



W.P.No.4983 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.06.2023

Delivered on: 04 .08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.4983 of 2019

&

W.M.P.No.5688 of 2019

1.E.Valavan

2.S.Athinarayanan

3.A.Manivel Raj

4.T.M.Jawahar Kennedy

5.V.Baskaran

6.R.Jeevashankar

... Petitioners

Vs.

1.Tamil Nadu Water Supply and Drainage Board
rep by its Managing Director
Chepauk, Chennai-600 005

2.B.Hari Govind

3.P.Jeyaprakash

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4.S.Raja

5.M.Ramasamy

6.S.S.Ayyappan

7.M.Kaliraj

8.S.Govindaraj

9.V.Senthilnathan

10.C.Thiagarajan

11.A.Chinnaiyan

12.S.Dharmar

13.G.Gnanasambantham

14.D.Eugene Visuvasam

15.V.Rajapandian

16.R.Rajendiran

17.S.Balasubramanian

18.J.Ramesh

19.C.Udayakumar

20.R.Perumal

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21.V.Danies

22.P.Venkatesa

23.D.Robert Kennedy

24.P.Parthiban

25.R.Venkatachalam@ Neethipathi

26.K.Shanmugam

27.R.Somasundaram

28.V.Jeevanantham

29.M.Sankaran

30.S.Rajendran

31.K.Pattan

32.T.Thayalan Jabakumar Moses

33.S.Ilango

34.S.Sekar

35.K.Subramanian

36.C.Tamilselvan

37.U.Thangaraj

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38.S.Rajagopal

39.R.Ravichandran

40.E.Iyyappa Babu

repondents 2 to 40

are working as Assistant Engineers/TWAD

C/o Managing Director

Tamil Nadu Water Supply and Drainage Board

Chepauk, Chennai-600 005

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records of the 1st respondent relating to its order in PROC.NO A1/RS/HO/80197/2007 dated 2-3-2018 and quash the same and direct the 1st respondent to correct its mistake by revising the panel of Assistant Engineers for the years 2007 and 2010 by following the length of service in the feeder categories alone and not following the cadre strength.

For Petitioners : Mr.Kandan Doraisamy

For Respondents : Mr.S.Silambannan, Additional Advocate General
assisted by
Ms.Shakila Bhanu for R1

Mr.M.Ganesh for R7,19 to 22, 25, 31, 32 and 33

R2,6,8,9 to 18,23,24,26 to 30 and 34 to 40
served no appearance.



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ORDER

The petitioners have approached this Court seeking to quash the impugned proceedings dated 02.03.2018 on the file of the 1st respondent and to consequently direct the 1st respondent to revise the panel of Assistant Engineers for the years 2007-2010 by following the length of service in the feeder categories alone and not following the cadre strength.

2. The case of the petitioners is that they were all serving as Assistant Engineers in the respondent Board. A resolution of the selection committee dated 06.07.2007 and consequential proceedings No.1 were challenged in W.P.No.27555 of 2007 before this Court. The said Writ Petition was dismissed. Aggrieved by the same, the petitioners preferred W.A.Nos.804 and 805 of 2008. The said Writ Appeals came to be allowed on 23.03.2016, thereby confirming that the length of service should be the basis for appointment by transfer of service from lower categories. Though, the respondent Board preferred a Special Leave Petitions in S.L.P.(C).Nos. 23349 and 23350 of 2016 before the Hon'ble Supreme Court, the Special



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Leave Petitions came to be dismissed. Various other proceedings were challenged before this Court and it is stated that W.A.No.1025 of 2017 is pending in that regard. The respondent Board also filed Rev.Appl.No.153 of 2017 in pursuance of liberty granted by the Hon'ble Supreme Court while S.L.P.Nos.23349 and 23350 of 2016 were withdrawn. The Hon'ble Division Bench of this Court dismissed the Review Application.No.153 of 2017 on 06.02.2018. In the Contempt Petition filed by the petitioners in Cont.P.No.2846 of 2016, it was brought to the notice of the petitioners that in and by proceedings dated 02.03.2018, the Board had prepared a temporary seniority list. Recording the said fact, the Contempt Petition was closed. It is the grievance of the petitioners that the temporary list prepared for the years 2007 and 2010 was defective and several juniors who were appointed much long after the petitioners came to be placed above the petitioners. It is the case of the petitioners that all of them joined between August and September, 1989. According to the petitioners, such placement of the petitioners below juniors who joined much later was in flagrant violation of the judgment of the Hon'ble Division Bench of this Court in W.A.No.805 of 2008. The specific



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grievance of the petitioners is that the length of service was not followed while preparing the temporary list for the years 2007 and 2010.

