



W.A.Nos.1154 and 1155 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

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1.N.Suresh

2.M.Jeevanandan

... Appellants in both appeals

-Vs-

1.The State of Tamil Nadu rep.by
Secretary to Government, Home
Department, Fort St.George
Chennai 600 009.

2.Tamil Nadu Public Service Commission
Rep.by its Secretary, Commercial
Taxes Annexe Building, Greaves Road
Chennai 600 006.

3.The Director of Forensic Science Department
30-A, Kamarajar Salai, Mylapore, Chennai-4.

4.N.Mahalakshmi

5.V.Devi

6.M.Hemalatha

7. L.Vijayalatha

8 D.Chitra

9 V.S.Mallika

10 B.Umadevi

11V.Valliammal

12 E.D.Thamaraiselvan

13 M.Padma



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- 14 C. Florence Devasudamani
- 15 T.P.Thara
- 16 N.Thilagavathi
- 17 M.S.Vasantha Sundari
- 18 B.Shanthi
- 19 K.Manjuladevi
- 20 V.Sivapriya
- 21 V.Jagannathan
- 22 D. Shanmugam
- 23 V.Arunagiri
- 24 G.Sridharan
- 25 D.Panchatcharam
- 26 S.Uma
- 27 D. Devaki
- 28 D.V.Arulraj
- 29 A.Visalakshi
- 30 A.Khaja Mohideen
- 31 Jayanthi Sakthisekaran
- 32 R. Avina
- 33 D.Thilaga
- 34 S. Baskaran
- 35 L.C. Amutha
- 36 Sophia Joseph
- 37 Srividya Srinivasan
- 38 N.Kala
- 39 L. Sangeetha
- 40 R.Ramachandran
- 41 A.Perumal
- 42 N.Balamurugan
- 43 Rajshree Raghunath
- 44 D. Vijayalakshmi
- 45 S.Jayanthi
- 46 C.Bhavani
- 47 C.Jaya
- 48 S. Rajmohan
- 49 R.Geetha
- 50 R.Rajesh
- 51 P.Vijayakumar
- 52 C.Pushparani
- 53 D.Velmurugan
- 54 M.Vairamuthu
- 55 J.Manjuladevi
- 56 M.Sankarkumar
- 57 R.Ramesh



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58 R.Manickam
59 K.Thara
60 S.Kayathiri
61 D.F. Shiba
62 T. Vidhyarani
63 P.Vadivel
64 P.Vijayendran
65 D.Parthasarathy
66 G.Gnanasambandan
67 V.Baskar
68 K.Venkateswaran
69 K.Tharani
70 S.Hemalatha
71 M.Manimaran
72 J.Sintha Sahul Hameed
73 D.Sujatha Priyadharshini
74 G.Uvarani
75 P.Manjari
76 V.Sivasubramanian
77 K.S.Shivashangari

... Respondents in both appeals

Common Prayer : Writ Appeals under Clause 15 of the Letters Patent against the order in W.P.Nos.464 and 465 of 2011 dated 25.03.2015.

For Appellants : Mr.M.Muthappan
For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader-for RR 1 and 3
Mr.R.Bharanidharan – for R2
RR 4 to 29 – Given up
Mr.L.Chandrakumar – for RR 30 to 43
RR 44 to 77 – Given up



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J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

These two intra court appeals have been directed against the common order passed by the writ Court in W.P.Nos.464 and 465 of 2011 dated 25.03.2015.

2. There is a post called Scientific Assistant Grade II in the Tamil Nadu Forensic Science Department. The said post was filled up through a method of sponsoring candidates from Employment Exchange and also based on merits. Therefore, for the appointments to the said post, the method of having any competitive examination to be conducted by the Service Commission ie., Tamil Nadu Public Service Commission (TNPSC) was not undertaken.

3. When that being so, the State Government appointed more than 30 persons in the year 1987, 1988 and 1989 for the said post on temporary basis under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules.



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4. It is to be noted that under the said Rule, the Government is empowered to appoint candidates due to contingency in any sanctioned vacancy and thereafter their services would be regularized in the manner known to law. Otherwise, when regular selection is made, these temporary appointees would be ousted.

