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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P. No. 10543 of 2006

- 1.A.Senthil Kumar
- 2.M.Mohanagandhi
- 3.M.Muruga Boopathi
- 4.V.Uthayakumar
- 5.M.Sathiaseelan
- 6.R.B.Sathya Bama
- 7.D.Raja Ebinezar Joseph
- 8.A.Kumanan
- 9.R.Ravikumar
- 10.M.Nakarajan
- 11.R.Selvaraju
- 12.M.Kumutha
- 13.K.Akila

...Petitioners

Vs.

1. The Government of Tamilnadu
represented by its Secretary,
Highways Department,
Fort St. George, Chennai-9.
2. The Chief Engineer, (General),
Highways Department,
P.W.D. Building,
Chepauk, Chennai-5.
3. M.S.Santharam



4. S.R.Ramasubramanian

5. N.Chinnanan

6. J.Venkatesan

7. V.S.R.Mayadevan

8. V.Perumal

9. P.Dayanidhi

10.S.Mohanraj

11.S.parthasarathy

12.D.Clive,

13.G.Prabavathi

14.D.Xavier

15.M.Baladhandapani

16.S.Raghunathan

17.G.Krishnasamy,

18.M.Duraisamy,

19.C.V.Ramachandran

20.A.K.Rajaduraiavel Pandiyan

21.S.Chidambaram,

22.A.Venkatesan

23.C.Alagiriswamy

24.J.Shanmugam

25.C.Palaniyandi

...Respondents

Prayer: Writ petition is filed under Art. 226 of Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate WRIT under Art. 226 of the Constitution of India calling for the records pertaining to the issue of the seniority list of Assistant Engineers in Highways Department as on 01.01.2004 published by the 2nd respondent in his proceedings



No. 22369 Nir 3(4) 2004 dated 29.04.2004, quash the same and consequently direct the first and second respondents to prepare the revised seniority list of Assistant Engineers by reckoning the seniority of Assistant Engineers re-designated from Junior Engineers only from the year in which they became eligible to be accommodated within the 25% quota of vacancies reserved for the category of Junior Engineers as contemplated under the said rules and accordingly to issue revised orders of all promotions already made and revised seniority list in the promoted categories.

For Petitioners : Mr.N.Subramniyan

For Respondents : Mr.K.Magesh, Spl.G.P.

For R1 and R2

Respondents 4, 7, 10, 15 - II Batta Due

Respondents 8,9,11,19,24 - Dismissed.

R16, 20, 22 - No appearance.

ORDER

The petitioners are working as Assistant Engineers in Tamil Nadu Highways Department and are engineering graduates and got regularly selected by Tamil Nadu Public Service Commission for the year 1993-95 under direct recruitment and appointed as Assistant Engineers, 5th category of Tamil Nadu Highways Engineering Service in the year 1998. The seniority of the Assistant Engineers selected by Tamil Nadu Public Service Commission is fixed as per the rank obtained in the said selection in accordance with rule 35 (a) of General rules.

2. According to the petitioners, the second respondent have not published any seniority list of Assistant Engineers from 1998. Only during the year 2004, a seniority list of Assistant Engineers in Highways Department as on 01.01.2004 was published by the 2nd respondent in his proceedings dated 29.04.2004. In the said seniority list, the respondents were placed above the petitioners under the heading "Redesignated as Assistant Engineers" during various years. The said respondents were redesignated as Assistant Engineers from the Junior Engineers who were appointed not in accordance with Special Rules to Tamil Nadu Highways Engineering Service. The petitioners have made representation dated 29.07.2004 through Association to the 2nd respondent to revise the impugned seniority list by reckoning the seniority of the Assistant Engineers redesignated from Junior Engineers on acquiring B.E. Degree only from the date on which they were eligible to be appointed in the category of Junior Engineers within the quota of 25% stipulated under



Special Rules to Tamil Nadu Highways Engineering Service. The 2nd respondent did not reply to the representation so far. Hence the petitioners preferred this Writ Petition.

