



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
25.6.2019

Delivered on
09.07.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.1615 OF 2017

1 V.SELVANATHAN
2 J.DEVARAJU
3 K.G.SATHIYAPRAKASH
4 P.MARIMUTHURAJAN

Vs

1 THE GOVERNMENT OF TAMILNADU
REP.BY ITS SECRETARY HIGHWAYS DEPARTMENT
FORT ST. GEORGE CHENNAI 9

2 THE CHIEF ENGINEER (GENERAL)
HIGHWAYS DEPARTMENT CHEPAUK CHENNAI-5

3 THE TAMILNADU PUBLIC SERVICE
COMMISSION REP.BY ITS SECRETARY GOVERNMENT
ESTATE CHENNAI-2

4 R.GOTHANDARAMAN
5 B.R.KUMAR
6 M.K.SELVAN
7 A.SUMATHI
8 R.SOUNDARAPANDIAN
9 A.KALIAPERUMAL
10 N.SHANTHI
11 N.BALAMURUGAN
12 R.GEETHA
13 M.VIJAYA
14 R.CHANDRASEKARAN
15 M.ALAGURAJ
16 C.KRISHNAMURTHY
17 M.MURUGESAN
18 S.RAMAKRISHNAN
19 S.SATISH
20 T.ILANGO
21 R.SELVA DURAI
22 S.JAWAHAR MUTHURAJ
23 V.KRISHNASWAMY
24 P.TAMIZHARASI



25 R.ARULMOZHI
26 S.USHA DEVI
27 J.KANNAN
28 N.POOVANANDAM
29 MEKALA PONMALAR
30 G.MANUNEEDEHI
31 S.SURESH
32 R.VIMALA
33 P.VALARMATHI
34 D.JABASELVIN GLADSON
35 M.PANEERSELVAM
36 S.PALANI
37 S.PALANIVEL
38 K.PREMALATHA
39 V.SREENIVASA RAGHAVAN
40 K.Sekar
41 S.P. BETHELRAJ ... respondents

Writ Appeal filed under clause 15 of letters patent to set aside the judgment of this Honble Court dated 13/09/2017 passed in WP No 14327 of 2010

Prayer in WP No.14327 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned seniority list of Assistant Divisional Engineers as on 1.4.2008 and on 1.4.2004 published by 2nd respondent respectively in Special memo No. 13501/Nir.1 (2)/2008-3 dt 12.11.2008 and in Special memo No. Nirvagam 1 (3)/197876/2004-1 dt 29.4.04 and the seniority list of Assistant Engineers as on 1.1.2004 and on 1.1. 1993 published by 2nd respondent respectively in his Memo No.22369 Nir 3(4)/2004 dt 15.6.2004 and Memo No. 960/N4-91 dt 18.4.1994 and quash the same and consequently direct the respondents to issue revised seniority lists of Assistant engineers and Assistant Divisional Engineers and accordingly to pass all consequential orders including.. reversion of promotion of respondents 4 to 18 as Assistant Divisional Engineer.

Appearance :-

Mr.AR.L.Sundaresan, Senior Counsel,
for Mrs.AL.Gandhimathi, for appellants 2 and 3

Mr.N.Subramaniyan, for appellants 1 and 4

Mr.Vijay Narayan, Advocate General,
Assisted by Mr.S.T.S.Moorthy, Addl. Advocate General,
and Mrs.A.Srijeyanthi, Spl.G.P., for respondents 1 and 2



