

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02/08/2019
Pronounced on: 14/11/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.24354 of 2010, W.P.(MD) No.985 of 2010
&
2157 of 2010

W.P.No.24354 of 2010

P. Vadivel

... Petitioner

Vs

1. The Government of Tamil Nadu
rep. by its Secretary
Public Works Department
Fort St. George
Chennai 600 009.

2. The Engineer-in-Chief (WRO) &
The Chief Engineer (General)
Public Works Department
PWD Campus
Chepauk
Chennai 5.

3. Thiruvengatamoorthy

4. M. Sankar

5. V. Paramasivam

6. V. Panchavaranam

7. M. Palaniappan

8. S. Kathiravan

9. C. Kannan

10. M. Logaguru

11. R. Vedamoorthi

...

Respondents

W.P.(MD) No.985 of 2010

1. Thiruvengatamoorthy

2. M. Sankar

3. V. Paramasivam

4. M. Panchavarnam

5. M. Palaniappan

6. S. Kathiravan

7. C. Kannan

8. M. Logaguru

9. R. Vedamoorthi ... Petitioners

Vs

1. The Government of Tamil Nadu
rep. by its Secretary to Government
Public Works Department, Chennai.

2. The Engineer-in-Chief
WRO and Chief Engineer (General)
Public Works Department
Chepauk
Chennai 600 005.

3. R. Venkatachalam

4. P. Rajendra Prasad

5. S. Sivakumar

6. A. Balamurugan

7. R. Thangaraj

8. C. Ayyasamy

9. A. Srinivasan

10. S. Sugunya

11. S. Poorani

12. S. Samynathan

13. M. Vasanthi

14. S. Madhavi

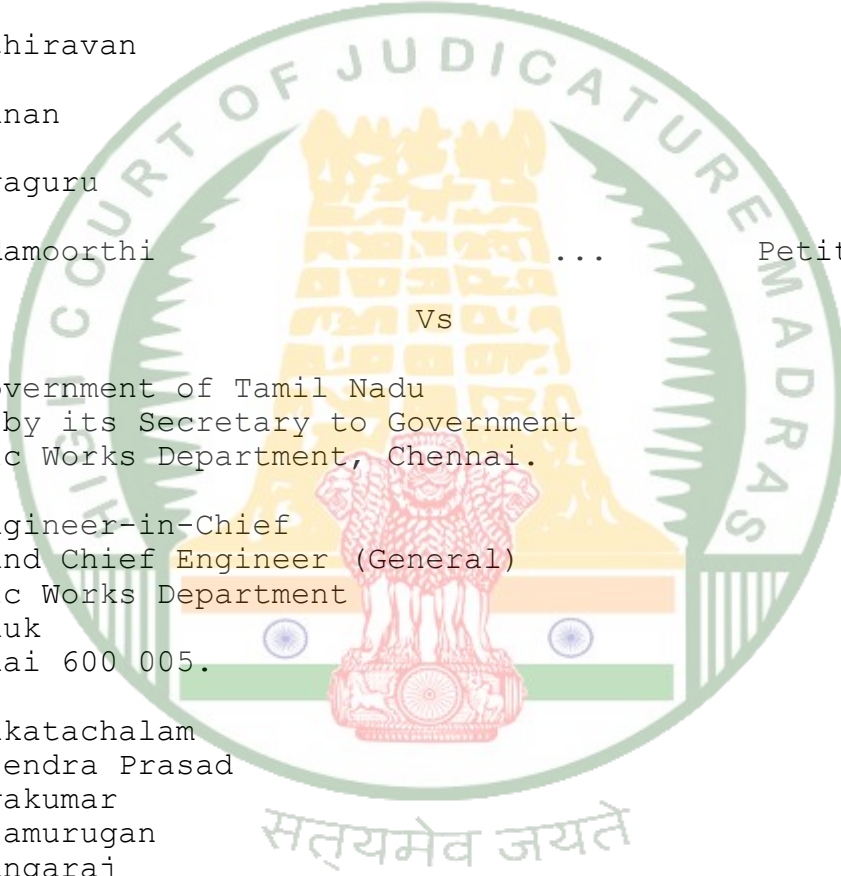
15. T. Devaraj

16. C. Balamurugan

17. P. Kumaran

18. T. Suganthi

19. K. Jayachithra



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20. K. Subbiah
21. A. Bhuvaneshwari
22. M. Vijayalakshmi

... Respondents

(R.R.13 to 22 impleaded as party respondents
as per the order, dated 21/6/2011 made in
M.P.No.1 of 2011).

W.P.No.2157 of 2010

S. Velanantharaj

...

Petitioner

Vs

1. The Secretary
Government of Tamil Nadu
Public Works Department
Fort St. George
Chennai.
2. The Engineer-in-Chief
W.R.O & Chief Engineer (General)
Public Works Department
Chepauk
Chennai.

...

Respondents

Prayer in W.P.No.24354 of 2010: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records available on the file of the first respondent relating to the impugned letter, Lr(Ms).No.296/B2/08 dated 29/9/2008 issued by the Secretary to first respondent and quash the same and further to direct the second respondent not to redesignate any Junior Engineer with B.E.Degree as Assistant Engineer.

Prayer in W.P.No.985 of 2010: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, to direct the respondents to obey and implement the order of the first respondent issued in Letter No.MS/296/B2/08, dated 29/9/2008 forthwith within the stipulated time as this Hon'ble Court deems fit and consequently, direct the respondents to include the petitioners name in the promotional panel in the appropriate place on par with promotion of his juniors and to effect promotion as Assistant Executive Engineer with all monetary and attendant benefits, as per the orders of the first respondent dated 29/9/2008.

Prayer in W.P.No.2157 of 2010: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the

impugned notice/proceedings, passed by the second respondent in his proceedings in C1 (3) 6581/2007-33, dated 3/8/2009 and quash the same and direct the respondents to include the petitioner's name in the approved panel list which was prepared by first respondent in G.O.No.91, dated 2/6/2009.

For petitioners ... Mr.N.Subramaniam
(W.P.No.24354 of 2010)

Mr.Veera Kathiravan
Senior Counsel
for Mrs.S.T.P.Kuil Mozhi
{W.P.(MD) No.985 of 2010}

No appearance in
W.P.No.2157 of 2010.

