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IN THE HIGH COURT JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

W.P.No. 33541 of 2007

and

M.P.No.2 of 2007

- 1.K.Murugan
- 2.P.Krishnamoorthy
- 3.R.Anbarasan
- 4.R.Kunjithapatham

...Petitioners

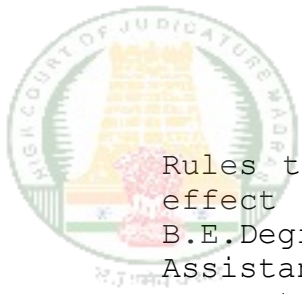
Vs

1. The Government of Tamil Nadu
Rep. By the Secretary
Public Works Department
Fort St.George, Chennai-9
2. The Chief Engineer(GI)
Public Works Department
PWD Campus, Chepauk
Chennai-5
3. The Tamil Nadu Public Service Commission
Rep. By its Secretary
Government Estate, Chennai-2
4. K.Ravindran
Assistant Engineer (PWD)
Water Resources Organisation
Mamallapuram

5. P.Sridhar

...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India prayed to issue a WRIT OF Declaration declaring the redesignations of the Junior Engineers on acquiring B.E.Degree as Assistant Engineers in Public Works Department ordered by the 2nd respondent after 11.09.1985, in so far as redesignating the Junior Engineers as Assistant Engineers even before approval of satisfactory completion of probation in the category of Junior Engineer and without preparing an approved list of candidates following the procedure, criteria etc., contemplated under the Tamil Nadu State and Subordinate Service Rules, especially General Rules 4 and 36A and Special



Rules to Tamil Nadu Engineering service by giving retrospective effect from the day following the last date of examination of B.E. Degree and reckoning the seniority of such redesignated Assistant Engineers from the aforesaid anterior date, is illegal unconstitutional and void ab initio and consequently direct the 2nd respondent to cancel all the orders of such redesignations and fixation of seniority issued after 11.09.1985 and further direct the 2nd respondent to appoint only the Junior Engineers, who are approved probationer in the category of Junior Engineer and who have acquired B.E. Degree after entering service as Junior Engineer, as Assistant Engineers by recruitment by transfer only after preparation of a list of approved candidates after following all the procedures, evaluation criteria etc., as contemplated under Tamil Nadu State and subordinate Service Rules and Special Rules to Tamil Nadu Engineering Service and to reckon the seniority of such Assistant Engineers appointed or to be appointed by recruitment by transfer from Junior Engineers only from the actual date of appointment and place them below the last Assistant Engineer selected by Tamil Nadu Public Service Commission whose select list was communicated to the 1st respondent in the same year as contemplated under rule 2(E) of Special Rules to Tamil Nadu Engineering service.

For Petitioners : Mr.N.Subramaniayan

For Respondents : Mr.K.Magesh, Spl.Govt.Pleader
for R1 and R2

Mr.S.Namasivayam for R4 and R5
R3- No appearance.

O R D E R

This writ petition is filed seeking a direction to the 2nd respondent to cancel all the orders of redesignations and fixation of seniority ordered by the 2nd respondent on 11.09.1985 and to direct the 2nd respondent to appoint only the Junior Engineers, who are approved probationer in the category of Junior Engineer and who have acquired B.E. Degree after entering service as Junior Engineer, as Assistant Engineers by recruitment by transfer only after preparation of a list of approved candidates after following all the procedures as contemplated under Tamilnadu State and Subordinate Service Rules and Special Rules to Tamilnadu Engineering service.

2. It is averred in the writ petition that the Engineering personnel in the Tamilnadu Public works Department are governed by the Special Rules to Tamilnadu Engineering Service and



Special Rules to Tamilnadu Engineering Subordinate Service. The category of Assistant Engineer and above, up to Chief Engineer, are coming under, Tamilnadu Engineering Service, a State Service, and the categories viz., Junior Engineer, Draughtsmen and below are coming under Tamilnadu Engineering Subordinate Service, a Subordinate Service. The category of Assistant Engineer was originally under Tamilnadu Engineering Service in G.O.Ms.No.496 dated 17.02.71 which was given statutory effect by the amendments issued retrospectively in G.O.Ms.Nos.1581 and 1582 even dated 11-09-85. Prior to issue of G.O.Ms.No.294 PWD dated 22-2-77, the Junior Engineers were known as Supervisors, the Assistant Engineers were known as Junior Engineers and Assistant Executive Engineers were known as Assistant Engineers.

