



WEB COPY



WA No. 58 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 58 of 2023
and
C.M.P. No. 541 of 2023

1.S. Pragadeeswaran
Assistant Engineer (Electrical)
Tamil Nadu Civil Supplies Corporation
Madurai

2. K.Mayilvaganan
Assistant Engineer (Civil)
Tamil Nadu Civil Supplies Corporation
Tirunelveli

.. Appellants

Versus

1.V. Raji
Assistant Engineer
Tamil Nadu Civil Supplies Corporation
Dindigul.

2.The Government of Tamil Nadu
represented by its Secretary
Department of Co-operation, Food and Consumer Protection
Fort St.George, Chennai – 600 009

3.The Tamil Nadu Civil Supplies Corporation Limited
represented by its Chairman/Managing Director
12, Thambusamy Road, Kilpauk
Chennai – 600 010

.. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 03.08.2022 made in W.P. No. 4889 of 2019 on the file of this Court.

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For Appellants : Ms. AL. Ganthimathi
Senior Advocate
for Ms. SA. Kanmani

For R1 : Mr. K.M. Vijayan
Senior Advocate
for M/s. K.M. Vijayan Associates

For RR 2 and 3 : Mr.C.Selvaraj
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by R. MAHADEVAN, J]

Challenging the order dated 03.08.2022 passed by the learned Judge in W.P. No. 4889 of 2019, filed by the first respondent herein, the appellants have preferred the present appeal.

2. The first respondent/writ petitioner was appointed as Assistant Engineer in the Tamil Nadu Construction Corporation on 06.07.1990. As Tamil Nadu Construction Corporation had come to a standstill due to various reasons, she was deputed to Tamil Nadu Civil Supplies Corporation (for brevity “the TNCSC”). She joined the services of TNCSC on 09.09.2011 as Assistant Engineer. While she was working in TNCSC, an order dated 22.11.2016 was passed absorbing the service of the first respondent on



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permanent basis. Subsequently, by proceedings dated 26.10.2018 in Proc.No.AE13/1320/2018, the TNCSC issued a list of eligible candidates, holding the post of Assistant Engineer, fit for promotion to the post of Assistant Executive Engineer, in which, the names of the appellants herein were included as eligible candidates. However, the name of the first respondent/writ petitioner was omitted to be included thereof. Aggrieved by the same, the first respondent filed W.P. No. 4889 of 2019 praying to quash the proceedings dated 26.10.2018 in Proc.No.AE13/ 1320/ 2018 of the third respondent herein and to direct the third respondent to accord the seniority of the first respondent in the panel of Assistant Executive Engineer from the date of joining the service i.e. 09.09.2011 in accordance with G.O. Ms. No.27, Finance (BPE) Department, dated 24.01.2007.

3. The learned Judge, after considering the materials available on record and upon hearing the counsel on either side, came to the conclusion that omission of the name of the first respondent in the panel drawn for promotion to the post of Assistant Executive Engineer is unlawful. Accordingly, the learned Judge disposed of the writ petition by setting aside the aforesaid proceedings dated 26.10.2018 of the third respondent in this appeal and remanded the matter for re-consideration with a further direction to the third



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respondent herein to issue a fresh panel by including the name of the first respondent. Aggrieved by the same, the appellants are before this Court with this intra-court appeal.

4. Heard Ms. AL. Ganthimathi, learned Senior Counsel for the appellants, Mr. K.M.Vijayan, learned Senior counsel for the first respondent/writ petitioner and Mr. C. Selvaraj, learned Additional Government Pleader appearing for the second and third respondents.

5. The learned Senior Counsel appearing for the appellants submitted that the appellants are working as Assistant Executive Engineer in TNCSC from February 2019 onwards. Originally, they joined the services of the TNCSC during 1993. However, by virtue of the order passed by the learned Judge, the appellants apprehend that they may be reverted back to the post of Assistant Engineer to accommodate the first respondent herein. The learned Senior counsel further submitted that as per G.O. Ms. No.27, Finance (BPE) Department, dated 24.01.2007, which has been relied on by the first respondent, the employees, who have been subsequently absorbed in the undertakings/Government Departments will be given pay protection, but, will not be given any service rights for the purpose of promotion, selection, grade



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appointments, etc., Thus, upon deputation and/or absorption, the first respondent has to be treated as junior most among the Assistant Engineers in the foreign service namely TNCSC viz., in the category in which she was absorbed and/or deputed. Therefore, she submitted that the first respondent is not entitled to any service rights for the purpose of promotion, selection grade appointments, *etc.* which the learned Judge failed to consider.