Mr.N.G.R.Prasad,
for M/s.S.Varsha and V.K.Gowtham, for respondents 11 to 13

Mr.L.S.M.Hasan Fizal, for respondents 7, 10 and 14

Ms.C.N.G.Niraimathi, for 3rd respondent

Mr.A.Prabhakaran, for respondents 4 to 6 and 17

Not ready in notice for respondents 8, 9, 15, 16, 18, 19 to 41

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory :-

The appellants who have entered the service at a later point of time, seek revision of seniority fixed 16 years ago in the post of Assistant Engineer in the Highways Department, primarily on the ground that Assistant Engineers selected for appointment in the Public Works Department have no right to migrate to the Highways Department, notwithstanding the fact that appointment of 15 Assistant Engineers in the Highways Department was in the year 1989 and they joined service well before the appointment of the appellants between the period August 1991 and January 1992. In short, seniority as on 1 January 1993 settled in 1994 is sought to be unsettled by the appellants long after their multiple promotions and without there being any challenge to the initial appointment of 15 Assistant Engineers, on the ground that their selection was originally in the Public Works Department. This is the sum and substance of the case put up by the Assistant Engineers appointed in the Highways Department for the year 1989-90 and joined the service long after the assumption of office by the 15 Public Works Department engineers who were accommodated in the Highways Department.

The facts in brief:-

2. The appellants filed a writ petition in W.P.No.14327/2010, challenging the seniority list of Assistant Engineers as on 1 January 2004 and 1 January 1993 and the seniority list of Assistant Divisional Engineers as on 1 April 2004 and 1 April 2008, primarily on the ground that Assistant Engineers selected for appointment in the Public Works Department were appointed in the Tamil Nadu Highways Department and placed above the regularly recruited Assistant Engineers in the Highways Department. The appellants made a request for revising the seniority list of Assistant Engineers and Assistant Divisional Engineers and place them above the respondents 4 to 17.



3. The appellants made a claim before the writ court that respondents 4 to 17 were selected for appointment to the post of Assistant Engineers in Public Works Department. Since sufficient posts were not available, their names were included in the waiting list. Subsequently, they were accommodated in the Tamil Nadu Highways Department through back door and without following any kind of transparent process. The appellants further contended that they were appointed in the Highways Department pursuant to the notification issued for the year 1989-90. Since the respondents 4 to 17 were appointed only in the Public Works Department, they should have been placed below the appellants in the seniority list taking into account the fact that their substantive appointment was not in the Highways Department.

4. The writ petition was opposed by the State. According to the State, the Public Works Department initiated proceedings for appointment of 428 Assistant Engineers. Since sufficient posts were not available, respondents 4 to 17 and others were not given appointment orders. Subsequently, a decision was taken at the Government level to post them in the Highways Department, taking into account the vacancies available in the said Department. It was the further contention of the State that even before the appellants joined the service, respondents 4 to 17 were appointed and they joined service in the Highways Department and as such, their seniority was correctly fixed.

5. The learned Single Judge verified the original file produced by the State and the Tamil Nadu Public Service Commission and found that only after adopting a fair and transparent procedure, respondents 4 to 17 were given appointment in the Highways Department. The learned Single Judge found that altogether, there were 428 vacancies. The names of respondents 4 to 17 were in the select list of 428 Assistant Engineers in the Public Works Department. Since Assistant Engineers appointed on temporary basis continued in the Public Works Department, without vacating the post the respondents 4 to 17 and others could not be appointed. The State therefore took a conscious decision to accommodate them in the Highways Department. Even though willingness was sought from all the candidates who have not been given appointment in the Public Works Department, only respondents 4 to 17 have given the option, resulting in their appointment well before the appointment of the appellants. The learned single Judge therefore opined that seniority of respondents 4 to 17 was correctly shown above the appellants. The writ petition was accordingly dismissed. Feeling aggrieved, the unsuccessful writ petitioners have come up with this intra court appeal.



