

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.03.2021

Judgment Delivered on : 16.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.886 of 2019

K.Shanmuganathan,
S/o V.Karuppiah,
Assistant Engineer,
National Highways,
Usilampatti Section,
Madurai Division (NH).

... Appellant

Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Highways and Minor Ports (HK2) Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Director General,
Highways Department,
Guindy, Chennai-600 025.

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 25.10.2018 passed by the learned Single
Judge, in W.P.No.22939 of 2018, and allow the Writ Petition.

Prayer in W.P.No.22939 of 2018:

This Writ Petition filed under Article 226 of the Constitution
of India praying for issuance of a Writ of Certiorarified
Mandamus to call for the records relating to the impugned
Government Order issued by the 1st respondent in G.O.Ms.No.83
Highways and Minor Ports (HK2) Department dated 11.10.2017 and
to quash the same in so far as it ignores the period of service
rendered from the date of initial appointment in Tamil Nadu
State Construction Corporation and subsequently in Rural
Development Department on deputation is concerned and
consequently directing the respondents to pass appropriate
orders to consider the service rendered by the petitioner from
the date of initial appointment as service period for all
service benefits with all attendant and consequential benefits

including the right to consider the petitioner for promotion as Assistant Divisional Engineer, within a time frame to be fixed by this Court.

For appellant : Mr.M.Ajmal Khan, Senior Counsel for
M/s.Ajmal Associates

For respondents: Mrs.A.Srijayanthi, Spl.G.P.

JUDGMENT

R. SUBBIAH, J

This Writ Appeal has been filed as against the order dated 25.10.2018 passed in W.P.No.22939 of 2018, whereby, the learned Single Judge dismissed the said Writ Petition filed by the appellant herein.

2. The appellant has filed the above WP No. 22939 of 2018 to quash the Order passed by the first respondent in G.O.Ms.No.83, Highways and Minor Ports (HK2) Department, dated 11.10.2017, insofar as it ignores the period of service rendered from the date of initial appointment in the Tamil Nadu State Construction Corporation (TNSCC) and subsequently in the Rural Development Department on deputation, is concerned, and consequently to direct the respondents to pass appropriate orders to consider the service rendered by the appellant/writ petitioner from the date of initial appointment as 'service period' for all service benefits with all attendant and consequential benefits including the right to consider the appellant/writ petitioner for promotion as Assistant Divisional Engineer, within a time frame that may be fixed by this Court.

3. Before traversing into the legal questions involved in this appeal, it is appropriate to state the brief facts as follows:

(a) The appellant/writ petitioner is a holder of B.E. (Civil Engineering) degree. He belongs to Scheduled Caste Community. He was selected and appointed as Site Engineer Grade-I Trainee in the Tamil Nadu State Construction Corporation (TNSCC), coming under the administrative control of the Highways Department. The selection for the post of Site Engineer Grade-I Trainee was conducted through Employment Exchange which includes written test and interview. The appellant participated in the selection, based on which, he was selected and appointed as Site Engineer Grade-I Trainee in TNSCC, which is a Government of Tamil Nadu Undertaking under the control of the Highways Department. He joined the service on 10.04.1991 FN in the Office of the Regional Manager (South).

(b) After joining in the said post and after completion of one year training, he was brought into regular post of Site Engineer Grade-I in the time scale of pay of Rs.2000-60-2300-75-3200-100-3500 with effect from 01.07.1992, vide proceedings of the General Manager, TNSCC, Chennai, in No.6020/92/A2, dated 01.07.1992. His probation was also declared and his service had been regularised. He became a regular member of service, vide proceedings of the General Manager, TNSCC, dated 22.06.1996.

(c) While so, by G.O.(Ms).No.263, Rural Development (CSS-I) Department, dated 27.12.1996, the Government had created 384 posts of additional Union Engineer in the rank of Assistant Engineer at the rate of one additional Union Engineer per Panchayat Union. By the said G.O.(Ms).No.263, the Government also stipulated that the additional technical posts sanctioned will be filled up on deputation by transfer of service basis for a period of three years on temporary basis. A list of eligible Assistant Engineers was called for from various Technical Departments, such as Highways, Rural Works and Agricultural Engineering Department, etc. The Managing Director of TNSCC forwarded the list of Assistant Engineers working in the TNSCC to the Director of Rural Development Department for deputation on the premise that the TNSCC had become a sick unit.