5. Since the appointment to the said post of Scientific Assistant Grade II was not under the purview of TNPSC, at one point of time, the Government thought it fit to bring that also under the purview of the TNPSC. Therefore, a Rule called Tamil Nadu Forensic Science Subordinate Service Rules were framed, because of which, an amendment has also been made in the Tamil Nadu Public Service Commission Regulations, 1954 and a notification to that effect had been issued in G.O.No.635, Personnel and Administrative Reforms Department dated 09.12.1988, under which amendment necessarily has been made in the said TNPSC Regulations, 1954, bringing the appointment of Scientific Assistant Grade II also as one of the post under the purview of TNPSC.



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6. When this change was made bringing the appointment of Scientific Assistant Grade II under the purview of TNPSC, the TNPSC had issued a notification inviting applications from eligible candidates for selection and appointment to the post of Scientific Assistant Grade II by notification dated 13.09.1989.

7. Aggrieved over the issuance of such notification by the TNPSC, these 10(a)(1) appointees as stated supra had approached the Tamil Nadu Administrative Tribunal (In short 'TNAT'), by filing original applications seeking for direction to the Government to regularize their services and also to challenge the notification of the TNPSC dated 13.09.1989.

8. While those cases were decided, the Tribunal passed an order stating that the amendment has been made to the TNPSC Regulations 1954 by bringing a Rule called Tamil Nadu Forensic Science Subordinate Service Rules with effect from 03.10.1986. However, the relevant Government Order was issued only on 09.12.1988. Therefore what are all the appointments that have been made under Rule 10(a)(1) on temporary basis for the said post shall be saved.



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9. As against the order, the matters have gone to the Hon'ble Supreme Court and ultimately the SLP seems to have been withdrawn by the Government. Therefore, the Government decided to regularize the services of 10(a)(1) appointees and accordingly they issued G.O.Ms.No.996, Home (Police-XVI) Department dated 04.07.1997, under which 31 such 10(a)(1) appointees' services were regularized with effect from their initial appointment. The initial appointment starts from 19.02.1987 and upto 07.08.1989.

10. Subsequently also, the very same Department issued another Government Order in G.O.Ms.No.1252 dated 17.11.2000, under which further 10 candidates who were appointed under 10(a)(1) were regularized and those appointment date ranged from 22.03.1989 to 13.03.1991. By thus, 31 + 10 10(a)(1) appointees' services were regularized by issuance of two Government Orders in G.O.Ms.No.996 and G.O.Ms.No.1252 of Home Department.

12. In the meanwhile, the TNPSC, pursuant to the notification dated 13.09.1989 conducted the selection process and selection list also had been sent on 22.12.1995 to the Government for appointment. Therefore, pursuant



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to the same, appointments were made on 08.03.1997. Some more appointments have been made on various dates.

13. Though these appointments were made for the regularly elected candidates pursuant to the TNPSC notification of 1989 and also the subsequent notification of the year 1996, those candidates were not in a position to claim seniority over the 10(a)(1) appointees, as they have already been regularized.

14. Therefore, it was the contention of the TNPSC selected candidates that once the purview has been brought under the TNPSC and a notification to that effect also was issued on 13.09.1989, even though the appointment of the regularly selected candidates was made belatedly because of the delay in completing the selection and appointment process, they cannot be marched over by the 10(a)(1) candidates and therefore, in this context, the regularly selected appointees through TNPSC joined together and filed two writ petitions ie., W.P.Nos.464 and 465 of 2011, questioning the appointment of the private respondents in those writ petitions ie., respondents 30 to 43 herein as Scientific Assistant Grade II in the said Department under 10(a)(1) and also seeking for a writ of Certiorarified Mandamus calling for the records



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of G.O.Ms.No.996 dated 04.07.1997 issued by the State Government regularizing the services of the respondents in that writ petition ie., respondents 4 to 29 and also for consequential reliefs.