For respondents ... Mr.Akhil Akbar Ali
Government Advocate
for R.R.1 and 2 in all WPs
Mr.Veera Kathiravan
Senior Counsel
for Ms.S.T.P.Kuil Mozhi
for R.3 to 11
in W.P.No.24354 of 2010
Mr.N.Subramaniam
for R.R.3 to 22 in WP(MD)
985/10
in W.P.(MD) No.985 of 2010

C O M M O N O R D E R

On going never ending fight between re-designated Assistant Engineers (from Junior Engineers) and Assistant Engineers, who are governed by the Tamil Nadu Engineering Subordinate Services and Tamil Nadu Engineering Services, respectively, is the subject matter in these writ petitions.

2. Genesis of this dispute is a letter, dated 29/9/2008, sent by the Chief Secretary to Government to the Chief Engineer (General), Public Works Department. By this letter, eleven individuals who have acquired B.E.Degree have been directed to be promoted as Junior Engineers and then re-designated as Assistant Engineers, from the day next of the date of their promotion. The said letter also indicates that similar benefits have been given to other persons also.

3. Writ Petition No.24354 of 2010 has been filed by Assistant Engineer, governed by the Special Rules to Tamil Nadu

Engineering Services, challenging the letter dated 29.09.2008. Writ Petition (MD) Nos.985 of 2010 and W.P.No.2157 of 2010 have been filed by the beneficiaries of the letter dated 29.09.2008, to implement this letter.

4. The Engineering branch in the Tamil Nadu Engineering Subordinate Services, consists of following officers, in descending order:- (i). Supervisor, (ii) Overseers, (iii). Head Draughtsman in the offices of the Chief Engineers, (iv). Civil Draughtsman and Artist Draughtsman in various office, (v). Store Keepers, (vi). Assistant Draughtsman, (vii). Blue Print Operators I and II Grades, (viii). Buildings Maistries - I and II Grades, (ix). Senior Research Assistants, (x). Junior Research Assistants and (xi). Laboratory Assistants.

5. The Subordinate Service Rules provides that Supervisors possessing a degree in Engineering recognised by the Government of Madras, Diploma of College of Engineering, Guindy, as sufficient qualification for appointment as Supervisor. The Government brought out G.O.Ms.No.294, Public Works Department, dated 22.02.1977, which directs that Supervisors who are Diploma Holders be re-designated as Junior Engineers on the existing scale of pay with the existing status, powers and functions of Supervisors.

6. The Government of Tamil Nadu, brought out G.O.Ms.No.1582, Public Works Department, dated 11.09.1985, amending the Special Rules for the Tamil Nadu Engineering Service (Section 10 in Volume II of the Tamil Nadu Services Manual, 1969). Tamil Nadu Engineering Services, consisted of following categories of Officers in descending order:- (i). Chief Engineers, (ii). Superintending Engineers, including Senior Deputy Chief Engineers, (iii). Executive Engineers, including Deputy Chief Engineers, (iv). Assistant Executive Engineers, (v). Assistant Engineers. Method of recruitment to Executive Engineers and Assistant Executive Engineers are as under:-

Category	Method of Recruitment
Assistant Executive Engineers	(i). Direct Recruitment (ii). Promotion from Assistant Engineers (iii). Recruitment by transfer from Junior Engineers, Overseers, Head Draftsmen or Draftsmen - Grade I of the Tamil Nadu Engineering Subordinate Service.

Category	Method of Recruitment
Assistant Engineers	(i). Direct Recruitment (ii). Recruitment by transfer from Junior Engineers, Overseers, Head Draftsmen or Civil Draftsmen of the Tamil Nadu Engineering Subordinate Service.

7. The said Government Order also provides that promotion as Assistant Executive Engineer, shall be made on grounds of merits and ability, seniority being considered only where merit and ability are approximately equal. It also provides that so far as qualified and suitable candidates are available, out of every four vacancies successively arising, first three vacancies will be filled or reserved either by promotion from the category of Assistant Engineers of the Service or by recruitment by transfer from among the Draughtsmen of the Tamil Nadu Engineering Subordinate Service, possessing B.E.degree or the Diploma in Engineering of the College of Engineering, Guindy, who have put in service for a period of not less than five years and the fourth vacancy shall be filled or reserved to be filled by recruitment by transfer from among

(a). Junior Engineers of the Tamil Nadu Engineering Subordinate Service (Excluding those promoted from the rank of Draughtsmen or Overseers in the same service) having put in service for a period of not less than ten years;

(b). Junior Engineers of the Tamil Nadu Engineering Subordinate Service promoted from the rank of Draughtsmen or Overseers in the same service with Upper Subordinate or L.C.E.Diploma of the College of Engineering, Guindy or L.M.E or L.A.E., Diploma of the Technological Diploma Examination Board, Madras, having put in service for a period of not less than fifteen years or with lower Subordinate qualification having put in service for a period of not less than eighteen years;

(c). Draughtsman, Grade I and Head Draughtsman of the Tamil Nadu Engineering Subordinate Service possessing the upper Subordinate of L.C.E., Diploma of the College of Engineering, Guindy, or L.M.E., or L.A.E., Diploma of Technological Diploma Examination Board, Madras, having put in service for a period of one year must have been spent on out door field work;

(d). Draughtsman, Grade I and Head Draughtsman of the Tamil Nadu Engineering Subordinate Service with Lower Subordinate qualification having put in service for a period of not less than eighteen years, out of which at least one year must have been spent on out door field work.

8. The said G.O., also provides for preparation of annual list of approved candidates. The said Rule states that candidates appointed as Assistant Engineers by the recruitment by transfer, on acquiring degree qualification shall take rank below the last Assistant Engineer in the list of candidates selected by the Tamil Nadu Public Service Commission in that calendar year. If no selection has been made by the Tamil Nadu Public Service Commission to the category of Assistant Engineer in that calendar year, the Junior Engineer so re-designated as Assistant Engineer shall be assigned rank below the last Assistant Engineer in the list last communicated. Thus, in the Tamil Nadu Engineering Service Special Rules, for Public Works Department, the post of Assistant Engineer has two modes of recruitment, viz., (i). Direct recruitment and (ii). Recruitment by transfer from Junior Engineers, Overseers, Head Draftsmen or Civil Draftsmen of the Tamil Nadu Engineering Subordinate Service.