Summary of submissions :-

6. The following are the substantial contentions advanced by the learned senior counsel for the appellants 2 and 3 :-

1. The Tamil Nadu Highways Engineering Service is governed by the Special Rules. The appellants were appointed as Assistant Engineers in the Tamil Nadu Highways Engineering Service, pursuant to the notification issued by the said Department. The notification was for the year 1989-90. Since the appellants were appointed in the Highways Department, they should have been placed above respondents 4 to 17, who were the appointees in the Public Works Department;
2. The appointment of respondents 4 to 17 in the Highways Department is void ab initio for the simple reason that they have not undergone the selection process in the Highways Department;
3. The decision was taken to accommodate them only at the Secretary level without the concurrence of the Government. The appointment has therefore no sanction of law;
4. There was no right conferred on respondents 4 to 17, who were placed in the waiting list in the Public Works Department to claim appointment, after a considerable period;
5. The Chief Engineer made an attempt to mislead by stating in the seniority list of Assistant Engineers as on 1 January 1993 published on 18 April 1994 that respondents 4 to 17 were "Re-designated Assistant Engineers". It was not a case of redesignation. The appellants were made to believe that those engineers have obtained degree subsequently, and consequently, they were re-designated as Assistant Engineers and that was the reason for the failure to challenge the appointments at the earliest point of time.
6. The appellants being appointees in the Highways Department ought to have been placed above the respondents 4 to 17 in view of their substantial appointment originally in the Public Works Department.

7. The learned counsel who appeared on behalf of some of the other appellants contended that respondents 4 to 17 entered the service through backdoor and as such, the very appointment is bad. According to the learned counsel, the appointment of respondents 4 to 17 being illegal, no right would accrue to them for seniority over others. The learned counsel took up a specific contention that there was no concurrence of the Government in the process of appointment of respondents 4 to 17 in the Highways Department and as such, their appointment lacks authority.

8. The learned Advocate General took us through the original file relating to the appointment of respondents 4 to



17. The learned Advocate General contended that respondents 4 to 17 were selected for appointment in the Public Works Department. It was a comprehensive list of 428 Assistant Engineers fit for appointment in the Public Works Department. The Assistant Engineers who were appointed earlier on temporary basis resisted the move to replace them. Those Assistant Engineers also approached the Court and obtained interim orders, resulting in delaying the appointment of respondents 4 to 17. The Chief Secretary convened a meeting of all the Secretaries and a decision was taken to accommodate the Assistant Engineers selected in the Public Works Department who were not given postings, in the Highways Department, after calling for their willingness. The learned Advocate General submitted that respondents 4 to 17 submitted their willingness and accordingly, they were appointed. It was his further contention that respondents 4 to 17 were appointed long before the appointment of the appellants in the Highways Department and as such, their seniority was rightly fixed by the Government. It was further contended that the appointment of respondents 4 to 17 were not challenged at any point of time and therefore, it is not permissible to challenge the seniority at this point of time.

DISCUSSION :-

9. The Public Works Department, taking into account the 428 vacancies in the said Department in the post of Assistant Engineers, issued a notification calling for applications. The appointment was for the year 1985-86. While preparing the select list of 428 Assistant Engineers, the Public Works Department followed the rule of reservation. Due to reasons beyond their control, Public Works Department could appoint only 300 selected candidates. Though Department made every effort to oust the temporary appointees to accommodate the newly recruited Assistant Engineers, all such efforts turned futile. Since sufficient posts were not available for accommodating the selectees beyond Sl.No.326, which includes the respondents 4 to 17, the Chief Engineer took up the matter with the Government for exploring the possibility of accommodating some of the selected candidates in the Highways Department. The Chief Secretary convened a meeting of all the Secretaries and it was resolved to accommodate the newly appointed Assistant Engineers of Public Works Department, in the Highways Department. The new projects undertaken by the Highways Department and the large number of vacancies in the said Department also contributed for taking such a decision. Since concurrence of the Public Service Commission was required for appointment in the Highways Department, the matter was taken up with the Tamil Nadu Public Service Commission. The Service Commission granted concurrence for appointment in the Highways Department.

10. The Public Works Department took the willingness from the selected candidates for appointment in the Highways Department. The respondents 4 to 17 exercised the option, rather



willingness, to join the Tamil Nadu Highways Department. The Government issued orders of appointments on 6 September 1989 to the respondents 4 to 17 and immediately thereafter, they joined the Tamil Nadu Highways service.

WEB COPY

11. It is a matter of record that only thereafter, notification was issued by the Highways Department for appointment to the post of Assistant Engineer in the said Department. The notification was issued on 12 September 1999. The appellants, along with others, submitted applications. The appellants were appointed as Assistant Engineers by order dated 14 August 1991 and they joined service between August 1991 and January 1992.