15. The said two writ petitions were heard together and disposed of by a common order of the writ Court dated 25.03.2015, where ultimately the learned Judge had come to the following conclusion:

"35. The Government have appointed the temporary appointees on account of administrative exigency. They have worked for years together. The Tribunal having found that the Government have regularised the appointments made prior to 3 October 1986 rightly directed regularisation of other employees appointed prior to 9 December 1988. It was a one time measure. The Government though challenged the order before the Supreme Court, subsequently took a conscious decision to comply with the direction and accordingly the Civil Appeals were dismissed as withdrawn. The petitioners who are subsequent appointees now wanted the benefit given to the temporary appointees by way of regularisation of their services to be recalled after seventeen years. Some of the petitioners were College students when the Government appointed the temporary appointees on account of administrative necessity. The petitioners have no legal or moral right to challenge the regularisation order issued long



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prior to their entry into service. I therefore do not find any merit in the contentions taken by the petitioners."

16. Aggrieved over the same, the two appellants herein have preferred the respective appeals. Making submissions on behalf of the appellants, learned counsel Mr.M.Muthappan would contend that, once the Rule got amended and that amendment was issued vide Government Order in G.O.Ms.No.635 dated 09.12.1988 with retrospective effect ie., from 03.10.1986, considering the same, the Tribunal had already declared that those appointments which were made prior to 09.12.1988 shall not be disturbed and they are entitled to continue including regularization, however subsequent to the said cut off date ie., 09.12.1988 is concerned, the State Government has no right to regularize the services of any 10(a)(1) appointees, even if they have been appointed subsequent to 09.12.1988.

17. He would further submit that, since the post has come under the purview of the TNPSC, which issued a notification on 13.03.1989, pursuant to which selection process went on. When that being so, in the meanwhile, ie., before the selected candidates were appointed, if any 10(a)(1) appointments were made on temporary basis due to contingency, those temporary appointments need not be given regularization and the moment the TNPSC



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selected candidates have come to occupy the posts in respect of the vacancies for which such selection was made, the temporary appointees under 10(a)(1) ought to have been ousted.

18. He would also submit that, however the respondents, instead of ousting those candidates, while giving appointment to the regularly appointed candidates, have regularized those 10(a)(1) appointees also, who were admittedly appointed after the cut off date ie., 09.12.1988.

19. Such a regularization given to those 10(a)(1) appointees appointed after 09.12.1988 and making them to march over the regularly selected candidates through TNPSC is against the Rule and therefore, the prayer sought for by these appellants before the writ Court ought to have been considered and allowed. However, the learned Judge, without considering those issues in proper perspective, since has rejected the writ petitions, the appeals which are presently before this Court are necessitated. Hence, the learned counsel appearing for the appellants seeks the indulgence of this Court.

20. On the other hand, Mr.K.V.Sajeev Kumar, learned Special



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Government Pleader appearing for the respondents 1 and 3 and Mr.R.Bharanidharan, learned Standing Counsel appearing for TNPSC and Mr.L.Chandrakumar, learned counsel appearing for respondents 30 to 43 have contended that, insofar as the right of the Government to make appointments under Rule 10(a)(1) is concerned, it cannot be denuded, as such power is always vested with the Government to make such appointments due to contingency.

21. Even though the TNPSC issued a notification on 13.09.1989, the selection was not immediately made and the Department required some hands. Therefore, it became necessitated for the Department to make appointments invoking Rule 10(a)(1). Hence, such appointments were made in the year 1989 and 1991. Prior to the cut off date also ie., on 09.12.1988, some more appointments had already been made and insofar as the appointments that have been made prior to 09.12.1988, the issue has been covered by the decision of the TNAT and the same has been confirmed, as the S.L.P., filed having been withdrawn and the Government also accepted to issue G.O.Ms.Nos.996 dated 04.07.1997 and G.O.Ms.No.1252 dated 17.11.2000.



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22. Quoting all these developments, the learned counsel for the respondents would contend that, insofar as these appointees are concerned, though they were initially appointed under Rule 10(a)(1), subsequently their services were regularized by issuance of Government Orders and it is the prerogative of the Government to make such appointments on contingency basis and subsequently, having taken note of the service as well as experience they gained in the Department, their services were regularized. Such kind of 10(a)(1) appointees normally would be regularized, they contended.