9. Material on record discloses that on 04.06.1990, a proposal was mooted from the office of the Deputy Secretary to the Government to the Chief Engineer (General), Public Works Department, for redesignating one P.B.Mohan, Junior Engineer, P.W.D., as Assistant Engineer, with effect from 02.02.1982. The same had been rejected, but due to a mercy petition, on the ground that some of his juniors have also been redesignated as Assistant Engineers, and promoted as Junior Engineer from the post of Draughtsman, Grade II, on 09.12.1981, he was relieved of his duties, on 23.01.1982, as Draughtsman, on administrative grounds and joined as Junior Engineer, on 01.02.1982, forenoon, the next date of his acquiring B.E.Degree, as Junior Engineer. It looks like that from here, on a concept of Junior Engineer, on acquisition of B.E.degree was to be redesignated as Assistant Engineer, started. In fact, the Government issued, G.O.Ms.No.1586, dated 15.11.1993, which states that as per the Special Rules for Tamil Nadu Engineering Service, Junior Engineers in Public Works Department can be redesignated as Assistant Engineers in P.W.D., on acquiring the degree qualification in Engineering, following the last date of examination for which the concurrence of the Tamil Nadu Public Service Commission shall not be necessary.

10. It was also stated in the G.O., that Government has carefully examined the matter and directed Junior Engineers in Public Works Department, who acquire B.E. degree qualification during the probation period in the post of Junior Engineer be redesignated as Assistant Engineer in Public Works Department in the Tamil Nadu Engineering Service only after completion of probation to the post of Junior Engineer in Tamil Nadu

Engineering Subordinate Services. The said G.O., specifically states that the Chief Engineer (General) is requested to send necessary proposals for amending the special Rules for the Tamil Nadu Engineering Service.

The impugned letter has also been passed on the very same lines by promoting persons as Junior Engineers on acquiring an engineering degree and then re-designating them as Assistant Engineers.

11. The issue therefore, which arises for consideration is as to,

(i) Whether the Junior Engineer, on acquiring B.E.degree is entitled to be automatically be redesignated as Assistant Engineer ?

(ii) Whether a supervisor or any other category under the Tamil Nadu Subordinate Service on acquiring B.E.degree is entitled to be promoted as Junior Engineer and on the very next day be redesignated as Assistant Engineer ?

12. Heard the counsel for the parties.

13. Mr.N.Subramaniam, learned counsel appearing for the directly recruited Assistant Engineer, petitioners in W.P.No.24354 of 2010, urges that the impugned letter issued by the Chief Secretary to Government, directing the statutory authority to redesignate Junior Engineers, B.E.Assistant Engineer is without any authority. He would further state that as per the Business rules of the Government of Tamilnadu. The term "secretary" means Secretary to Government and also includes Addl. Secretary, Joint Secretary and a Deputy Secretary to Government. Various Departments of the Government are allotted to various Ministers by the Governor on the advice of the Chief Minister. Accordingly the Department of Public Works Department is allotted to Public Works Department Minister. The Business Rule stipulates that whether an order is individually authorized by a Minister or by the Council, the Council of Ministers shall be collectively responsible. The Business Rules further state that all orders / instrument of the Government shall be issued in the name of Governor and signed either by the Secretary or Addl. Secretary, or DS or US. Under the Business Rule, the Minister is responsible to dispose of the business of his Department and if he so desires he could issue standing orders authorizing the Secretary to dispose of any business. He would submit that the Chief Secretary was therefore not competent to issue the impugned letter and the same is contrary to the business Rules. It is submitted by Mr.N.Subramaniam, learned counsel, that the Secretary to government unless the Chief Secretary is authorized by a Standing Order, he has no authority to dispose of any business in the Department. It is urged that there is no standing order by which the Secretary to Government

has been authorized in this regard. He states that the Secretary to Government has no authority under any law to act on behalf of the Government and hence the impugned letter is not in the name of the Governor and without authority by the Secretary to Government and hence ab initio void and liable to be quashed.

14. It is then contended that the Special Rules to Tamilnadu Engineering Service which governs the service condition of Assistant Engineer do not have the "redesignation" as one of the methods of appointment to the post of Assistant Engineer and hence the impugned letter directing the Chief Engineer to redesignate the Junior Engineers with B.E. degree as Assistant Engineer from the date of acquiring B.E degree has been issued contrary to the statutory rules and hence is liable to be quashed. It is stated by Mr.N.Subramaniam, learned counsel, as per Rule 2(a) of Special Rules to Tamilnadu Engineering Service, the method of recruitment stipulated for appointment to the category of Assistant Engineer is (i) direct recruitment and (ii) recruitment by transfer from Junior Engineer. A Junior Engineer therefore can be appointed as Assistant Engineer only by recruitment by transfer and not by any other means. It is argued that the rule does not contemplate redesignation of Junior Engineer with B.E. degree as Assistant Engineer.

15. It is urged that a person with B.E degree who could not succeed before Tamilnadu Public Service Commission for selection to the category of Assistant Engineer by direct recruitment, if gets appointed as Assistant Engineer by way of redesignation, then entry of such B.E. graduates would be nothing, but back door entry to the category of Assistant Engineer.

16. It is further argued that the appointment to the post Assistant Engineer by recruitment by transfer are from - (i) Junior Engineer, (ii) Overseer, (iii) Draughtsman. The category of overseer or draughtsman are feeder categories to the category of Junior Engineer. The rule does not prescribe any experience for these categories with B.E. degree to be appointed as Assistant Engineer, which would lead to a situation that a person with B.E. degree who could not get selected as Assistant Engineer by direct recruitment before Tamilnadu Public Service Commission, could get appointed as overseer or draughtsman and could, on the next day could become as Assistant Engineer even by redesignation as claimed by the private respondents which would be nothing but treating the Junior Engineer with B.E. degree, or lower categories overseer and Draughtsman with B.E. degree equal to those who clear a exam and become Assistant Engineer. They can become Assistant Engineer by recruitment by transfer on the posts which are to be filled by the method of recruitment by transfer.

17. It is therefore contended that, to avoid such illegal and back door entries, the framers of rules contemplated that even though the overseers or Draughtsman are made as feeder categories, they could become Assistant Engineer by recruitment by transfer only after becoming Junior Engineers and further if they acquired B.E., degree after becoming Junior Engineer by incorporating a phrase in rule 5 prescribing the qualifications as "Must have acquired the B.E. degree following qualification after service as Junior Engineer".

18. It is argued that the private respondents having not acquired B.E. degree after becoming Junior Engineer, but having acquired the same before entry as Junior Engineer, are ineligible to be considered for appointment to the category of Assistant Engineer even by recruitment by transfer.