3. The learned counsel for petitioners contends that the category of Assistant Engineer is the 5th category in Tamil Nadu Highways Engineering Service. The method of recruitment to the category of Assistant Engineer is (i) Direct recruitment and (ii) recruitment by transfer from Junior Engineers with B.E degree. The category of Assistant Engineer was originally under Tamil Nadu Highways Engineering Subordinate Service and was known as Junior Engineer. In G.O.Ms. No. 496 date 17.02.1971, the category of Junior Engineer was directed to be brought under Tamil Nadu Highways Engineering Service. While in the Service, prior to 24.05.93, the category of supervisor (now Junior Engineer) was used to be redesignated as Junior Engineer (now Assistant Engineer) on acquiring B.E. Degree. In G.O.Ms.No. 294 dated 22.02.1977, the redesignation of various categories, viz. Supervisor as Junior Engineer; Junior Engineer as Assistant Engineer and Assistant Engineer as Assistant Divisional Engineer was ordered. The above said G.Os dated 17.02.1971 and 22.02.1977 were given statutory effect by amending Special Rules to Tamil Nadu Highways Engineering Service retrospectively in G.O.Ms.No.807 dated 24.05.93. Both, under the Tamil Nadu Highways Engineering Subordinate Service and under Tamil Nadu Highways Engineering Service, a quota rule of 75% : 25% has been stipulated for appointment of vacancies accruing every year for the appointment of Assistant Engineers and Junior Engineers respectively. It is relevant to state that even though the Assistant Engineer and Junior Engineer are different and distinct categories, both of them are holding the same office, namely, section office in Tamil Nadu Highways Department and are interchangeable.

4. The learned counsel for petitioners submitted that the petitioners names were included in the seniority list of Assistant Engineers first time only in the seniority list of Assistant Engineers as on 01.01.2004 published by the second respondent vide his proceedings No. 22369 Nir 3(4) 2004 dated 29.04.2004, wherein, all the names of the respondents are not at all found. Instead they were all promoted as Assistant Divisional Engineers and surprisingly, neither the panel of Assistant Engineers fir for promotion as Assistant Divisional Engineers nor their promotion orders as Assistant Divisional Engineers were published in the Tamil Nadu Government Gazette as stipulated in rule 4(a) of General Rules. Further, the second respondent included the names of the respondents even in the seniority list of Assistant Divisional Engineers as on 01.04.2004 published vide his proceedings dated 29.04.2004 and somewhere even promoted as Divisional Engineers. The



representation dated 06.07.204 made by the petitioners Association challenging the inclusion of their names in the seniority list of Assistant Divisional Engineers as on 01.04.2004 had not been acted upon by the first and second respondents. Aggrieved by the same, the present writ petition is filed before this court.

5. The learned counsel for petitioners further contends that the first and second respondents without following the statutory rules and the settled principles of law prepared the impugned seniority list of Assistant Engineers as on 01.01.2004 and the seniority list of Assistant Divisional Engineers as on 01.04.2004, based on which the respondents who are to be placed below the petitioners and like Assistant Engineers selected for the year 1993-95 in the impugned seniority list of Assistant Engineers as on 01.01.2004 were given promotions as Assistant Divisional Engineers as on 01.04.2004 and the panel of Assistant Divisional Engineers fit for promotion as Divisional Engineers in G.O. 169 dated 19.08.2005 is causing grave injustice and irreparable loss to the petitioners. The first and second respondents ignored the said quota rule irrespective of the orders of the Hon'ble Tamil Nadu Administrative Tribunal in O.A.No. 4663 of 1992 to follow the quota rule strictly and to revise the promotions made from 1972. therefore, the acts of the first and second respondents are willful and nothing but perpetuating the illegality, which shall be stopped forthwith.

6. The learned counsel for the petitioners would submit that the petitioners were appointed through Tamilnadu Public Service Commission in accordance with rules and joined the service during January 1998. The respondents 3 to 24 were appointed as Junior Engineers during the years 1981 to 1986. As the private respondents except the respondents Nos. 16,20,21 and 22 were now retired, the details with regard to the respondents 16 and 20 to 22 is that they were redesignated as Assistant Engineers during the year 1987. These redesignated Assistant Engineers were placed as seniors to the petitioners in the seniority list of Assistant Engineers as on 1.1.2004 published by the 2nd respondent in his proceedings dated 29.04.2004. This is being under challenge in this writ petition.

