoolam Village & Post, Madurai Pincode: 625 014	16/06/59	Lower Vaigai Special Planning Sub.Division Madurai (Lower Vaigai Basin Circle, Sivagangai)

(2) They are requested to get proper re-appointment order from the concerned Superintendent Engineers and join in the service:

(3) This is to inform that, if it is known at a later date that in particulars mentioned in the document submitted by him is wrong, their services will be immediately terminated.

Sd/-.....

R.V.S.Vijayakumar,
Chief Engineer, WRO, PWD,
Madurai Division, Madurai - 2.

Copy

1. R.Uma
19-2A, Pudhu Village,
1st Street, Kovilpatti,
Pincode: 628 501.

2. Thiru.D.Parthasarathy,
Plot No.9, Anbu Nagar,
S.Alangoolam Village & Post,
Madurai Pincode: 625 014

Sd/-.....

R.V.S.Vijayakumar,
Chief Engineer, WRO, PWD,
Madurai Division, Madurai - 2.

14. The order dated 01.08.2006, allotting the petitioner in WP No.25350 of 2009 [R.Uma] to PWD Department reads as under.

PROCEEDINGS LETTER OF EXECUTIVE ENGINEER
TAMIRAPARANI BASIN DIVISION, PALAYAMKOTTAI
Present: Thiru.S.Gulam Hussain, B.E., M.I.E.,
Proc. Order No.Nil/1456/2006 Date:
1.8.2006

Sub:Establishment -T.N.P.S.Commission - competitive examination services under Group IV the selection was made of the post of Junior Assistant cum Typist for the 1998-99 in government service and as per the approved list the candidate allotted to P.W.Department - appointment order issued - re-appointment order to be issued.

Ref: 1. Proc.No.S3(4)/47959/2000 dated
1.7.2006 of the
Principal Chief Engineer.
2. Proc. Order No.2574/06/Nil/
dated 31.7.2006 of the
Special Chief Engineer,
Thamiraparani Basin Division,
Tirunelveli - 2.

For the service of Junior Assistant cum Typist, coming under the Group IV services, the competitive examination was conducted by Tamil Nadu Public Service Commission for the year 1998-00 and allotted to PWD and through the above referred proceedings number, the re-appointment was made to this divisional office viz., Tmt.R.Uma, is directed to join the service of vacancy of "junior assistant cum typist".

2. It is hereby directed to bring all the original certificates and the physical fitness certificate obtained now at the time of joining service. She has to join immediately.

Sd/-xxx 1.8.06

Executive Engineer, WRO / PWD
Thamiraparani Basin Division,
Palayamkottai.

To
Tmt.R.Uma,
19-2A, TherukuPudu Village,
1st Street, Kovilpatti 628 501.

15. The order dated 01.08.2006, allotting the petitioner in WP No.25923 of 2009 [D.Parthasarathy] to PWD Department reads as under.

Proceedings of the Chief Engineer, WRO, PWD, Lower
Vaigai

Basin Circle, Sivagangai

Present: Engineer R.Sakthivel, B.E.,

Proceedings No.E21/4447/2006 Date 01/08/2006

Sub: Establishment T.N.G.S. - Service
comprised in Group IV 1998-99 - List of person selected
for the post of Junior Assistant-cum-Typist in Tamil
Nadu Ministerial Service and sanctioned for the post of
Junior Assistant -cum-Typist and allotted in Public
Works Department - Issuance of appointment order - Reg.

Ref: 1.Proc.No.S3(4)/47959/2000
dated 11.7.2006 of the
Engineer in Chief, WRO &
Chief Engineer (General)
Public Works Department, Chennai.
2. Proceedings No.A1/10575/2006
Date 26/07/2006 of
Chief Engineer, WRO, PWD,
Madurai Division, Madurai.

Persons who are selected by Tamil Nadu Public Service Commission in the competitive examination held for Group IV for the year 1998-99 for the post of Junior Assistant-cum-Typist and allotted for Public Works Department and vide letter under reference (1) and re-allotted to Water Resources Organisation, Madurai Division, as per letter under reference (2) from the Chief Engineer, Madurai Division, Thiru.D.Parthasarathy (D.O.B. 16/06/1959) Service Commission Serial No.192, who was appointed and posted to this Division, as per Tamil Nadu State and Subordinate Rules 10 (A)(i) temporarily as Junior Assistant-cum-Typist with scale of pay Rs.3200-85-4000, he is re-posted in this division, vacant Junior Assistant-cum-Typist post at Lower Vaigai Special Planning Sub-Division (3) Madurai.

(2) He is directed to join at office of the Assistant Executive Engineer, Lower Vaigai Special Planning Sub-Division(3), Madurai.

