



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
20.04.2021	28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.255 of 2020

and

C.M.P. (MD) No.1744 of 2020

E.Senthil ... Appellant/Petitioner

-vs-

1.The Principal Secretary to Government
Public Works Department
Fort St.George
Chennai

2.The Engineer-in-Chief, W.R.D.,
& Chief Engineer (General)
Public Works Department
Chepauk
Chennai-600 005

3.A.Balaravikumar
Assistant Executive Engineer
Building (C&M) Sub-Division
Medical Works
Public Works Department
Trichy

4.The Chairman
Tamilnadu Public Service Commission
TNPSC Road, Park Town
V.O.C.Nagar, Chennai-600 003

... Respondents/Respondents



Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.01.2020, passed in W.P.(MD) No.19959 of 2019, on the file of this Court.

Prayer in WP(MD) . 19959/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings No.S2(2) / 53679/2009 dt.05/09/2019 and quash the same as illegal, arbitrary

For Appellant : Mr.B.Saravanan

For Respondents : Mr.K.P.Krishnadass
Special Government Pleader for R1 & R2
Mr.Raja Karthikeyan for R3
Mr.D.Sivaraman for R4

J U D G M E N T

The writ petitioner is the appellant, who is aggrieved by the dismissal of W.P.(MD) No.19959 of 2019 by order dated 30.01.2020.

2. The above said writ petition was filed challenging the proceedings of the second respondent dated 05.09.2019. By the said proceedings, the second respondent re-fixed the seniority in the post of Assistant Engineer (Civil) and placed the third respondent in Serial No.1 above the appellant.

3. We have elaborately heard Mr.B.Saravanan, learned counsel appearing for the appellant, Mr.K.P.Krishnadass, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.Raja Karthikeyan, learned counsel appearing for the third respondent and Mr.D.Sivaraman, learned counsel for the fourth respondent and carefully gone through the materials placed on record and also the written submissions, which has been submitted along with a typed set of papers by Mr.Raja Karthikeyan, learned counsel for the third respondent.

4. The following factual background is required to be noted before we test the correctness of the order impugned in this appeal.

4.1. The appellant is an Engineering Graduate and applied to the Tamil Nadu Public Service Commission (TNPSC) for appointment to the post of Assistant Engineer (Civil) in the Public Works Department (PWD) in the year 1993. On account of various litigations, the selection process was delayed and the selection list was published in the year 1998 and the appellant was placed in Serial



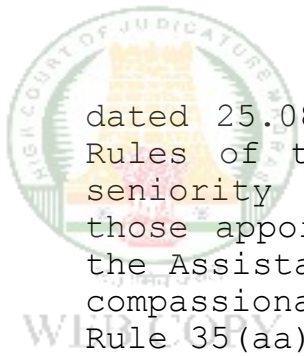
No.1 and appointed as Assistant Engineer (Civil) in PWD on 30.12.1998.

4.2. The third respondent was appointed in the post of Assistant Engineer (Civil) in PWD on compassionate ground and he joined duty on 23.06.1998 and his probation was declared on 22.06.2000. A representation was given by the third respondent to re-fix his seniority in the post of Assistant Engineer (Civil) with reference to the date of his regular appointment in the said post.

4.3. The second respondent, by order dated 25.08.2008, rejected the said request. As against the said order, an appeal was preferred to the Government, which was also rejected. The third respondent challenged those orders by filing W.P.(MD) No.17856 of 2009 and the said writ petition is stated to be pending. The appellant has been subsequently promoted to the post of Assistant Executive Engineer (Civil) on 14.09.2009 and the panel for further promotion to the post of Executive Engineer has been published on 05.04.2014 and the appellant's name is found place in Serial No.322 and that of the third respondent in Serial No.550. On 31.07.2019, the appellant has been promoted as Executive Engineer. By order dated 05.09.2019, the inter se seniority has been altered and the third respondent has been placed above the appellant by referring to Section 40(2) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the clarification issued by the Government, dated 15.05.2018.

5. The key factual issues, which have to be noted, are that the appellant was selected pursuant to a recruitment process conducted by TNPSC. The seniority of the appellant will be determined by the rank assigned by TNPSC. The third respondent's father was working as Teacher in a Primary School in Kozhaiyur Village Panchayat of Thittakudi Taluk and he died in harness on 05.02.1985. The third respondent appears to have made a representation stating that he should be appointed on compassionate ground in PWD as Assistant Engineer. Surprisingly, the Government considered the representation favourably as sought for by the third respondent and by G.O.Ms.No.272, Public Works Department, dated 12.05.1988, appointed the third respondent and he joined the post on 23.06.1988.

6. The short question, which involved in the instant case is whether the third respondent can have a march over the appellant, who has been selected by TNPSC after undergoing a full-fledged process of recruitment. The initial representation submitted by the third respondent to the Department was rightly rejected by order,



dated 25.08.2008. It has been held that Rule 2(e) of the Special Rules of the Tamil Nadu Engineering Service deals with fixing of seniority only between directly recruited Assistant Engineers and those appointed by transfer from feeder category and in respect of the Assistant Engineers appointed by transfer and those appointed on compassionate ground, seniority will be decided with reference to Rule 35(aa) of the General Rules.