3. The methods of recruitment for the post of Assistant Engineer when under Tamilnadu Engineering Subordinate Service were:

- (i) Direct recruitment through TNPSC and
- (ii) By designating Junior Engineers who possess B.E. Degree as Assistant Engineers.

The aforesaid designation of Junior Engineers who possess B.E. Degree as Assistant Engineers was based on the provisions under the "Note" appended to the constitution of categories in Rule 1 of Tamilnadu Engineering Subordinate Service. The above said note was available in the rules even from 1950s. Even though part time B.E degree was introduced only during 1970s, the provisions under the said 'Note' were used to re-designate the Junior Engineers who acquire B.E. Degree as Assistant Engineers. The categories, Assistant Engineer and Junior Engineer, even though are separate and distinct categories, they occupy an office known as Section Office and the vacancies accruing in that Section office, i.e., in both categories of Assistant Engineers and Junior Engineers, every year shall be apportioned between Assistant Engineers and Junior Engineers at a ratio of 75%:25% (3:1). Accordingly the 75% of vacancies accruing every year in the category of both Assistant Engineer and Junior Engineer are filled by Assistant Engineers from degree holders and the balance 25% vacancies are filled by the Junior Engineers from the diploma holders.

4. The amendments were issued to Special Rules to Tamilnadu Engineering Service in G.O.Ms.Nos 1581 and 1582 both dated 11-09-1985, based on which the category of Assistant Engineer became 5th category in Tamilnadu Engineering Service and the method of Appointment to the category of Assistant Engineer thereafter became

- (i) By direct recruitment through TNPSC and
- (ii) By recruitment by transfer from Junior Engineers, overseers, civil draughts men who acquire B.E. Degree after



entering service as Junior Engineer.

Thus the concept of the re-designation of Junior Engineer as Assistant Engineer on acquiring B.E. Degree came to an end on 11.09.1985, the date on which the rules were amended by bringing the category of Assistant Engineer as 5th category in Tamilnadu Engineering Service and the method of Appointment to the category of Assistant Engineer from Junior Engineer became recruitment by transfer thereafter. As per the amended rules, a Junior Engineer who acquired B.E. Degree after entering service as Junior Engineer can be appointed as Assistant Engineer only by recruitment by transfer after preparation of panel and publishing the same in Government Gazette as per Rule 4(a) of General Rules. The date of appointment shall have to take effect only from the date of order of such appointment. The seniority of such Assistant Engineers appointed by recruitment by transfer as aforesaid in a calendar year shall be placed below the last Assistant Engineer selected by direct recruitment in that calendar year through Tamilnadu Public Service Commission, and the calendar year shall be decided based on the date of communication of the list by Tamilnadu Public Service Commission as mandated under rule 2(e) of Special Rules to Tamilnadu Engineering Service.

5. The 1st respondent issued G.O.Ms.No.66 P.W.D dated 12.03.2007 wherein orders were issued to reckon the seniority of Assistant Engineers redesignated from the category of Junior Engineers who acquired B.E. Degree by placing them above the Assistant Engineers directly recruited if the date from which the re-designation is given effect to is earlier to the actual date of appointment orders of directly recruited Assistant Engineers and vice versa. The petitioners have challenged the said G.O. in W.P.No.14865 of 2007.

6. The respondents 4 and 5 and their Association have filed W.P.Nos.17596, 21008, 24783, 28771 of 2007 praying to implement the G.O.66 dated 12.03.07. A perusal of G.O.66 dated 12.03.07 and the affidavits filed in support of the Writ Petitions show that the 2nd respondent have been continuously redesignating the Junior Engineers who acquired B.E.Degree even after 11.09.1985, the date on which the category of Assistant Engineer was brought under Tamilnadu Engineering service and method of appointment of Assistant Engineers from the Junior Engineers who acquired B.E. Degree became recruitment by transfer as per rule and 2 and 5 of Special Rules to Tamilnadu Engineering Service. It is pertinent to note that the 2nd respondent had not published the appointment of Assistant Engineers made by redesignation of Junior Engineers in the Tamilnadu Government official Gazette as mandated under rule 4 of Tamilnadu State and Subordinate Service Rules.