12. The Chief Engineer (Highways and Rural Work) Madras, prepared a seniority list of Assistant Engineers/ Junior Engineers of the said Department, as on 1 January 1993. The seniority list was published on 18 April 1994. In the said seniority list, though respondents 4 to 17 were shown above the appellants, the fact remains that they were shown only as "Re-designated Assistant Engineers". The nomenclature "re-designated as Assistant Engineers" is taken as a ground by the appellants to contend that it was a "mala fide action". According to the appellants, in case the respondents 4 to 17 were appointed in the Highways Department even prior to their appointment, there was no need to show them as re-designated Assistant Engineers.

13. There is no dispute that respondents 4 to 17 were shown as re-designated Assistant Engineers in the seniority list published on 18 April 1994. However, in the subsequent seniority list as on 1 April 2004, published on 29 April 2004 the respondents 4 to 17 were placed above the appellants, without any confusion. The error committed in the seniority list dated 18 April 1994 was corrected and the identity of respondents 4 to 17 were correctly shown. The seniority list was not challenged by the appellants within a reasonable period.

14. The Government thereafter published the panel of Divisional Engineers, fit for promotion to the post of Superintending Engineers in the Highways Department. The Government Order in G.O.(2D) No.6, Highways and Small Ports (HK-1) Department, dated 31 January 2006 was published in the Government gazette. The Assistant Engineers appointed pursuant to the notification dated 12 September 1989 were shown as "juniors". Even thereafter, seniority list was not challenged by the appellants.

15. The appellants have not taken any action right from 18 April 1994 for revising the seniority. Though it can be stated that the respondents 4 to 17 were described as re-designated



Assistant Engineers in the seniority list dated 18 April 1994, no such indication was given in the subsequent seniority lists published by the Government. Therefore, it cannot be said that the appellants were not aware of the seniority position of respondents 4 to 17, even after publication of the seniority list of Assistant Divisional Engineers as on 1 April 2004 on 29 April 2004. The respondents 4 to 17 were promoted as Assistant Divisional Engineers/Divisional Engineers/Superintending Engineers, by giving them due seniority in the Highways Department. However, their seniority was not challenged by the appellants. It was only in 2010, the appellants made a hue and cry that their seniority was overlooked and respondents 4 to 17 were given undue preference notwithstanding the illegality in their initial appointment.

16. The learned Senior Counsel for the appellants 2 and 3 and learned counsel for appellants 1 and 4 strenuously contend that the very appointment of the respondents 4 to 17 is bad in law and as such, there was no need to challenge their appointment specifically. We are not in a position to entertain the said argument, which has no force in law.

17. The respondents 4 to 17 were initially selected for appointment in the Public Works Department. The selection was done by the Tamil Nadu Public Service Commission. The ultimate selection was on the basis of the rule of reservation. It is a matter of record that there were 428 vacancies and in respect of the entire vacancies, selection process was undertaken by the Government. For certain reasons beyond the control of the Appointing Authority, postings orders could not be issued to all the Assistant Engineers. The respondents were placed beyond Sl.No.328 in the select list. It was not a waiting list. It was a select list on the basis of communal roster. Therefore, the contention that waiting list was operated subsequently by appointing in the Highways Department has no basis.

18. The file produced by the Government clearly shows that every attempt was made to oust the temporary Assistant Engineers who were in the Public Works Department service, to accommodate the newly selected Assistant Engineers. Every such attempt was delayed on account of the litigation initiated by the temporary Assistant Engineers in Public Works Department. It was only under such circumstances, a conscious decision was taken at the highest level to accommodate the remaining selected Assistant Engineers in the Highways Department. The string of projects in the Highways Department also made the Government to take such a decision. It was essentially a decision taken in the larger public interest to complete the developmental activities involving the Highways Department.