7. Further, TNPSC has objected to insertion of the name of the third respondent as it will upset the turn based on the roster, which was adopted while selection of the candidates. Further, the third respondent placed reliance on G.O.(Ms) No.951, P&AR, dated 14.09.1984, which was held to be inapplicable to the third respondent's case as it is applicable only to the compassionate appointments under the Tamil Nadu Ministerial Services.

8. The second respondent, while allowing the appeal filed by the third respondent, has undertaken an unnecessary exercise tread into the areas, which are not relevant presumably with a view to sustain the case of the third respondent. We need not labour much to arrive at a decision in the instant case as this is a claim made by the appointee, who was appointed on compassionate ground in PWD versus appointee, who was selected to the post by TNPSC. The position becomes clear on perusal of the opinion rendered by TNPSC, when the matter was referred to them for clarification. In fact, the second respondent also attempts to refer to the said clarification issued by TNPSC.

9. The Government, by letters dated 09.04.2014 and 28.05.2015 requested the views of TNPSC for fixing seniority of the Assistant Engineers in P.W.D. appointed on compassionate ground in accordance with Rule 35(aa) of General Rules for Tamil Nadu State and Subordinate Services and on the analogy of orders issued in G.O. (MS) No.951, Personnel and Administrative Reforms (B) Department, dated 14.09.1984. The opinion given by TNPSC reads as follows:

"(3) In this connection, I am directed to state that the commission offers its views that as there is no specific provision in the Special Rules for the Tamil Nadu Engineering Service to fix Inter-se seniority of Assistant Engineers appointed "on compassionate" grounds, corresponding Act to previous rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules i.e., Act 40(2) and suitable proviso therein of Tamil Nadu Government Servants (Condition of Service) Act, 2016, Tamil Nadu Act No.14 of 2016 may be followed for fixing Inter-se-seniority among the Assistant Engineers in the Tamil Nadu Engineering Service appointed by many modes of appointment i.e., (i) By Direct



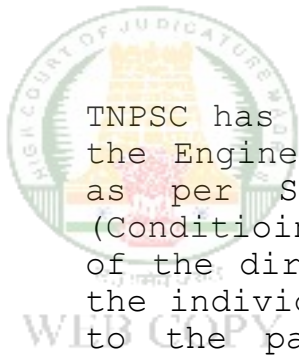
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Recruitment by the Tamil Nadu Public Service Commission, (ii) Appointment on Compassionate grounds and (iii) Recruitment by transfer by Public Works Department from persons, from the feeder categories of posts, in that Department itself, without affecting seniority of the Tamil Nadu Public Service Commission's selected candidates in the same year, since, Tamil Nadu Public Service Commission's seniority for them is decided based on the Rule of Reservation."

10. In terms of the opinion rendered by the Commission, it is clear that there is no specific provision in the Special Rules for the Tamil Nadu Engineering Service to fix inter-se seniority of Assistant Engineers appointed on compassionate grounds, corresponding Act to previous Rule 35(aa) of the Tamil Nadu State and Subordinate Services Rules i.e., Act 40(2) and suitable proviso therein of Tamil Nadu Government Servants (Condition of Service) Act, 2016. Therefore, TNPSC opined that the inter-se seniority can be fixed by considering three modes of appointment, namely, (i) direct recruitment by TNPSC, (ii) appointment on compassionate grounds and (iii) recruitment by transfer.

11. We have our own reservation on this portion of the opinion rendered by TNPSC by bringing in the appointment on compassionate grounds on the equal pedestal to that of the direct recruitment for the purpose of determining inter-se seniority. Be that as it may, TNPSC was affirmed in its opinion that even if the three modes of appointment are to be reckoned and the inter se seniority to be fixed, it has to be fixed without affecting the seniority of the candidate selected by TNPSC in the same year as the seniority is decided by TNPSC based on the rule of reservation. This opinion was taken note of by the Principal Secretary, Public Works Department, who addressed a letter dated 15.05.2018 to the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai-5, stating that there is no provision in Rule 2(e) of the existing Special Rules for Tamil Nadu Engineering Service for fixing of the seniority of Assistant Engineers appointed on compassionate grounds. Referring to the draft counter sent by the Engineer-in-Chief, the Principal Secretary to Government, PWD stated that in the draft counter affidavit, it has been stated that in the absence of specific ruling, it is only proper to place the candidates appointed by the method of compassionate ground in the given year below the candidates selected by the Tamil Nadu Public Service Commission and the candidates appointed by recruitment by transfer in that year.

12. Further, it was stated that the Government sought the views of TNPSC by letter, dated 09.04.2014, on the said issues and



TNPSC has given its opinion on 05.03.2018 and accordingly, directed the Engineer-in-Chief to fix the seniority of the third respondent as per Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, without altering the seniority of the direct recruits selected through TNPSC in the year in which the individual himself joined duty as Assistant Engineer. This led to the passing of the order, dated 05.09.2019, by the second respondent, which is impugned in the writ petition.