19. Mr.N.Subramaniam, learned counsel, places his reliance on the judgment of the Hon'ble Supreme Court in B.Thirumal v. Ananda Sivakumar, in C.A.NO.10660 -10662 of 2013, paras 15 to 22, which has held that the Junior Engineer even though got redesignated as Assistant Engineer on acquiring B.E. degree, their appointment to the category of Assistant Engineer in State Service by recruitment by transfer and the redesignated Assistant Engineers shall have to be considered only as Junior Engineers in Tamilnadu Engineering Subordinate Service and they are eligible for promotion recruitment by transfer to the category of Assistant Executive Engineer only within 25% quota earmarked for Junior Engineers and shall not be eligible to be considered within the 75% quota for promotion to the category of Assistant Executive Engineer. Therefore, even if the prayer of W.P.(MD).No.985 of 2010 seeking appointment of the private respondents as Assistant Engineer retrospectively with retrospective seniority in the category of Assistant Engineer cannot be granted as it would run contrary to the judgment of the Hon'ble Supreme Court in B.Thirumal's case.

20. Per Contra, Mr.Veera Kathiravan, learned Senior counsel appearing for the persons, who now seek to be redesignated as Assistant Engineer would contend that, by G.O.Ms.No.294, Public Works Department, dated 22.02.1977, Supervisors and Junior Engineers were merged and from that date, Diploma Holders were be called as Junior Engineers and Degree Holders are called as Assistant Engineers and their next promotional post was that of Assistant Executive Engineer.

21. G.O.Ms.No.288, Public Works Department, dated 01.03.1978, was passed by the Government, which stated that the Supervisors (now Junior Engineers) acquiring an engineering degree or its equivalent qualification and getting redesignated

as Junior Engineers (now Assistant Engineers) be assigned the rank below the last Junior Engineer (now Assistant Engineers) selected by the Tamil Nadu Public Services Commission in the year in which they acquired the qualification.

22. By a subsequent G.O.Ms.No.2070, dated 30.12.1980, certain clarifications were given regarding the implementation of G.O.Ms.No.299. The clarification were as follows:-

"Junior Engineers of Public Works & Highways and Rural Works departments acquiring the Engineering Degree qualification or its equivalent in a calendar year and getting redesignated as Assistant Engineers shall be assigned rank below the last Assistant Engineer in the list of candidates selected by the Tamil Nadu Public Service Commission in that calendar year."

23. Mr.Veerakathiravan, learned senior counsel, would rely on the judgment of this Court in the Secretary to Government of Tamil Nadu, Transport Department, General and another Vs. K.Sriramachandran and three others in W.A.No.996 of 1986. A Hon'ble Division Bench, in the said Writ Appeal has considered the validity of G.O.Ms.No.288, Public Works Department, dated 01.03.1978.

24. The Division Bench after analysing the various provisions, rejected the argument of the Assistant Engineers that Rules do not provide for redesignation as a mode of recruitment. For coming to this conclusion, the Division Bench relied on the counter affidavit filed by the Government which reads as under:-

"The Special Rules also provides for designating Supervisor (Designated as Junior Engineer) as Junior Engineer (Designated as Assistant Engineer) on acquiring the degree in Engineering, both the diploma holder and the degree holder are posted in charge of a section discharging the same functions though there is difference in qualification and scales of pay."

25. The Hon'ble Division Bench also held that once a Supervisor is redesignated as Junior Engineer, he becomes entitled to all the benefits that are conferred on Junior Engineer. The judgment of the Hon'ble Division Bench was challenged in the Hon'ble Supreme Court in Civil Appeal No.7794 of 1997.

26. The Hon'ble Supreme Court dismissed the Civil Appeal and observed as under:-

9. After hearing learned counsel for the parties, we are of the considered view that though

initially in 1972, the Rule was that Overseers and Draftsmen Gr. II and III could be recruited by way of transfer to the posts of Assistant Engineer, in case they had acquired the qualification after they had entered into the service and rendered requisite period of service, as prescribed by the Rules of 1972. However, thereafter, amendment came into force in 1983 w.e.f. 1980, and Overseers and Civil Draftsman Grade II and III were made ineligible for promotion as Assistant Engineer. The eligibility was confined to Head Draftsmen Gr. I. Thus, the position of 1972 was altered and given a go bye till 1985 rules came into force.

10. Then again position had been changed by the Rules of 1985. A bare reading of Rule 5, read with Rule 2(a) of Rules of 1985 makes it clear that the incumbents, 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 to the posts of Assistant Engineers. It is clear that differentiation of grades of Draftsmen had been done away with and all Civil Draftsmen had been made eligible including Overseer under Rule 2 of 1985 Rules.

11. Thus, we find no force in the submissions urged by learned counsel for the appellant, as the Rules of 1985 holds the field, and the action of the respondents is in accordance with law.

12. With respect to the alleged illegal usurpation of the quota of direct recruitment. It is apparent that inter alia the incumbents, holding the post, in the Public Works Department, of Overseers or Junior Engineer after serving for one year becomes eligible to stake their claim to the post of direct recruitment. Thus, if they are appointed by way of direct recruitment, it could not be said that they had illegally usurped the quota reserved for direct recruitment. As a matter of fact, on being appointed by way of process of direct recruitment they are not to be treated as recruited against the quota reserved for recruitment by way of transfer. Once they have been selected by process of direct recruitment, they have to be counted towards quota of 75% reserved for the direct recruitment.

27. It is submitted that the Rule has been the subject matter of several litigations and the Hon'ble Supreme Court in SLP (C) No.7794 of 1997 has upheld the procedure of re-designation of Junior Engineer as Assistant Engineer and has also held that seniority should be reckoned above the directly

recruited Assistant Engineers. The judgment of the Hon'ble High Court in W.A.No.996 of 1986 has been confirmed by the Hon'ble Apex Court. The resultant position is that the re-designated Junior Engineers as Assistant Engineers were senior to the directly recruited Assistant Engineers who are subsequently appointed. The judgment is binding on all the directly recruited Assistant Engineers. It is stated that the question which arises in the writ petition has attained finality by the decision of the Hon'ble Supreme Court upholding the re-designation and confirmation of the seniority for the re-designated Junior Engineer.