(d) The Director of Rural Development Department issued order dated 13.06.1997 accepting 23 Assistant Engineers belonging to TNSCC and allotted them to various Districts for postings by the concerned District Collector. The appellant was one among the 23 Assistant Engineers belonging to TNSCC allotted to Madurai District and posted as Additional Union Engineer in Kottampatti Panchayat Union of Madurai District, vide proceedings of the District Collector, dated 27.06.1997. The appellant joined the post of Additional Union Engineer on 16.07.1997 FN. He continued to work as such in various Panchayat Unions until 31.12.2007 and his period of service under the Rural Development Department was calculated as 10 years 5 months and 29 days.

(e) That being so, the Director of Rural Development Department issued order dated 07.12.2007 surrendering all the said 23 Assistant Engineers belonging to the TNSCC including the appellant/writ petitioner to the Highways Department, as the administrative control of the TNSCC vested with the Highways Department. The said order was issued by the Director of Rural Development and Panchayat Raj Department, based on the order passed in the Writ Petitions, which related to termination of contract employees of Boards and Undertakings, working in Rural Development Department, whereas, the appellant and others have never worked on contract basis in the Rural Development Department, but they were regularly appointed as Assistant Engineers and subsequently transferred to Rural Development Department on deputation. Consequent upon the order of the Director of Rural Development Department, dated 07.12.2007, the

appellant/writ petitioner was reverted back to the Highways Department and the Government issued order in G.O.Ms.No.314, Highways Department, dated 29.12.2007 to absorb the appellant and others in the Highways Department on deputation basis.

(f) As per G.O.Ms.No.314, Highways Department, dated 29.12.2007, the appellant joined duty as Assistant Engineer in the Highways Department in January 2008 and continued to work as such till date. Though the appellant was appointed on regular basis in the TNSCC coming under the control of the Highways Department as Assistant Engineer, till date, he was stagnated in the same post without any promotion. Furthermore, the Government issued order in G.O.Ms.No.83, Highways and Minor Ports (HK2) Department, dated 11.10.2017, based on the order passed in the Writ Petitions to consider the representation of the petitioners therein. It is stated that the 23 Assistant Engineers of the TNSCC who worked earlier in the Rural Development Department on contract basis and later reverted to the Highways Department on deputation basis, were absorbed permanently from the date of their joining in the Highways Department, i.e. 01.01.2008 and their seniority was fixed below the regular incumbent appointed in the cadre of the Assistant Engineer. Accordingly, it was presumed that the appellant was earlier working on contract basis in the Rural Development Department and now permanently absorbed into the Highways Department with effect from 01.01.2008 with fixation of seniority below the last regular incumbent appointed in the cadre of the Assistant Engineer as on date.

(g) The order of the Government issued in the said G.O.Ms.No.83, Highways and Minor Ports (HK2) Department, dated 11.10.2017, came to be issued by misconception of facts and law, since the appellant and others were regularly appointed as Assistant Engineer in the TNSCC coming under the control of the Highways Department, by undergoing the process of selection and later deputed to the Rural Development Department and again absorbed into the Highways Department. The appellant had been described as 'worked' in the Department of the Rural Development Department on contract basis, in order to deny all the service benefits from the date of initial appointment. Hence, the appellant had filed the present Writ Petition for the relief stated supra.

4. The learned Single Judge dismissed the Writ Petition even at the stage of admission itself, holding that the appellant being not borne in the cadre post, though absorbed from 01.01.2008, cannot be said to have a case for seniority, stealing a march over the persons who are regularly recruited through the process of selection in accordance with Rule, as prescribed for the said post(s). So far as the other service benefits consequent upon such regularisation, is concerned, the appellant/writ petitioner did not press the same before the

learned Single Judge. Challenging the said finding(s) of the learned Single Judge, the present Writ Appeal is filed by the appellant/writ petitioner.

5. The learned Senior Counsel appearing for the appellant/writ petitioner contended that the appellant joined as Site Engineer Grade-I Trainee in the TNSCC on 10.04.1991 in the Office of the Regional Manager (South), pursuant to the selection conducted for the said post through the Employment Exchange. He was also brought into regular post of Site Engineer Grade-I with time scale of pay with effect from 01.07.1992. His services had also been regularised and probation got declared, whereby he became a regular member of service, vide proceedings of the General Manager of the TNSCC, dated 22.06.1996. The learned Senior Counsel appearing for the appellant/writ petitioner further contended that the appellant can no way be held responsible for posting him in another Department and as such, there is no fault on his part, as his previous service had to be taken into consideration for the purpose of reckoning seniority.