19. The appellants would be justified in their contention in case appointments of respondents 4 to 17 were made after their selection in the Highways Department. It is a matter of record that pursuant to the decision taken by the Government, option was taken from the Assistant Engineers in the Public Works Department. The Government taking into account the willingness shown by respondents 4 to 17, accommodated them in the Highways Department. The respondents 4 to 17 joined the service even before the issuance of the notification, which ultimately culminated in the appointment of the appellants in Highways Department. Therefore, it is very clear that respondents 4 to 17 were seniors to the appellants at all point of time in the Highways Department.

20. The affidavit filed in support of the writ petition proceeds as if respondents 4 to 17 entered the Highways service through back door. There is absolutely no merit in the said contention. The file produced before us clearly shows that there was no waiting list as such. It was only the select list which was operated subsequently. In fact, the respondents 4 to 17 were not responsible for non appointment in Public Works Department. It was only due to the subsequent events, they were accommodated in the Highways Department.

21. The learned counsel for the appellants 1 and 4 took up a technical contention that there was no participation of the Government in the process of appointment of respondents 4 to 17 in the Highways Department. There is absolutely no merit in the said argument for more than one reason. The file produced before us shows that the meeting was convened by the Chief Secretary and a decision was taken by the Government to accommodate the Assistant Engineers in the Public Works Department who were waiting for appointment, in the Highways Department. There were exchange of correspondences between various Departments in this regard. Subsequently, a decision was taken to accommodate them in the Highways Department, more so on account of the large number of works undertaken by the said Department and the requirement of man power. The proposal was sent to the Service Commission for concurrence. The concurrence was necessary, as the posts would come within the purview of the Tamil Nadu Public Service Commission. It is a matter of record that Tamil Nadu Public Service Commission also concurred with the proposal. There are indications in various orders and correspondence that a decision was taken at the Government level to accommodate the Assistant Engineers in the Highways Department. Even otherwise, it cannot be said that the Government was not a party to the process of appointment or the process relating to fixation of seniority. The seniority list were all published only by the Government. The seniority list contain the names of respondents 4 to 17 above the appellants. Even if there was an irregularity



initially, it was regularized by approving the seniority list by the Government at a later point of time, placing respondents 4 to 17 above appellants. Therefore, on any account, the contention regarding the failure to obtain the approval of the concerned minister in the process would not help the appellants.

22. The original file contain the copies of the appointment orders issued to the 15 re-alloted candidates. The order was issued on 6 September 1989. The Assistant Engineers joined service from 11 September 1989 and their probation period commenced from 14 May 1990. The appellants were appointed only on 4 September 1991 and appointment orders were issued to them on 24 October 1991. The appellants were not borne in the cadre of Assistant Engineers in the Tamil Nadu Highways Department, when the respondents 4 to 17 joined the said service.

23. The appellants were in the know of things at all point of time with regard to the appointment of respondents 4 to 17 in the Tamil Nadu Highways Department. They have, for reasons best known, not taken any action at any point of time to challenge the appointment orders or to revise the seniority. It was only 16 years after publishing the seniority list, that the appellants have come up with a grievance that they were placed below the Assistant Engineers, who were initially recruited in the Public Works Department.

Seniority - a civil right :-

24. The Supreme Court in H.S. Vankani v. State of Gujarat, (2010) 4 SCC 301, underlined the importance of seniority and the consequences of unsettling the seniority.

The Supreme Court said :-

38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may



WEB COPY

drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action.

25. The Supreme Court in *State of U.P. And others vs. Dinkar Sinha*, 2007(7) Scale 8, held that seniority is a civil right and infringement of the said right would be permissible only if there exists any rules validly framed under a statute or proviso appended to Article 309 of the Constitution of India.

Determination of seniority:-

26. The Hon'ble Supreme Court in *K.A.Abdul Majeed vs. State of Kerala and others*, (2001 (6) SCC 292), made it very clear that the seniority of an employee is to be determined by the date of first appointment in the service. The Supreme Court held that the question whether initial appointment was regular or not could not be considered at the time of fixation of seniority.