28. In the Tamil Nadu Engineering Subordinate Service Rules, note to the Rule 2(b) reads as follows :

Note - Supervisors possessing a degree in Engineering recognized by the Government of Madras as sufficient qualification for appointment as Supervisor, or holding the Diploma in Engineering of the College of Engineering, Guindy, shall be designated as "Junior Engineers".

The said rule can be read as Junior Engineer in the place of Supervisor and Assistant Engineer in the place of Junior Engineer.

29. Subsequently the Rules were framed by the Government in G.O.Ms.NO.1582 Public Works Department, dated 11.09.1985, wherein Rule 4 & 5 reads as follows :

"4. Assistant Executive Engineers -

1. Direct recruitment; or

2. Promotion from Assistant Engineers;

3. Recruitment by transfer from Junior Engineers, Head Draftsman or Draftsman, Grade-I of the Tamil Nadu Engineering Subordinate Service.

5. Assistant Engineers -

(1) Direct Recruitment; or

(2) Recruitment by transfer from Junior Engineers, Overseers, Head Draftsman or Civil Draftsman of the Tamil Nadu Engineering Subordinate Service."

Explanation 2(c)(i) is as follows :

2(c)(i) Such number of substantive vacancies among Assistant Executive Engineers, as the State Government

may from time to time determine, shall be filled or reserved to be filled by direct recruitment on the results of a competitive examination.

Rule 2(e) reads as follows :

"2(e) The candidates appointed as Assistant Engineers by the recruitment by transfer on acquiring degree qualification shall take rank below the last Assistant Engineering in the list of candidates selected by the Tamil Nadu Public Service Commission in that calendar year. If no selection has been made by the Tamil Nadu Public Service Commission to the category of Assistant Engineer in that calendar year, the Junior Engineer so redesignated as Assistant Engineer shall be assigned rank below the last Assistant Engineer in the list last communicated. For this purposes, the date of communication of the list by the Tamil Nadu Public Service Commission shall be the criterion to decide the calendar year to which the list belongs. The concurrence of the Tamil Nadu Public Service Commission shall not be necessary for such an appointment."

Rule-5 Recruitment by transfer

"Must have acquired the following qualifications after entering service as Junior Engineer, namely :-

- Degree in Civil Engineering; or"
-

30. There is no specific provision available for re-designation of Junior Engineer after obtaining a Degree in Engineering and the persons who had been promoted or directly recruited as Junior Engineers cannot be re-designated as Assistant Engineers as per the aforesaid Service rules. Even before framing the Service Rules 1985, the specific provisions under the old Service Rules is that the Junior Engineer (previously called as Supervisors) on acquiring a Degree in Engineering can be designated as Assistant Engineer (previously called as Junior Engineer). As per the newly framed service Rules in 1985 the post of Assistant Engineer can be filled up by two methods viz., direct recruitment and recruitment by transfer from the post of Junior Engineers, Overseers, Head Draftsmen or Civil Draftsmen and now the Technical Assistant can be included in the eligibility criteria.

31. The Assistant Engineers are having little higher pay than the Junior Engineer. The post of Assistant Engineer is a post under the Tamil Nadu Engineering Service Rules and the post

of Junior Engineer comes under the Engineering Subordinate Service Rules.

32. Rule 2(e) (supra) makes it clear that the seniority of re-designated Assistant Engineer will be reckoned in the bottom of the directly recruited Assistant Engineer of the relevant year, that means there is a procedure to be followed for re-designating the Junior Engineer who are having a Degree qualification. While amending the Rules in 1985, the Government has safeguarded the re-designated Assistant Engineers.

33. This Court is of the view that the Hon'ble Supreme Court in B.Thirumal Vs. Ananda Shivakumar and Others (Civil Appeal Nos.10660-10662 of 2013), has concluded the issue. The Hon'ble Supreme Court while deciding with the issue as to whether redesignation of Junior Engineer to Assistant Engineer would amount to promotion to the cadre of Assistant Engineer or not the Hon'ble Supreme Court observed as under:-

"9. We had after noticing the rival contentions of the parties passed an order on 12th April, 2012 by which we had directed the State Government to file an affidavit stating whether or not the re-designation of such Junior Engineers was granted at the request of such Junior Engineers or came about automatically. The State was also directed to place on record Government Orders and Circulars issued from time to time regarding recruitment to the State Engineering Service by transfer from the Subordinate Engineering Service as a source of such recruitment and in case the State had treated the re-designated members of the Subordinate Service to have been recruited by transfer the process that was followed for making such recruitment. In compliance with that order an affidavit was filed by Shri K. Eswantha Rao, Deputy Secretary to Government, Public Works Department, Chennai on 4th October, 2012. A reading of the affidavit shows that re-designation is granted only on receipt of an application from the Junior Engineer concerned. The Affidavit states:

"As per the said rule provisions, on receipt of application from the Junior Engineer concerned informing the fact of acquisition of B.E. degree by him and requesting redesignation, he is granted redesignation as Assistant Engineer with effect from the date of acquisition of B.E. degree by recruitment by transfer."

10. By another order dated 14th August, 2013 passed by this Court, the respondent-State was directed to file a further affidavit stating whether the re-designated Assistant Engineers are considered for promotion

against the 75% quota reserved for the Assistant Engineers for promotion to the cadre of Assistant Executive Engineer. The State was further directed to indicate whether upon re-designation the Junior Engineers are shown in the final seniority list of Assistant Engineers and also to furnish details about the sanctioned cadre strength of Assistant Engineers in the State Service for the past ten years. Copies of the seniority lists and the relevant Rules were also directed to be filed. An additional affidavit pursuant to the said directions has been filed in which it is stated that Assistant Engineers upon their re-designation are being considered for promotion as Assistant Executive Engineers against 75% quota earmarked for Assistant Engineers based on the seniority fixed in the cadre of Assistant Engineers. The affidavit goes on to state that such Assistant Engineers are also being considered for promotion as Assistant Executive Engineers against 25% quota reserved for diploma holder Junior Engineers. The following passage from the affidavit is, in this regard, noteworthy:

"It is submitted that redesignated Assistant Engineers are being considered for promotion as Assistant Executive Engineers in the 75% quota earmarked for Assistant Engineers based on the seniority fixed in the post of Assistant Engineers. It is further submitted that as a convention, redesignated Assistant Engineers are also being considered for promotion as Assistant Executive Engineers based on their seniority in the post of Junior Engineer in the 25% quota if their turn for promotion comes first in the seniority list of Junior Engineers, which is an additional benefit conferred on them for having acquired higher qualification."