6. The learned Senior Counsel appearing for the appellant/writ petitioner further submitted that the right to seniority is a civil right and any deprivation/violation thereof without any authority of law is illegal, and as such, depriving the appellant's seniority by way of the impugned G.O., warrants interference by this Court. In support of the above submissions, the learned Senior Counsel appearing for the appellant/writ petitioner relied on a decision of the Supreme Court reported in 2007 (10) SCC 548 (State of U.P. Vs. Dinkar Sinha), wherein it was held as follows:

"25. Seniority may not be a fundamental right, but is a civil right (See Indu Shekhar Singh Vs. State of U.P., (2006 (8) SCC 129 : 2006 SCC (L & S) 1916), Bimlesh Tanwar Vs. State of Haryana (2003 (5) SCC 604 : 2003 SCC (L & S) 737) and Prafulla Kumar Das Vs. State of Orissa (2003 (11) SCC 614 : 2004 SCC (L & S) 121). Infringement of the said right would be permissible only if there exists any rules validly framed under a statute and/or the proviso appended to Article 309 of the Constitution of India. It cannot act in a vacuum. Any rule taking away such rights would deserve strict construction."

7. Thus, the learned Senior Counsel appearing for the appellant/writ petitioner submitted that, depriving the seniority of the appellant, amounts to alteration of the service

condition itself, for which, there is no justifiable reason assigned by the respondents. According to the learned Senior counsel for the appellant, in a similar situation, the Supreme Court of India, in the case of R.Alagesan and another Vs. State of Tamil Nadu and others, in S.L.P(C).No.12121 of 2011, vide order dated 11.05.2016, held as follows:

".. ..

After hearing the learned senior counsels for the parties, we deem it appropriate to dispose of the special leave petition with the following directions:

(1) It will be open for the petitioners to join in the post of Junior Training Officers in the Training Wing of Department of Employment and Training, as offered by the State Government in paragraph 8 of its Compliance Affidavit filed on 9th May 2016. If the petitioners so join, the period of service rendered by them in Tamil Nadu Agro Engineering and Service Co-operative Federation Limited (AGROFED) will be taken into account for computation of the total length of service that the petitioners would have rendered on attaining the age of superannuation.

.. .."

Thus, the learned Senior counsel for the appellant/writ petitioner prayed for allowing the Writ Appeal.

8. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that the appellant was engaged as Site Engineer in TNSCC on 10.04.1991 and his service was regularised on 01.07.1992. While so, on 27.12.1996, the Rural Development Department formed an Engineering Wing and requested to sponsor qualified Engineers from various Departments like Highways Department, Agriculture Engineering Department, TWAD Board, TNSCC etc., on deputation. In this regard, G.O.(Ms).No.263, Rural Development (CSS-I) Department, dated 27.12.1996, was issued and 23 qualified Engineers, including the appellant (plus one candidate recruited through TNPSC), were deputed to Rural Development Department from the TNSCC. While the appellant was so working, he was granted Selection Grade and Special Grade. In the meantime, the deputationists from the TWAD Board like the appellant herein, filed Writ Petitions before this Court in W.P.Nos.19401 to 19410 of 2004, etc., to absorb them in Rural Development Department on permanent basis, which were dismissed by a Division Bench of this Court on 29.01.2007. Thereafter, the Director of Rural Development cancelled and repatriated 24 Assistant Engineers to