23. Learned counsel for the respondents further contended that, insofar as these appellants are concerned, admittedly they were appointed only in the year 1997, even though the notification was of the year 1989 by the TNPSC. Therefore, the appointment in respect of these appellants taken place well after the appointment of the respondents, who were admittedly appointed either in the year 1989 or in the year 1991. Therefore, six to seven years prior to the appointments since the respondents have been appointed and their regularization since has been made from the date of initial appointment, naturally they become seniors and therefore, they can very well



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march over the present appellants. Hence, the learned counsel appearing for the respondents would submit that, the reasoning given by the learned Judge in rejecting the plea made by the appellants and others before the writ court through the order impugned is completely justifiable and also in consonance with the Rule position. Therefore, the said order does not require any interference by this Court.

24. We have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

25. It is an admitted fact that, by issuing G.O.Ms.No.635 dated 09.12.1988, the Rule has got amended including the TNPSC Regulations, 1954, under which the appointment of the Scientific Assistant Grade II at the Tamil Nadu Forensic Science Department has been brought under the purview of the TNPSC.

26. Once it has been brought under the purview of TNPSC, it should be made only by TNPSC by regular method of selection for which TNPSC already issued a notification on 13.09.1989, pursuant to which several candidates who were eligible to make applications applied and selection process went



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27. In the meanwhile, before said amendment was made with effect from 09.12.1988, even though it was retrospectively granted from 03.10.1986, in view of the declaration that has been made by the TNAT that, those who were appointed under Rule 10(a)(1) prior to 09.12.1988, the date on which such amendment was issued under G.O.No.635 can be saved is concerned, the appointments that have been made under Rule 10(a)(1) certainly have been saved and this position cannot be controverted because, it has been concluded.

28. However, after 09.12.1988 since it comes under the domain of TNPSC, even if any temporary appointment is made under Rule 10(a)(1), for which the Government is empowered to, whether those temporary appointees can seek appointment as a matter of right, that too seeking seniority marching over the regularly selected candidates subsequently been appointed and occupied the position, is the moot question.

29. This issue has been considered several times and it has been declared as one of the settled law that, whenever the regularly selected



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candidates are appointed by way of TNPSC selection, those candidates, the moment they occupy the position, the temporarily appointed 10(a)(1) appointees have to be necessarily ousted for want of vacancy. The reason being that the selection and appointment made through TNPSC is only for the substantive vacancies which are notified by each of the Departments and therefore, if such substantive vacancies are filled up by regularly selected candidates, naturally the temporary appointees under Rule 10(a)(1) have to vacate their posts.

30. However, sometime there would be a delay in making the selection and appointment through TNPSC and in that case, if 10(a)(1) appointments are made and those appointments continue for a longer period in the Department, the Government may, at times, taking note of the long years of service as well as the experience gained by them would regularize those temporary appointees under Rule 10(a)(1).

31. Here in the case in hand, the 10(a)(1) appointees, who were appointed right from 19.02.1987 till 06.09.1988 could be regularized by virtue of the Government Order issued in this regard, as their regularization has already been ordered by the Tribunal, which has also been confirmed.



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This is because of the cut off date of 09.12.1988, ie., on that date only the new Rule has come into effect as declared by the TNAT. However, even after the cut off date, 4+10 candidates were appointed from 03.08.1989 till 15.03.1991. The four candidates who are appointed under Rule 10(a)(1) on 03.08.1989 and 07.08.1989 were regularized by G.O.Ms.No.996 dated 04.07.1997 and the 10 candidates who were appointed on 03.08.1989 and 07.08.1989 were regularized by G.O.Ms.No.1252 dated 17.11.2000.

32. Though this regularization has been made and pursuant to which those temporary appointees who have been regularized by those two Government Orders have been working continuously in the Department and some of them also superannuated, remaining are working. Those candidates' regularization, though has been questioned, cannot be gone into at this stage because, insofar as the appointments that has been made to these two appellants are concerned, admittedly they have been appointed on 08.03.1997. Assuming that those temporary appointees were regularized by virtue of the aforesaid Government Orders, now the only question to be gone into is, what is the seniority to be fixed for these two appellants.