11. The affidavit goes on to explain the reason for such duality of consideration for promotion in the following words:

"It is submitted that there is no explicit provision in the special rules for Tamil Nadu Engineering Services to provide promotion to the redesignated Assistant Engineers on the basis of their seniority in the post of Junior Engineer if their turn for promotion as Assistant Executive Engineers comes earlier in the seniority list of Junior Engineers than in the seniority lists of Assistant Engineers. However, this procedure is being followed conventionally and more than twenty persons both in the category of Civil and Electrical in this

Department have been promoted as Assistant Executive Engineers."

12. We have referred to the affidavits in detail only to highlight the fact that the procedure followed by the State Government is not sanctioned by any rule and yet is being followed in the name of a convention. We, however, fail to appreciate how an officer could be considered for promotion in two different channels of promotion. Nor is it possible to appreciate how an engineer or any other civil servant could be a member of two distinct services at the same time or claim a lien or consideration for promotion on that basis.

13. Time now to refer to the provisions of 'Branch V - Electrical' of the Special Rules applicable to State Engineering Service which recognises three categories of officers, namely, Electric Engineers in Category-I, Assistant Executive Engineers (Electrical) in Category-II and Assistant Engineers (Electrical) comprising Category-III. Rule 2 and the Table below the same prescribe the category and the method of recruitment. It reads:

"2 Appointment:- (a) Appointment to the categories specified in column (1) of the Table below shall be made by the methods specified in column (2) thereof:-

TABLE	Category	Method of recruitment	(2)	(1)
1.	Electrical Engineer	(i) By Promotion from Assistant Executive Engineer (Electrical) in category 2.		
		(ii) By recruitment by transfer from the category of Electrical Inspector in the Tamil Nadu Electrical Inspectorate service.		
2.	Assistant Executive Engineer	(i) By promotion from Assistant Engineer (Electrical) in category 3; or		
		(ii) By recruitment by transfer from the category of Junior Engineer (Electrical) in the Tamil Nadu Engineering Subordinate Service or from the category of Assistant Electrical Inspector in the Tamil Nadu Electrical Inspectorate service; or		
		(iii) By direct recruitment, if qualified hands are not available for appointment by the above methods.		
3.	Assistant Engineer	(i) By direct recruitment; or		
		(Electrical) (ii) By recruitment by transfer from the category of Junior Engineer (Electrical) in the Tamil Nadu Engineering Subordinate service who possess a Degree in Electrical Engineering; or from the category of Junior Electrical Inspectors in the Tamil Nadu Electrical Inspectorate service.		

(b) Promotion to the category of Electrical Engineer shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.

(c) So far as qualified and suitable candidates are available out of every four vacancies successively arising in the category of a Assistant Executive Engineer (Electrical), the first three vacancies shall be filled in or reserved to be filled in by promotion from among the category to Assistant Engineer possessing B.E.degree (Electrical) and the fourth vacancy shall be filled in or reserved to be filled by recruitment by transfer from the category of Junior Engineer (Electrical) possessing the diploma in Electrical Engineering."

14. A bare glance at the above would show that appointment to the category of Assistant Engineer can be made by direct recruitment or by transfer from the category of Junior Engineer (Electrical) in the Tamil Nadu Engineering Subordinate Service from among those who possess a degree in Electrical Engineering or from the Junior Electrical Inspectors to the Tamil Nadu Electrical Inspectorate Service. The question as noticed earlier is whether the re-designation of degree holder Junior Engineers was by itself tantamount to appointment by transfer to the State Engineering Service. It is common ground that no reference to the Tamil Nadu State Public Service Commission was made nor was any other process of selection undertaken for such re-designation which was based entirely on the degree qualification of the incumbent and was granted with effect from the date the qualification was acquired. The re-designation had similarly nothing to do with the number of vacancies available in the State Engineering Service. Availability of vacancies in the cadre of Assistant Engineers was an essential condition precedent for any recruitment to that cadre whether by transfer or otherwise. Not only that, re-designation did not result in the occurrence of any vacancy in the cadre of Junior Engineers as it should ordinarily have, when someone holding the post of Junior Engineer got appointed to another service, resulting in the termination of his lien in the parent service. This implied that even though re-designated as an Assistant Engineer (Electrical) the incumbent continued to hold the post of Junior Engineer after re-designation. All this leads to the irresistible conclusion that except financial benefit and status, re-designation did not bring about any other change. If the version of the respondents is believed as we are inclined to do, even the duties of such re-designated officers remained the same as before. According to the State Government the two positions viz. Junior Engineer (Electrical) and

Assistant Engineer (Electrical) are synonymous insofar as the nature of work and duties are concerned. To sum up :

i) The re-designation comes as a natural and inexorable consequence of the higher qualification acquired by a Junior Engineer, no matter on an application filed by the incumbent.

ii) The re-designation is granted with effect from the date the higher qualification is acquired.

(iii) The re-designation has no co-relation to the vacancies in the cadre of Assistant Engineers (Electrical). No vacancies are created to accommodate the officers being re-designated, which would be inevitable unless the vacancies equal to the officers being re-designated, were already available.

(iv) The nature of duties for the re-designated officers remained the same as for Junior Engineers.

(v) The re-designated officers continue to be considered for promotion in their parent service against 25% quota fixed for that source.

15. The cumulative effect of the above, in our opinion, is that there is no element of recruitment to the State Engineering Service by direct recruitment or by transfer. The contention that those re-designated stood appointed to the cadre of Assistant Engineers (Electrical) in State Service must, therefore, fail. Considerable support for that conclusion is available from the decision of this Court in *BSNL v. R. Santhakumari Velusamy & Ors.* AIR 2011 SC 3793. That was a case where this Court was examining whether rules of reservation were applicable to promotions to Grade IV under the Biennial Cadre Review Scheme introduced by the Department of Telecommunications, Government of India with a view to remove stagnation of certain categories of employees serving in the said department. The Government had formulated the procedure regarding promotion to Grade IV according to which such promotions were to be granted on the basis of seniority in the basic grade from amongst the officers in Grade III subject to fitness determined in the usual manner of One Time Bound Promotion Scheme ('OTBP Scheme' for short). By a clarificatory Circular issued subsequently the Government had directed that promotions would be subject to fulfilment of other conditions and that normal rules of reservation would apply to the same. The direction regarding application of rules of reservation to promotions to Grade IV was assailed by the All India Non Schedule Caste/Schedule Tribe Telecom Employees Association on the ground that principles of reservation had no application for