13. Firstly, the opinion rendered by TNPSC has not been followed by the respondents, while fixing the inter-se seniority of the appellant and the third respondent. As consequent upon the order impugned in the writ petition, the seniority of the appellant has been altered. Hence, this is the first violation.

14. The second error committed by the second respondent is that he ignored the selection list, which contained the names of the appellant, in which he was placed in Serial No.1, was published by TNPSC, for the year 1993-1994 and re-fixing the seniority of the third respondent over and above the name of the appellant in spite of the third respondent having been appointed only on 23.06.1998 on compassionate ground is illegal. Furthermore, the 2016 Act came into force on 14.09.2016 and in terms of Section 1(2) of the 2016 Act, Section 40(1) of the Act shall be deemed to have to come into force on 01.01.1955 and all other provisions of the Act shall come into force with effect from 14.09.2016. The order impugned in the writ petition passed by the second respondent seeks to invoke Section 40(2) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which has not been given retrospective effect and can be applied prospectively i.e. only with effect from 14.09.2016. Therefore, the said provision could not have been referred to or relied on by the second respondent while passing the order impugned in the writ petition. In any event, a candidate, who has been appointed on compassionate ground, cannot be treated as a senior over and above the directly recruited candidate and if such is the interpretation which has to be given, then Rule 2(e) in Section 10 of the Tamil Nadu Engineering Service will have to be scrapped from the statute book. The said rule reads as follows:

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



communicated. For this purpose, the date of communication of the list by Tamil Nadu Public Service Commission shall be the criterion to decide the calendar year to which the list belongs. The concurrence of the Tamil Nadu Public Service Commission shall not be necessary for such an appointment."

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15. That apart, the order impugned in the writ petition passed by the second respondent is contrary to the opinion given by TNPSC, which was forwarded by the Principal Secretary, PWD, to the Engineer-in-Chief to be followed, which has not been done. Furthermore, the settled seniority position is sought to be altered by the third respondent much after he had joined the post and after the appellant and the third respondent and others have gained two level of further promotions, which has been admitted by the third respondent in the affidavit filed in support of the writ petition. Thus, unsettling the seniority position after a period of 20 years based on an erroneous interpretation done by the respondent - Department at the instance of the third respondent, is impermissible.

16. The learned counsel for the third respondent placed reliance on the decision of the Honourable Division Bench in the case of **H.Nagarajan and others vs. The State of Tamil Nadu** [W.P.Nos.3822 and 3823 of 2006, dated 03.04.2006] for the proposition that compassionate ground appointment into the Government service is considered as direct recruitment in terms of Rule 2(14) of Tamil Nadu State and Subordinate Service Rules and that such compassionate appointees are having equal rights with other appointees through other modes of selection.

17. In the instant case, the question is not as to whether an appointment on compassionate ground is equivalent to that of the direct recruitment or not. But, the question is whether inter se seniority can be altered and whether the third respondent can be placed above the appellant, who was ranked in Serial No.1 based upon the rank assigned by TNPSC. In fact, in the said decision, the Court has held that the candidates appointed under Rule 10(a)(i) of the General Rules have to be ranked below TNPSC candidates irrespective of the date of appointment of such TNPSC candidates and special absorption rules candidates. In other words it was explained that 10(a)(i) appointees have to be ranked below the last TNPSC candidates selected on the basis of the examination. This observation is noted to show that the rank assigned to the concerned TNPSC candidate cannot be disturbed and that is why the TNPSC while offering its opinion in the third respondent's case has clearly



stated that the inter se seniority can be considered without affecting the seniority of TNPSC selected candidates. Therefore, the decision in **H.Arumugam's** case will not render any assistance to the case of the third respondent.

18. The learned counsel for the third respondent also relied upon the decision of the Honourable Division Bench of this Court in the case of **P.Bhaskaran and others vs. S.K.M.Sivakumaran and others** [W.A.Nos.302, 425 and 855 of 2014, dated 28.05.2015]. On going through the facts as set out in Paragraph No.4 of the Judgment, we find that the facts of the case are entirely different and the observations contained therein qua the inter se seniority issued in the said case cannot be made applicable to the case on hand and the said decision is distinguishable on facts.

19. For the above reasons, the writ appeal is allowed and the order, dated 30.01.2020, passed in W.P.(MD) No.19959 of 2019, is set aside. Consequently, W.P.(MD) No.19959 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Principal Secretary to Government,
Public Works Department,
Fort St.George, Chennai.
- 2.The Engineer-in-Chief, W.R.D.,
& Chief Engineer (General),
Public Works Department,
Chepauk, Chennai-600 005.



3. The Chairman
Tamilnadu Public Service Commission,
TNPSC Road, Park Town
V.O.C.Nagar Chennai-600 003.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-17801[F] dated 28/04/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-17997[F] dated 29/04/2021)

+1 CC to M/s.SPL GP (SR-18082[F] dated 29/04/2021)

JUDGMENT

IN

W.A. (MD) No.255 of 2020

and

C.M.P. (MD) No.1744 of 2020

28.04.2021

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