6. Per contra, the learned Senior counsel for the first respondent, by relying upon Clause 9 of the G.O. Ms. No. 27, Finance (BPE) Department, dated 24.01.2007, submitted that the employees of the State Public Sector Undertakings are to be considered for permanent absorption on deputation in other State Public Sector Undertakings or Government Department only after they completed two years of service in the Foreign service, meaning that, from the date of deputation in the organisation where, he or she has been deputed, only after two years, he or she would be entitled to be absorbed on permanent basis. He further submitted that the first respondent was deputed to the TNCSC on 09.09.2011 and had been continuously working as deputationist, therefore, she would be entitled to seek for absorption only on completion of two years of service i.e. 09.09.2013. Admittedly, the appellants have been promoted to the post of Assistant Engineer only on 22.11.2011 and



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06.12.2012, respectively, whereas, the first respondent, on deputation, is holding the post of Assistant Engineer even on 09.09.2011. Therefore, it is his submission that the appellants are junior to the first respondent and therefore, the learned Judge is justified in directing the third respondent herein to draw a fresh panel, by including the name of the first respondent herein and depending upon the vacancy in the post of Assistant Executive Engineer (Civil/Electrical), the names of the appellants/respondents 3 and 4 in the writ petition can be included. However, it was directed by the learned Judge that the first post of Assistant Executive Engineer for promotion from the year 2018 shall be given to the writ petitioner/first respondent herein, taking note of the date of her absorption in TNCSC. Such a direction issued by the learned Judge did not call for any interference by this Court and therefore he prayed for dismissal of the intra-court appeal.

7. On the above contentions, we have heard the learned Additional Government Pleader appearing for the respondents 2 and 3 and also perused the materials placed on record.

8. It is not in dispute that the first respondent herein/writ petitioner was appointed as Assistant Engineer in Tamil Nadu State Construction



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Corporation on 06.07.1990. On the other hand, the appellants herein were appointed in TNCSC during the year 1993. Subsequently, on 09.09.2011, the first respondent was deputed to the services of TNCSC and she was permanently absorbed in the foreign service by a proceedings dated 22.11.2016. Such an absorption was made on the basis of the guidelines issued by the Government in G.O. Ms. No.27 dated 24.01.2007. Undoubtedly, the absorption of the first respondent in the foreign service, by the proceedings dated 22.11.2016, would date back from the date on which she was absorbed in the foreign service namely 09.09.2011. In fact, the order, absorbing the first respondent has not been questioned or challenged by any one, including the appellants herein. It is also to be noted that the first appellant herein was working as Junior Engineer and he became an Assistant Engineer on 22.11.2011, much after the absorption of the writ petitioner/first respondent herein on 09.09.2011. Similarly, the second appellant was promoted to the post of Assistant Engineer on 06.12.2012 after the writ petitioner/first respondent was absorbed as such on 09.09.2011. Thus, the first respondent is senior in the services of TNCSC, in the cadre of Assistant Engineer, than the appellants herein. While so, when her name was ignored while drawing the panel for promotion to the post of Assistant Executive Engineer, she has filed the writ petition. In such view of the matter, the seniority of the first



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respondent has to be reckoned from the date on which she was deputed to TNCSC namely 09.09.2011, on the strength of the order of absorption dated 22.11.2016, with effect from the date of her deputation. If this is taken into consideration, certainly, the first respondent is senior in the cadre of Assistant Engineer than the appellants and promoting the first respondent before conferring promotion to the appellants, in the order of seniority, is proper. The learned Judge, taking note of the date of absorption of the first respondent as well as the dates on which the appellants came to be promoted to the post of Assistant Engineer, has rightly held that the first respondent deserves to be considered ahead of the appellants in the matter of conferment of promotion to the post of Assistant Executive Engineer. We see no reason to interfere with such an order passed by the learned Judge.

9. In the result, we confirm the order dated 03.08.2022 passed by the learned Judge in W.P. No. 4889 of 2019. As a corollary, the writ appeal fails and it is dismissed. No costs. Connected C.M.P. is closed.

[R.M.D., J] [M.S.Q., J]
08.02.2023

Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

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