upgradation on existing posts which did not carry any change in duties and responsibilities. The Central Administrative Tribunal, Ahmedabad upheld that contention and directed that reservation will have no application while upgrading posts under the BCR Scheme and directed that the department shall take appropriate action for effecting promotions to the upgraded posts without applying the reservation roster. The order passed by the Tribunal was upheld by the Gujarat High Court in a writ petition filed by the Government. The matter eventually reached this Court by special leave. One of the main issues considered by this Court was whether upgradation of the posts under the BCR Scheme was tantamount to promotion. This Court upon a comprehensive review of the decisions rendered earlier including those rendered in *Union of India v. S.S. Ranade* (1995) 4 SCC 462, *Union of India v. V.K. Sirothia* (2008) 9 SCC 283 and *Lalit Mohan Deb and Ors. v. Union of India & Ors.* (1973) 3 SCC 862 formulated specific principles relating to promotion and upgradation in the following words:

"21. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without

undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation. A

(v) Where the process is an upgradation simplicitor, there is No. need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

16. On a careful reading of principles (ii) and (iii) above, it is evident that upgradation which is synonymous to re-designation in the facts of this case simply confers a financial benefit by raising the scale of pay of the posts without there being movement from a lower position to a higher position. In the

case of upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale. Not only that, where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if advancement to a higher pay-scale without change of post is accompanied by some process which has the element of selection, then it will be a promotion to a higher pay-scale. This Court declared that up-gradation in that case was not promotion, also because the BCR Scheme did not involve creation of additional posts nor did the scheme involve consideration of inter se merit of the candidates or involve any selection process. The Court on that basis declared that BCR Scheme was only an upgradation intended to give relief against stagnation which was not tantamount to promotion. To such process of upgradation, the Reservation Rules had no application, declared this Court.

17. The rationale behind upgradation not being considered tantamount to promotion would, in our opinion, apply with full force even to a case where the upgradation/redesignation is sought to be termed as a case of recruitment by transfer. If the process of upgradation/redesignation has no correlation to the vacancies available in the State Engineering Service and if such upgradation/redesignation is granted as a matter of course without any selection process and merely on the incumbent acquiring a degree qualification, we see no reason why such upgradation/redesignation should be treated as a case of appointment to the said service by transfer. What could not constitute promotion (assuming that the post of Assistant Engineer (Electrical) was a part of the Subordinate Service) cannot obviously be considered to be a case of appointment by transfer.

18. Suffice it to say that the principles enunciated in Velusamy's case (supra) when applied to the facts of the case at hand, leave no manner of doubt that the upgradation/redesignation granted to the members of the Subordinate Engineering Service upon their acquiring a degree qualification was meant only to encourage or recognize their getting such higher qualification. Such upgradation may involve a higher designation and better emoluments for the incumbents but neither of those two benefits could constitute promotion or recruitment by transfer.

19. It is true that the State has shown the upgraded engineers in the seniority list of the Assistant Engineers (Electrical) and even considered and promoted them against vacancies available in 75% quota, meant for that source but such inclusion, consideration and promotion cannot by itself be treated to be ground for holding that the re-designation had the effect of appointing the incumbents by transfer. At any rate, there is nothing to show that the State had taken the lien of the incumbents in their parent service to have been terminated. On the contrary, the State has been considering such re-designated officers for promotion even against 25% quota meant for the Junior Engineers serving in the Subordinate Service. The aberration of considering the redesignated officers as members of the State Service does not constitute a sufficient basis for us to depart from the legal parameters to which we have adverted earlier.

20. The Division Bench of the High Court has, while dealing with the question whether Junior Engineers re-designated as Assistant Engineers could have the "best of both worlds" by availing of both the 25% and 75% quotas, upheld that practice on the ground that it only served to reward pursuit of higher studies without causing any undue disadvantage to diploma-holder Junior Engineers, or to directly recruited Assistant Engineers. The Division Bench observed:

"14...A Diploma-holder Junior Engineer, who on acquisition of Degree in Electrical Engineering is re-designated as Assistant Engineer, is placed below the directly recruited graduate Engineer during the year concerned. Therefore, obviously he does not steal march over such directly recruited Assistant Engineer having Degree in Engineering. Similarly it cannot be said that he is stealing march over the Diploma-holder Junior Engineers who continue as such in as much as such a person only gets a better opportunity because of his perseverance in pursuing further study and acquisition of a higher qualification subsequently adds to the quality of work done by such person. A Diploma-holder Junior Engineer, who subsequently acquires a degree in Engineering, does not become senior above any Diploma-holder Junior Engineer. While he retains his seniority, he only gets an additional avenue as he is also redesignated as Assistant Engineer. Ultimately, the benefit goes to a person who pursues higher studies. It cannot be said that there is anything inherently arbitrary in such a scenario in as much as a person ultimately gets some reward for his

pursuit of higher study and because of his perseverance in obtaining a higher degree.

If a Diploma-holder Junior Engineer on acquisition of higher qualification is to be compulsorily moved out of the category of Junior Engineer, anomalous position may crop up. Since such a person would be placed below all the existing graduate Assistant Engineers, his chance of being promoted within the quota of 3/4th meant for graduate Assistant Engineers would be practically nil. It is of course true that on being re-designated as Assistant Engineer, such a person receives higher salary, but when he is compulsorily "kicked upstairs" (if we may be permitted to observe so) the Diploma-holder Junior Engineer, who were below him, would be in a better position for being promoted, even though less qualified than him. The convention which was being hitherto followed in the Department does not prejudice a graduate Engineer in the Assistant Engineer cadre nor it has the effect of blocking the promotional prospects of any Diploma-holder Junior Engineer, who was senior to such other Diploma-holder Junior Engineer who subsequently acquires the higher qualification.

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19. In our considered opinion, the Junior Engineers, on acquisition of higher qualification are re-designated as Assistant Engineers, but it cannot be said that they have become full-fledged members of any other service. It is to be noticed that though technically two services may be different, the nature of the work done is the same and, since two services are essentially same, the traditional concept of losing lien in the original service while absorbed or deputed in any other service does not strictly arise for consideration.

20. The convention, which was hitherto being followed by the Department, and now approved by us, has the effect of conferring additional benefit on a person who pursues the study for acquiring higher qualification."