7. The petitioners challenged the seniority list and the consequent promotions of the private respondents in this writ petition mainly on the ground that they were appointed as Junior Engineers in excess of the quota of 25% earmarked for the Junior Engineers under rule 18(a) of Tamilnadu Highways Engineering Service.

8. For the first time after their joining service, the seniority was published during the year 2004. As their



representation through the Association did not invoke any response from the 1st respondent and 2nd respondent, the petitioner challenged the seniority list as on 1.1.2004, this writ petition is filed. Rule 35(f) of General Rules relied upon by the respondents is only supporting the case of the petitioners as the said rule permits challenge to seniority within 3 years from the date of publication of seniority list. Herein the seniority list was published on 29.4.2004 and the writ petition has been filed in the year 2006 itself, i.e., before 3 years from that date. Therefore, there was neither delay nor laches in filing the writ petition as claimed by the respondents.

9. As to non-challenging of 1993 seniority list pointed out by the learned counsel for the respondents, it is submitted by the petitioners counsel that the petitioners joined the service only during January' 1998 and the 1993 seniority of Assistant Engineers/Junior Engineers having been not communicated to them after joining the service and further redesignation of the private respondents having been not Gazette notified as mandated under rule 4(a) of General Rules, the question of challenging the 1993 seniority list does not arise.

10. The savings under rule 23(a) protects the appointment of Assistant Divisional Engineers from Assistant Engineers and not the Assistant Engineers redesignated from Junior Engineers. Rule 23(b) only protects the appointments of Assistant Engineers appointed from Draughting officials and not from Junior Engineers. Therefore, the reliance on rule 23 of saving clause by the respondents is unsustainable.

11 The Hon'ble Supreme Court did not refer to G.O.Ms.No. 807 Public Works Department dated 24.04.1993, by which the category of then Junior Engineer, now Assistant Engineer was carved out from Tamilnadu Highways Engineering Subordinate Service and brought under category no.5 of Tamilnadu Highways Engineering Subordinate Service. Therefore, the said decision is not at all applicable. Further, the question of excess appointment of Junior Engineers and consequential redesignation of such excess Junior Engineers as Assistant Engineers on acquiring B.E degree and their seniority inter se with directly recruited Assistant Engineers like the petitioners was not the issue therein. Therefore, the said decision of the Hon'ble Supreme Court is not applicable.

12. The quota rule is applicable only for the vacancies accruing for every year in both the categories of Assistant Engineers and Junior Engineers and no where it states that it is applicable to cadre strength.



13. Respondents 1 and 2 filed counter affidavit and submitted that as per rule 3 of the Tamil Nadu Highways Engineers Subordinate Service the said 25% reserved for Diploma holders can be filled by direct recruitment or by promotion from feeder categories. Taking into consideration large number of persons working in the feeder categories of Junior Engineer with diploma qualification, the direct recruitment of Junior Engineer was not resorted to. The Junior Engineer post was filled up from eligible diploma holders by promotion upto 1995. During 1995, the Association of the Tamil Nadu Highways Engineers in their representation dated 19.06.1995 has brought to the notice of the Government, that Junior Engineers were recruited in excess of their 25% quota of the earlier years and had put forth the two options to tide over the situation i.e, (i) either to revert all those Junior Engineers who were recruited in excess of 25% quota or to recruit only Assistant Engineers continuously to set right the quota for Degree holders. It was decided that instead of reverting the Junior Engineers appointed in excess which may cause hardship to them it was suggested to recruit (Degree holders) Assistant Engineer continuously to set right the deficiency in the quota for degree holders. Accordingly the entire 217 numbers of vacancies estimated for the year 1995-1996 and 269 number of vacancies estimated for the year 1997-1998 were set apart for direct recruitment of Assistant Engineers.