33. In this context, it is submitted by the learned counsel for the



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respondents, especially for the contesting private respondents that, insofar as the seniority of these appellants are concerned, if it is fixed on the basis of the regularization that has been made to some of the temporary appointees who have been appointed under Rule 10(a)(1) after 09.12.1988, in that case, the position what has been held by those 10(a)(1) appointees who have been appointed after 09.12.1988 shall not be disturbed. That means, by giving any benefit to these appellants, the position already acquired by those temporary appointees on regularization, need not be disturbed, they contended.

34. Insofar as the appellants are concerned, the learned counsel also would contend that, by fixing the inter-se seniority between the temporary appointees and the regular appointees, viz., the appellants, the date of appointment cannot be taken into account because, these regularly appointed candidates will always march over the temporary appointees appointed after the cut off date.

35. The reason being that, after 09.12.1988, the selection and appointment of the said post called Scientific Assistant Grade II has been



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entrusted to TNPSC. Therefore, without the method of selection through TNPSC, no other method can be adopted by the Department to select candidates for the said post. Merely because the right of appointment was given under Rule 10(a)(1) to the Government, that would not *ipso facto* confer the benefit of regularization retrospectively from the date of initial appointment, that too, to the extent of affecting the seniority of the regular appointees who have subsequently been appointed.

36. This legal position cannot be disturbed and being the settled legal position, the claim now made by the appellants to have the seniority marching over the 10(a)(1) appointees who were appointed after 09.12.1988 is a justifiable one.

37. This aspect since has not been considered by the learned Judge in the order impugned and the cut off date is 09.12.1988 declared by the TNAT by virtue of G.O.Ms.No.635 which was issued only on that date and those who have been appointed prior to 09.12.1988 alone were directed to be saved and the remaining people would not get regularization that has been made by the Government through G.O.Ms.Nos.996 and 1252, as stated *supra*, whereby 4+10 candidates admittedly appointed after the cut off date



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since were regularized, we feel that those candidates in the seniority cannot march over these appellants, as these appellants were selected pursuant to the notification issued by the TNPSC dated 13.09.1989.

38. In view of the aforesaid, we feel that we want to interfere with the judgment of the learned Judge by making some small modifications to the following effect. Accordingly, the following orders are passed in these writ appeals.

(a) That the two appellants herein viz., N.Suresh and M.Jeevanandan shall be placed above A.Khaja Mohideen, whose date of birth is 25.05.1967 and was appointed initially under Rule 10(a)(1) on 03.08.1989 in the post of Scientific Assistant Grade II. Accordingly, these appellants are entitled to get all service benefits.

(b) In other words, in the seniority list that has been issued by the respondent Department on 08.12.2010, already these two appellants have been placed at Sl.Nos.41 and 42. However, they shall now be placed at Sl.Nos.27A and 27B after S.Baskaran and before A.Khaja Mohideen.



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(c) It is made clear that, by virtue of these directions, if the appellants are placed at the aforesaid places ahead of some of the 10(a)(1) appointees, the seniority and other benefits already acquired by the respondents 30 to 43 herein shall not be disturbed.

(d) One of the appellant viz., Jeevanandan had already retired from service. His service benefits, pursuant to the above direction, shall be conferred on him notionally. Therefore, he will be entitled to get pensionary benefits with the revised pension.

(e) Insofar as the other appellant viz., N.Suresh is concerned, he is entitled to get all service benefits except the back wages for the non-working period in case he earns any promotion by virtue of his modified seniority.

39. With the above directions, the order impugned passed by the writ Court is modified to the extent indicated above. These writ appeals are disposed of accordingly. No costs.

(R.S.K.,J..) (K.B.,J.)
13.07.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To
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- 1.The State of Tamil Nadu rep.by
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Chennai 600 009.
- 2.Tamil Nadu Public Service Commission
Rep.by its Secretary, Commercial
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- 3.The Director of Forensic Science Department
30-A, Kamarajar Salai, Mylapore, Chennai-4.



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