21. The observations made by the Division Bench in the above passages do not appear to be legally correct since an incumbent in service cannot hold lien in two different cadres at once. It is also not correct to say that the two services are in essence one. The distinction is obvious and clear enough from the rules, that provide for method of recruitment, promotion and conditions of eligibility for the two separately. That is so also because the quotas for promotion to the posts of Assistant Executive

Engineers are separate for the members of the two services and one cannot be utilized for the benefit of the other. That apart, the High Court was not correct in holding as if a degree holder could be redesignated as an Assistant Engineer against his will and only because he had acquired a degree qualification. The State has made it clear in the additional affidavit filed on its behalf that redesignation was ordered on the basis of requests made by the members of the Subordinate Engineering Service. It was, therefore, not correct to suggest as though redesignation was thrust upon unwilling members of the Subordinate Service. Suffice it to say that even the High Court has held that the redesignated Assistant Engineers did not because of redesignation become full-fledged members of the State Service. If that be so, there is no half way house, for either they are members of Subordinate Service or they are not. They cannot be members of the Subordinate Service and State Service both, at one and the same time.

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 redesignated 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.

34. The upshot of the discussion of the Hon'ble Supreme Court is that the Supreme Court itself had approved the conclusion of the High Court that a Degree Holder Junior Engineer could be redesignated as Assistant Engineer only by acquiring the degree qualification. The Hon'ble Supreme Court

held that the the promotion of Junior Engineer as Assistant Engineer can be done only against 25% quota reserved for Subordinate service and they cannot automatically be redesignated as Assistant Engineer because then the 3:1 ratio will be violated.

35. Contention of the proposed redesignated Junior Engineers that Rule enables an automatic redesignation of Junior Engineer to Assistant Engineer on their acquiring a degree cannot be accepted. Rule which is being relied on by the proposed redesignated Assistant Engineer is a note appended to, the Tamil Nadu Engineering Subordinate Service which reads as under:-

"Supervisors possessing a degree in Engineering recognised by the Government of Madras as sufficient qualification for appointment as Supervisor or the Diploma of the College of Engineering, Guindy shall be designated as Junior Engineer."

This note only permits redesignation as Junior Engineers. Amendment in the Rules by G.O.Ms.No.294, Public Works Department, dated 22/2/1977, wherein Rule 3 (ii) was amended to read as under:-

"The Junior Engineers (Degree holders) be redesignated as Assistant Engineers on the existing scale of pay and with the existing scale of pay and with the existing powers and functions of Junior Engineers."

After the Tamil Nadu Engineering Services was amended by G.O.Ms.No.1582, dated 11/9/1985, Rule 2 (e), reads as under:-

"The candidates appointed as Assistant Engineers by the recruitment by transfer on acquiring degree qualification shall take rank below the last Assistant Engineer in the list of candidates selected by the Tamil Nadu Public Service Commission in that calendar year. If no selection has been made by the Tamil Nadu Public Service Commission to the category of Assistant Engineer in that calendar year, the Junior Engineer so redesignated as Assistant Engineer shall be assigned rank below the last Assistant Engineer in the list last communicated."

36. As stated earlier, the method of recruitment for Assistant Engineers are under two heads (i). direct recruitment (ii). by recruitment by transfer from Junior Engineers. The above quoted Rule 2 (e) would show that Junior Engineer be appointed as Assistant Engineer by recruitment by transfer after acquiring a degree in Engineering. Ratio between Directly recruited Assistant Engineer and Junior Engineer was to be 3:1.

It cannot be stated that any Junior Engineer who obtains a degree would automatically be appointed as Assistant Engineer on acquiring a degree in Engineering then the quota Rule between the direct recruitment and recruitment by transfer would be completely broken. Such a procedure of redesignating Junior Engineer as Assistant Engineer immediately on acquiring a degree cannot be accepted.

37. The Government orders which existed prior the amendment in the year 1985 cannot be relied on after the amendment in 1985 by which the Tamil Nadu Engineering Services was amended. Junior Engineer was not made a part of the Tamil Nadu Engineering Services and it continued to be only a part of the Tamil Nadu Subordinate Services. The category of overseer and draughtsman are the feeder category to Junior Engineer. If any Overseer or Draftsman on obtaining a degree, cannot be permitted to be appointed as Assistant Engineer immediately. A person who fails to get through a direct recruitment, cannot be permitted to get automatically redesignation as Assistant Engineer by acquiring a degree and this will undoubtedly lead to back door entry by inservice candidates and would be against public policy. Such a method would actually undermine the examination conducted for direct recruitment Assistant Engineers. Such a method would actually permit draughtsman and Overseers to supersede other Junior Engineers and just because they have obtained B.E.Degree, they would then become Assistant Engineers superseding other senior Junior Engineers, even if they had failed to pass the examination conducted for the recruitment of Assistant Engineer. Rule has to be understood as only Junior Engineers who have obtained degree after becoming Junior Engineers can be first permitted to be appointed as Assistant Engineers under the recruitment by transfer Rule. The draughtsman and other persons have to first become a Junior Engineer by their natural promotion and only after becoming Junior Engineer in the natural course can they be promoted to be redesignated as Assistant Engineer by adopting the method of recruitment by transfer. Any other method would break 3 : 1 quota between direct recruits and appointment by recruitment by transfer. Judgment made in W.A.No.996 of 1996 and C.A.No.7794 of 1997, pertain to pre 1985 situation which will not be applicable to this case.

38. In view of the above, this Court is now not inclined to go into the issue as to whether the letter, dated 29/9/2008 has been passed by the competent authority or not.

39. In the result, W.P.(MD) Nos.24354 ***is allowed.** Letter dated 29th September 2008, is quashed, being ***contrary** to the Rules of recruitment and ***W.P.2157/10 and** W.P.(MD)No.985 of 2010 filed by the proposed redesignated employees **are** dismissed. No costs.

***Corrected as per the order**
dated 09/01/2020 in W.P.No.24354 of 2010

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu
Public Works Department
Fort St. George, Chennai 600 009.
2. The Engineer-in-Chief (WRO) &
The Chief Engineer (General)
Public Works Department
PWD Campus, Chepauk, Chennai 5.

+1cc to Mr.N.Subramaniyan, Advocate Sr.94799
+1cc to Mrs.S.T.P.Kuilmozhi, Advocate Sr.3009

W.P.Nos.24354 of 2010,
W.P.(MD) No.985 of 2010 and 2157 of 2010

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srg 31/01/2020

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