7. It is submitted by the petitioners that an appointee



became full member of a service only after confirmation by satisfactory completion of probation. A Junior Engineer if acquires B.E. Degree will become only eligible to be considered for appointment as Assistant Engineer by recruitment by transfer as per rules 2 and 5 of Special Rules to Tamilnadu Engineering service. Thereafter the 2nd respondent has to prepare an approved list of Junior Engineers with B.E. Degree who are approved probationers and against whom no charges, under rule 17(b) of Discipline and Appeal Rules, are pending and whose records are rated, based on merits, making them eligible for inclusion in the list of approved candidates, and after approval of the list, the same has to be published in the official Government gazette and also to be communicated by registered post to all the persons concerned to receive objections if any as contemplated under rules 4, 36A, etc., of General rules of Tamilnadu State and Subordinate Service. Thereafter appointments are to be made from the said approved list and a candidate became appointed as Assistant Engineer only from the date on which he discharges duty as Assistant Engineer as defined under rule 2 of Part-1, Preliminary, of Tamilnadu State and Subordinate Service Rules. The seniority of such Assistant Engineers shall be reckoned only from the rank in the approved list among themselves. The inter se seniority of such Assistant Engineers recruited by transfer shall be fixed by placing them below the last Assistant Engineer selected by direct recruitment through Tamilnadu Public Service Commission in the same year in which the appointments were actually made by recruitment by transfer.

8. The petitioners would submit that respondents 4 and 5 were appointed as Junior Engineers on 05.06.1986 and 07.03.1986 respectively. They have been initially redesignated as Assistant Engineers by the 2nd respondent in proceedings dated 26.07.1995 and 11.06.1994 respectively giving retrospective effect to the redesignations from 05.06.1988 and 07.03.1988 respectively, the days following the date of completion of probation in the category of Junior Engineer as ordered in G.O.No.1586 dated 15.11.1993. Shockingly the said orders were reviewed/revised by the 2nd respondent, without any power or authority for such review or revision, in his proceedings dated 18.07.2000 and 06.03.2000 respectively on the representations of the said respondents directing their redesignations to take retrospective effect from 16.12.1986, the day following the last date of examination of B.E.Degree in blatant violation of the Tamil Nadu State and Subordinate Service and Special Rules to Tamil Nadu Engineering Service. Aforesaid redesignations of Junior Engineers like respondents 4 and 5 as Assistant Engineers and reckoning their seniority from the day following the last date of Examination of B.E.degree seriously affect the vested rights of seniority of the petitioners.



9. A direct recruit Assistant Engineer is appointed only after competing in the open competition among thousands of engineering graduates. Without any test or criteria or even without prescribing any minimum length of service but simply on the strength of acquiring B.E. Degree, Assistant Engineers redesignation is done. This is nothing but back door entry to the post of Assistant Engineer. Therefore the very concept of redesignation of Junior Engineers as Assistant Engineers being ordered by the 2nd respondent after 11.09.1985 is arbitrary, unreasonable and is against the efficiency of public administration mandated under Art.335 of Constitution of India. Therefore the said redesignations of Junior Engineers as Assistant Engineers ordered by the 2nd respondent so far, after 11.09.1985, are unconstitutional and liable to be cancelled.

10. Respondents 1 and 2 filed Counter affidavit. In the counter affidavit, it is submitted that the issue has already been adjudicated by the Hon'ble Supreme Court of India in the case of B.Thirumal Vs Ananda Sivakumar and other reported in (2013 8 MLJ 479(SC)), in which the Hon'ble Supreme Court has observed as follows:-

"16. xxx xxx it is evident that upgradation which is synonymous to redesignation 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"

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xxx

xxx

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 post of Subordinate Service) cannot obviously be considered to be a case of appointment



by transfer.

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 the 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."

11. It is therefore, evident that the Hon'ble Apex Court has taken cognizance of the fact that a Degree holder Junior Engineer is re-designated as Assistant Engineer without correlation to the estimate of vacancies and the redesignation is granted as a matter of course without any selection process and merely on the incumbent acquiring a Degree qualification. Therefore the proposition that the redesignation of a Degree holder Junior Engineer as an Assistant Engineer need not necessarily be done against the estimate of vacancy has been accepted and upheld by the Hon'ble Apex Court.

12. It is also submitted by respondents 1 and 2 that the Tamilnadu Engineering Association, Public Works Department, represented by its General Secretary Thiru K.Ravindran, has filed W.P.No. 24783 of 2007 on the file of High Court Madras, praying for a issue of a Writ of Mandamus, directing the respondents to implement G.O(Ms) No.66, Public Works (B2) Department, dated 12.03.2007, for preparing the seniority list of the Junior Engineers who are redesignated as Assistant Engineers by placing them above the Assistant Engineers selected by the Tamilnadu Public Service Commission in the year 1986. By common order, dated 15.10.2014, in W.P. No. 34276, 14865 and 24783 of 2007, have taken cognizance of the Hon'ble orders of



the Apex Court in Civil Appeal Nos. 10660-10662 of 2013 filed by Thiru B.Thirumal, and has ordered 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 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."