27. The Supreme Court in *Amarjeet Singh v. Devi Ratan*, (2010) 1 SCC 417, held that an employee cannot be given seniority prior to his birth in the cadre.

The Supreme Court said :-

27. The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an



WEB COPY

intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue." [Vide S.P. Kapoor (Dr.) v. State of H.P. Shitla .Prasad Shukla v. State of U.P. (SCC p. 190, para 10) and Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.]

28. The Supreme Court in Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267, summarized the legal position regarding determination of seniority in the following manner:-

45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority



WEB COPY

cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

29. The Supreme Court in Ram Janam Singh v. State of U.P., (1994) 2 SCC 622, clearly held that date of entry into the service is the determining factor for fixation of seniority.

The Supreme Court said :-

10. From time to time controversy regarding inter se seniority is raised between persons recruited from different sources to the same service. In past, notional seniority used to be given to one group of officers, purporting to mitigate their hardship or to rectify any alleged wrong done to them in the process of recruitment or promotion. Ultimately it was realised that if liberty is given to fix seniority of an officer or group of officers belonging to a particular category with reference to a notional date, that will lead to great uncertainty in public service. The date of entry into a particular service was considered to be the most safe rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different judgments of this Court, a Constitution Bench in the case of Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] came to the same conclusion. The same has been reiterated in the case of State of W.B. v. Aghore Nath Dey [(1993) 3 SCC 371 : 1993 SCC (L&S) 783 : (1993) 24 ATC 932] . It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution.

The Rule Position :-

30. Rule 35 of the Tamil Nadu State and Subordinate Rules provides for fixation of seniority. Rule 35aa reads thus.

(aa) The seniority of a person in a



WEB COPY

service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade; Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed: Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority: Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.

31. In the subject case, there was no challenge to the appointment of respondents 4 to 17 in the Tamil Nadu Highways Department. It was only the seniority list which was put to challenge and that too after a considerable period. In order to upset the seniority, the appellants have taken up a contention that the initial appointment was bad. However, the fact remains that the appointment was never an issue before any forum.

Limitation period for revision of seniority:-

32. There is also a limitation period prescribed in the Tamil Nadu State and Subordinate Rules for revising the seniority. Rule 35(f) clearly provides that application for revision of seniority should be submitted to the Appointing Authority within a period of three years from the date of appointment to such service.

33. In the subject case, the seniority list of the Assistant Engineers was published on 18 April 1994. Subsequently, seniority list of Assistant Divisional Engineers as on 1 April 2008 was published on 12 November 2008. There was absolutely no challenge to the seniority list at the instance of



the appellants. The appellants have not submitted any application within the prescribed period for revision of seniority. It is a matter of record that objections were called for after publishing the tentative seniority list since none of the appellants have objected, final seniority list was drawn. The claim for revision of seniority at this point of time is barred by limitation.

34. The learned Single Judge verified the entire records and correctly opined that there was no illegality either in the appointment of respondents 4 to 17 in the Highways Department or in the seniority assigned to them. We do not find any reason made out by the appellants to interfere with the order passed by the learned Single Judge.

35. For the reasons aforesaid, we dismiss the intra court appeals without any liability to pay costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

tar

To

- 1 THE SECRETARY TO THE GOVERNMENT OF TAMILNADU,
HIGHWAYS DEPARTMENT
FORT ST. GEORGE CHENNAI 9
- 2 THE CHIEF ENGINEER (GENERAL)
HIGHWAYS DEPARTMENT CHEPAUK CHENNAI-5
- 3 THE SECRETARY, TNPSC, CHENNAI-2

+1cc to Mr.N.Subramaniam, Advocate SR.No.58165
+2cc to Mr.V.K.Gowtham, Advocate SR.No.58362,57852
+1cc to Mr.A.Prabhakaran, Advocate SR.No.57188
+1cc to Government Pleader SR.No.58596
+3cc to Mr.L.SM.Hasan Fizal, Advocate SR.No.58425

W.A.No.1615 OF 2017

pm(CO)
GMY(01/08/2019)