14. It is submitted that in G.O. (Ms) No. 288, Public Works Department, dated 01.03.1978 and G.O.(Ms) No.2070, Public Works Department, dated 30.12.1980, orders have been issued that a Junior Engineer who has acquired B.E., degree on the day following the last day of the Examination will be re-designated as Assistant Engineer. According to rule 18 (b) of the Tamil Nadu Highways Engineering Service "Junior Engineers, acquiring a degree in Engineering or its equivalent in a calendar year and re-designated as Assistant Engineers shall be assigned the 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 is 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 will be assigned rank below the last Assistant Engineer in the list last communicated. For this purpose, 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. Accordingly the seniority of the Respondents 3 to 25 were fixed and issued as on 01.01.1993 and again on 01.01.2004. hence the seniority list needs no revision. Once a Junior Engineer who acquired degree in Engineering is appointed as Assistant Engineer he has to be considered as moved to the 75% quota allotted to degree holders. Since there is no provision in the rules to accommodate the degree holders within



the 25% vacancies allotted to diploma holders. The respondents thus submit that the averments made in the writ petition is not correct.

15. As on 01.11.2008, 683 Assistant Engineers (degree holders) and 174 Junior Engineers (diploma holders) alone are working in the department. As per the 75% - 25% quota that must be 227 Junior Engineers and hence they are in short of 54 in number. Thus it is evident that the Assistant Engineers (degree holders) are in service in excess of the 75% quota reserved for them, whereas the strength of Junior Engineers (diploma holder) is less than their 25% quota.

16. If no selection is 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 will be assigned rank below the last Assistant Engineer in the list last communicated. For this purpose, 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. Hence, it is clear the re-designation of the respondents 3 to 25 as Assistant Engineer and assigning seniority to them in the post of Assistant Engineer were rightly done as per provisions laid down in rules 3 & 18(b) of the Tamil Nadu Highways Engineering Service Rules and there was no violation of any rules.

17. As per the directions of the Hon'ble Tamil Nadu Administrative Tribunal in OA.No.4663/1992 the interse seniority of Assistant Engineers and Junior Engineers in the category of Assistant Divisional Engineer duly following the 3:1 ratio is being re-fixed by preparing presumptive panels right from the year 1972. So far presumptive panels for the post of Assistant Divisional Engineer upto the year 1984 has been prepared and interse seniority re-fixed. The regular panels for the subsequent year are under preparation in consultation with the Tamil Nadu Public Service Commission. Till then promotion to the posts of Assistant Divisional Engineer and subsequent promotion to Divisional Engineer, Superintending Engineer and Chief Engineer are made purely on temporary basis and their seniority are liable to be re-fixed. As far as Assistant Engineers and Junior Engineers are concerned there is no dispute in their seniority lists as they are maintained separately. Their promotion as Assistant Divisional Engineer is also made in the ratio 3:1 as per the provisions contained in Tamil Nadu Highways Engineering Service rules. Only because the earlier year panels have to be revised based on the order of the Hon'ble Tamil Nadu Administrative Tribunal, the promotion made till that exercise is over have also to be made temporarily. Hence, it is clear that no injustice has been done to the petitioners.



18. Respondent Nos.6, 16, 20 and 22 filed counter affidavits. It is submitted that as per Rule 35(aa) of General Rules, the Seniority assigned in the post of Assistant Engineer, the Feeder category of post in the Tamil Nadu Highways Engineering Service, has to be retained and maintained in all further promotions. Thus the seniority in the post of Assistant Divisional Engineers was determined reckoning the seniority in the post of Assistant Engineer. The seniority of Assistant Divisional Engineers published on 29.04.2004 had become final with orders issued in G.O.(Rt).No.263, Highways Department, dated 22.09.2004.

19. The issue raised in this writ petition has already been answered by the Supreme Court in the case of B.Thirumal Vs. Ananda Sivakumar and others reported in (2013) 8 MLJ 479 (SC) and also by this court by its common order dated 15.10.2014 in W.P.Nos.34276, 14865 and 24783 of 2007.