13. It is submitted that the Hon'ble Supreme Court of India and the Hon'ble High Court of Madras, has already answered the prayer of the petitioners with regard to 1st part pertaining to re-designation of Junior Engineers as Assistant Engineers on acquiring B.E. Degree qualification and with regard to the 2nd part pertaining to placing of Seniority of such re-designated Assistant Engineers on acquiring B.E. Degree qualification.



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14. The respondents 1 and 2 also submitted that though the appointment of Junior Engineers, who possess B.E. Degree has been defined as recruitment by transfer in rule 5 of the Special Rules for Tamil Nadu Engineering Services, the basic difference between Junior Engineer and Assistant Engineer is that the former is a diploma holder and the later is a degree holder. When a Junior Engineer acquires B.E. Degree, he becomes eligible for appointment as Assistant Engineer from the date of acquiring of B.E. Degree as per rules 2 and 5 of the Special Rules for Tamil Nadu Engineering Services read with ruling 2 under rule 26 (a) of the Fundamental Rules. In appointing a Junior Engineer as Assistant Engineer, the date of issue of order is irrelevant and the date of acquiring of B.E. Degree alone will be a criterion for redesignation. Therefore, even if a panel is prepared for the appointment of Assistant Engineers from the post of Junior Engineer, the appointment as Assistant Engineer will take effect only from the date of acquiring of B.E degree and not from any prospective date.

15. It is further submitted that as the Junior Engineers were appointed as Assistant Engineers only after acquiring the required B.E. Degree, the stipulation in rule 36 A of the General Rules for Tamil Nadu State and Subordinate Services now under section 43 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 was not violated. It is further submitted that the procedure stipulated in rule 4(a) of the General rules for Tamil Nadu State and Subordinate Services now under section 7(1) of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 is meant to be adopted in respect of the cases where appointments are made by promotion and recruitment by transfer against the estimated number of vacancies expected to arise during the course of a year. The appointment of Junior Engineers as Assistant Engineers on acquiring B.E.Degree is not being made against any vacancies, since it is not more than mere redesignation. The Junior Engineers even after appointment as Assistant Engineers on acquiring B.E degree continue to work in the same post and perform same duties. The duties and responsibilities attached to the posts of Junior Engineer and assistant Engineer are the same. The only difference between the posts is that the qualification prescribed for the post of Assistant Engineer is B.E. Degree and the qualification prescribed for the post of Junior Engineer is Diploma.

16. The respondents 1 and 2 would point out that the conferment of the right of redesignation to Junior Engineers on acquiring B.E.Degree is based on the provisions contained in rules 2 and 5 of the Special Rules for Tamil Nadu Engineering Services read with ruling 2 under rule 26(a) of the Fundamental Rules. The contention that mere possession of minimum



educational qualification for a post does not ipso facto makes a person eligible for appointment to the post is not applicable to the redesignation of Junior Engineers who have already entered service either by selection through Tamil Nadu Public Service Commission or by the method of promotion from feeder categories. It is submitted that as the appointment of respondents 4 and 5 were made on the basis of the provisions contained in the Special Rules for Tamil Nadu Engineering Services and General Rules for Tamil Nadu State and Subordinate Service, their appointment as Assistant Engineers is valid.

17. In the counter affidavit, it is submitted by the respondents 1 and 2 that respondents 4 and 5 were now promoted as Assistant Executive Engineers and therefore, there is no need for granting any relief. Since the prayer of the petitioners 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, this writ petition is liable to be dismissed.

18. Heard both sides and perused the records.

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. 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



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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."

20. 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 within a period of six months from the date of receipt of a copy of this order, if not already implemented to these petitioners. No costs. Consequently, connected M.P.No.2 of 2007 is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri



To

1. The Secretary,
Public Works Department,
Fort St.George, Chennai-9.
2. The Chief Engineer(GI),
Public Works Department,
PWD Campus, Chepauk,
Chennai-5.
3. The Secretary,
Tamil Nadu Public Service Commission,
Government Estate, Chennai-2.

+1cc to Mr.N.Subramaniyan, Advocate, S.R.No.55767

+1cc to Mr.S.Namasivayam, Advocate, S.R.No.55243

W.P. No. 33541 of 2007

SV-I (CO)
SU(22/11/2021)