the parent Department,. i.e. TNSCC in the year 2007. By the time, the TNSCC was under liquidation as it had become sick. Hence, considering the length of the service of the Assistant Engineers of the TNSCC, taking a sympathetic and humanitarian consideration, as a special measure, the Highways Department had absorbed 24 Engineers on 29.12.2007 by issuing G.O.(Ms).No.314 from Highways (HK2) Department, on deputation basis and the Chief Engineer (General), Highways Department, Chennai issued posting orders on 31.12.2007. Based on the same, the appellant also joined duty on 28.01.2008. Therefore, the appellant is an employee of the Highways Department only from 28.01.2008 and he cannot seek regularisation of his service from the date of his regularisation dated 01.07.1992 in the TNSCC, which is an autonomous body having separate Rules and Regulations/Instructions. The said recruitment will not come under the purview of the Tamil Nadu Public Service Commission (TNPSC). Further, the Assistant Engineers of the Highways Department must write the examination conducted by the TNPSC and through the selection process of the TNPSC, they can be selected as Assistant Engineer. However, as far as the appellant is concerned, he was not selected through TNPSC recruitment process. On 11.10.2017, the Government issued G.O.(Ms).No.83, Highways and Minor Ports (HK2) Department, in which, it is clearly stated that 23 Assistant Engineers of TNSCC who worked and remained in the Rural Development Department on contract basis, and later reverted to the Highways Department on deputation basis, be absorbed permanently from the date of their joining in the Highways Department (i.e. 01.01.2008) and their seniority will be below the last regular incumbent in the cadre of the Assistant Engineer as on date by relaxing the rules (i.e. age, method of appointments and rule of reservation) subject to the conditions issued in G.O(Ms).No.27, Finance (BPE) Department, dated 24.01.2007. Hence, the learned Special Government Pleader submitted that the appellant's service in TNSCC cannot be treated as Government service and he was not a Government servant from 01.07.1992 to 27.01.2008. The appellant was only an employee of the Corporation (TNSCC). Therefore, as observed by the learned Single Judge, the appellant cannot march over the persons who were regularly recruited through a process of selection in accordance with the Rules, as prescribed for the respective post(s). Thus, the learned Special Government Pleader appearing for the respondents prayed for dismissal of the Writ Appeal.

9. By way of reply, the learned counsel for the appellant/writ petitioner submitted that though the learned Single Judge observed that the appellant cannot march over the incumbents already working, who were appointed through the TNPSC, the fact remains that the appellant was also appointed only by following the mandate of Articles 14 and 16 of the

Constitution of India. His initial appointment itself was in the TNSCC, which is affiliated with the Highways Department and that the appointment was made as early as on 10.04.1991. If the initial appointment is reckoned, he will be the senior most person, and therefore, absolutely, there is no justification to deny the seniority to the appellant. Therefore, he prayed for allowing the Writ Appeal.

10. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

11. It is the main grievance of the appellant/writ petitioner that his past service rendered in TNSCC from 01.07.1992 as well as in the Rural Development Department till 27.01.2008, had to be taken into consideration for the purpose of fixation of seniority. To this, it is the reply of the learned Special Government Pleader appearing for the respondents that the appellant's past service in TNSCC cannot be treated as Government service, since he was not a Government servant from 01.07.1992 till 27.01.2008. It is his contention that the appellant did not participate in any selection process conducted by the Tamil Nadu Public Service Commission or any other competent recruitment agency as specified in Rule 11 of the Tamil Nadu State and Subordinate Service Rules, which is equivalent to Section 58 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

12. Admittedly, the appellant was selected and appointed only through Employment Exchange. As per the relevant Rules, the appellant did not participate in any selection process conducted by Tamil Nadu Public Service Commission. On such selection through the Employment Exchange, the appellant was only engaged as Site Engineer in TNSCC from 10.04.1991 and his service was regularised on 01.07.1992. On and from 27.12.1996 the appellant was deputed to work in Rural Development Department. Thereafter, the Director of Rural Development cancelled and repatriated 24 Assistant Engineers to the parent Department, i.e. TNSCC in the year 2007, which has become sick. In such circumstances, on sympathetic consideration, the appellant was absorbed by the Highways Department as a special gesture with effect from 01.01.2008. While so, the appellant cannot seek to consider his past service for fixation of seniority. If the said request of the appellant is accepted for regularisation from 01.07.1992, though he was not working in any cadre borne post in the Highways Department in the year 1992, it would affect the seniority maintained by the Highways Department and would only cause administrative chaos. The reckoning of seniority, as claimed by the appellant, would result in causing alteration of the seniority of the regular employees of the Highways Department who have been selected through the TNPSC examination

and presently working there. Therefore, the contention of the appellant in that regard is not justifiable. Considering all the above aspects, the learned Single Judge had correctly dismissed the Writ Petition holding that the appellant cannot march over the persons who are regularly recruited through a process of selection in accordance with the relevant Rules as prescribed for the said post. We do not find any infirmity in the order under challenge passed by the learned Single Judge and thus, there is no compelling circumstances warranting interference by us in this Writ Appeal. The Writ Appeal is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

CS
To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Highways and Minor Ports (HK2) Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Director General,
Highways Department,
Guindy, Chennai-600 025.

+lcc to the Government Pleader Sr.23375

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