20. By common order, dated 15.10.2014, in W.P. No. 34276, 14865 and 24783 of 2007, the Honourable Supreme Court in Civil Appeal Nos. 10660-10662 of 2013 filed by Thiru B.Thirumal, has held as follows:-

"6. We have examined the judgement of the Honourable Supreme Court in B.Thirumal case cited supra, which has a direct bearing on the controversy in question. As usual, there is no stand of the State Government on record. It really cannot be disputed now that acquiring of a B.E. Degree would not confer automatically on the Junior Engineers a promoted post, but only among to re-designation of their post as Assistant Engineers. They, thus continue to be part of the Tamil Nadu Engineering Subordinate Service and can be promoted only under the 25% quota. As far as the persons who have already been erroneously promoted under the 75% quota are concerned, the order of the Honourable Supreme Court protects them to the extent, that it does not seek to set at naught what has been done in the past. It however, does not take care of the issue of inter-se-seniority, which would not have to be examined by the State Government in the context of those persons still being part of the Tamil Nadu Engineering Subordinate Service. There are no details as to how many posts were available at the relevant point of time when promotions took place and under which quota. The seniority list would undoubtedly have to be worked out again on the basis of the Judgment pronounced by the Honourable Supreme Court and thus, while the Judgment protects the Junior Engineers from being demoted, inter-se-seniority may be affected as a consequence of the ratio of the said Judgment, which



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we have discussed aforesaid. We, thus call upon the State Government to apply its mind to the issue of inter-se-seniority in the context of the aforesaid Judgement and accordingly circulate a draft seniority list, invite objections and thereafter publish the final seniority list. This task be carried out within a maximum period of six months from today.

7.The writ petitions accordingly stand disposed of. No costs."

21. The Honourable First Bench of this court vide order dated 15.10.2014 in W.P.Nos.34276, 14865 and 24783 of 2007, had an occasion to deal with similar issue and held in paragraph 6 as under:-

"6. We have examined the judgment of the Honourable Supreme Court in B.Thirumal case cited supra, which a direct bearing on the controversy in question. As usual, there is no stand of the State Government on record. It really cannot be disputed now that acquiring of a B.E.Degree would not confer automatically on the Junior Engineers a promoted post, but only amount to re-designation of their post as Assistant Engineers. They, thus continue to be a part of the Tamil Nadu Engineering Subordinate Service and can be promoted only under the 25% quota. As far as the persons who have already been erroneously promoted under the 75% quota are to the extent that it does not seek to set as naught what has been done in the past. It however, does not take care of the issue of inter set seniority, which would now have to be examined by the State Government in the context of those persons still being part of the Tamil Nadu Engineering Subordinate Service. There are no details as to how many posts were available at the relevant point of time when promotions took place and under which quota. The seniority list would undoubtedly have to be worked out again on the basis of the Judgment pronounced by the Honourable Supreme court and thus, while the Judgment protects the Junior Engineers from being demoted, inter set seniority may be effected as a consequence of the ratio of the said Judgment, which we have discussed aforesaid. We, thus call upon the State Government to apply its mind to the issue of inter se seniority in the context of the aforesaid Judgment and accordingly circulate a draft seniority list, invite objections and thereafter publish the final seniority list. This task be carried out within a maximum period of six months from today.



7. The writ petitions accordingly stand disposed of.
No costs."

22. In the light of the above decision of the Honourable Supreme Court and this Court, this writ petition is disposed of with a direction to the respondents 1 and 2 to follow the directions of the Honourable Supreme Court and this Court as cited in the preceding paragraph. The respondents 1 and 2 shall take necessary steps to implement the directions of the Honourable Supreme Court as well as this Court and complete the same within a period of six months from the date of receipt of a copy of this order, if not implemented to these petitioners. No costs.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

nvsri

To

1. The Secretary,
Highways Department,
Fort St. George, Chennai-9.
2. The Chief Engineer, (General),
Highways Department,
P.W.D. Building,
Chepauk, Chennai-5.

+1cc to M/s.N.Subramaniam, Advocate, S.R.No.55766

+1cc to M/s.Sivam Sivanandaraj, Advocate, S.R.No.55357

+1cc to the Government Pleader, S.R.No.55848

W.P. No. 10543 of 2006

RGN(CO)
SU(26/11/2021)