(3) Before joining the service, he is requested to submit Physical Fitness Certificate to the Executive Engineer. This is to inform that, if it is known at a later date that the particulars mentioned in the documents submitted by him is wrong, his service will be immediately terminated.

Sd/-.....

Special Chief Engineer, PWD, WRO,
Lower Vaigai Basin Circle, Sivagangai.

To
Thiru.D.Parthasarathy,
Plot No.8,
Anbu Nagar,
S.Alangoolam Village & Post.
Madurai- 625 014
Pincode: 625 014

16. A perusal of these orders show that the petitioners were selected in the year 2000 itself and they have been now reallocated to their respective departments in PWD. They therefore cannot be treated as freshly recruited. They have been recruited prior to 01.04.2003. Though the letters dated 26.07.2006 and 01.08.2006 state that the petitioners are re-appointed, it is an obvious mistake. The petitioners were selected in 2002 itself. They only had to submit medical certificates to justify their appointment under the physically handicapped quota. There is no question of re-appointment. G.O. Ms.259, Finance (Pension) Department, dated 06.08.2003, states that the new contributory pension scheme would apply only to employees recruited on or after 01.04.2003. As stated the recruitment in the case of the petitioners had been completed in 2000 itself and therefore the petitioner can be granted only under the old scheme. It is made clear that this order is only for the purpose of grant of pensionary benefits. The petitioner will not be able to claim any backwages or for any other purpose including computation of seniority.

17. The writ petitions are therefore allowed. No Costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ars/pkn.

To

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

2. The Secretary,
Tamilnadu Public Service Commission, Chennai - 600 002.

3. The Engineer-in-Chief,
Water Resources Organisation and
Chief Engineer (General),
Public Works Department, Chepauk, Chennai - 600 005.

4. The Chief Engineer,
Public Works Department (WRO),
Madurai Region, Madurai - 625 002.

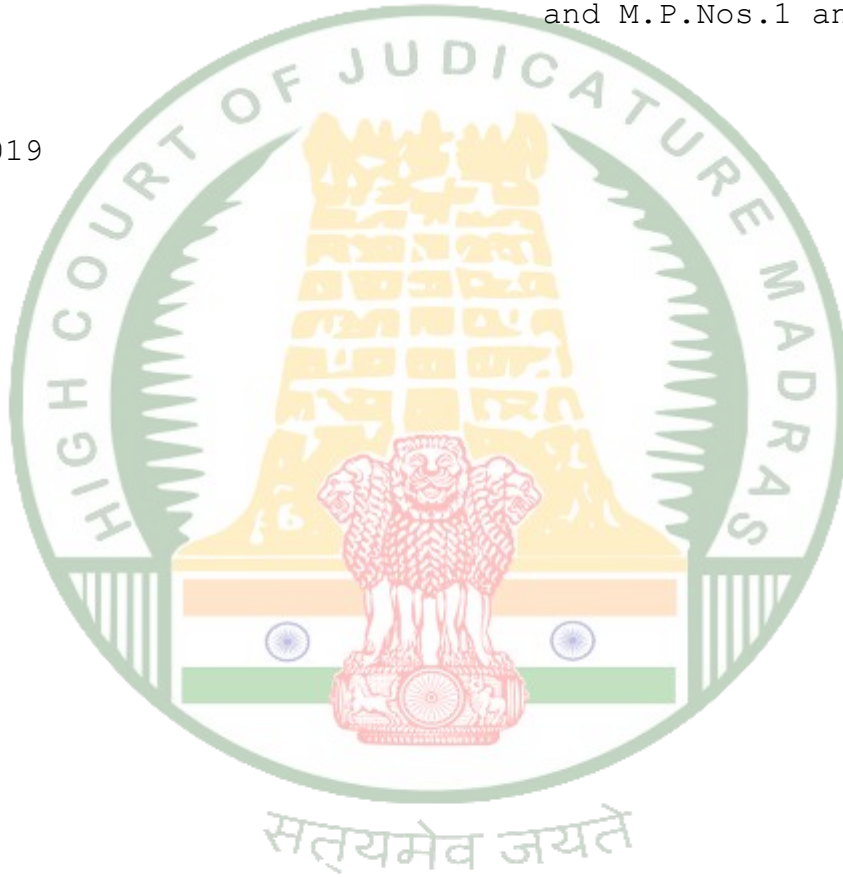
5. The Superintending Engineer,
Public Works Department (WRO),
Thamiraparani Basin Division, Tirunelveli.

6. The Executive Engineer,
Public Works Department (WRO),
Thamiraparani Basin Division, Tirunelveli.

+2 ccs to M/s.R.Parthiban Advocate sr90472
+1 cc to Mr.Devendran Advocate sr90644

WP Nos.25350 & 25923 of 2009
and M.P.Nos.1 and 1 of 2009

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