3. In the meantime, the respondent Board also challenged the order dated 06.02.2018 in Rev.Appl.No.153 of 2017 as well as the judgment of the Hon'ble Division Bench in W.A.No.805 of 2008, before the Hon'ble Supreme Court. Both the Special Leave Petitions were rejected on 20.07.2018.

4. According to the petitioners, the 2nd respondent seeks to apply G.O.Ms.No.1069 dated 13.10.1984, which is only an executive order having no statutory force. Infact, the Tamil Nadu State and Sub-Ordinate Service Rules (in short 'TNSSS Rules') were also amended by inserting a Second Proviso to Rule 36(a) which came into force on 13.10.1984 vide G.O.Ms.No.1069 dated 13.10.1984 and therefore the contention of the respondent Board that cadre strength of the feeder categories is to be followed was unsustainable. On these grounds, the impugned proceedings dated 02.03.2018 being the selection list for the years 2007 and 2010 has



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been challenged.

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5. Though the statutory respondents have not filed a counter, the 19th respondent, one of the junior employees of the petitioners has chosen to file a counter defending the action of the statutory respondent Board on the ground that the revised selection list for the years 2007 and 2010 was only in accordance with the guidelines issued in G.O.Ms.No.1069 dated 13.10.1984 and therefore, no interference was warranted by way of issuance of a Writ.

6. Heard Mr.Kandan Doraisamy, learned counsel for the petitioners. Mr.S.Silambanan, Additional Advocate General-II assisted by Ms.Shakila Bhanu, learned counsel for the 1st respondent, Mr.Ganesh, learned counsel for the respondents 7, 19 to 22, 25,31,32 and 33. I have also perused the materials placed on record by the respective counsel.

7. The counsel for the petitioners would canvass the various grounds raised in the Writ Petition and also take me through the various orders passed



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in relation to this issue earlier, especially the orders passed in Writ Appeals and Review Application. Learned counsel for the petitioners would first and foremost contend that the respondent Board having lost its stand before the Division Bench of this Court as well as the Hon'ble Supreme Court especially with regard to the applicability of G.O.Ms.No.1069 dated 13.10.1984, cannot thereafter try to implement the said G.O by back door methods. He would further contend that the said G.O contain two parts viz.,

i) Where the scales of pay of feeder categories were similar, for the purposes of promotion, a percentage for each feeder category would be prescribed, taking into consideration the cadre strength of each of the feeder categories and a cycle for promotion may also prescribed in this regard;

ii) Where the scales of pay of the feeder categories are different, then the persons holding posts carrying a higher scale of pay in the feeder category should be considered first and only when there are no qualified and suitable persons available in that post, then persons holding posts carrying the next higher scale of pay in the feeder category should be considered.



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8. He also specifically drew my attention to the fact that in the very same G.O it has been mentioned that orders amending General Rules for Tamil Nadu State and Sub-Ordinate Services would be issued separately. He would also further contend that while issuing amendment to the Tamil Nadu State and Sub-ordinate Service Rules, the State Government has consciously inserted only the second part of G.O.Ms.No.1069 as the Second Proviso to Rule 36(a) and part 1 of G.O.Ms.No.1069, which deals with cadre strength was not given any statutory force. Therefore, he would conclude his arguments stating that the G.O had no statutory force and the Government had consciously given effect to only one part of the G.O by carrying out an amendment to R.36(a) by inserting a Second Proviso and that promotion cannot be given on the basis of such a G.O which is only at best an executive instruction. He would also rely on TWAD Board Service Regulations especially Regulation 22(b) which states as follows:

“Promotion in all cases shall be made on the grounds of merits and ability, seniority being considered where merit and ability are approximately equal”.



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9. He would also draw a parallel by referring to R.36 b(i) of the Tamil Nadu State Sub-Ordinate Service Rules, which reads as follows:

“ (b)(i) Promotions to selection category or grade-- Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found suitable for such promotion shall be with reference to the inter-se-seniority of such persons in the lower post.”

He would also state that when the respondent Board had adopted viz., the combined length of service/seniority from feeder category of JDO and Technical Assistants in 1998, for appointment of A.E by transfer of service from departmental candidates, it was unfair and improper on the part of the respondent Board to arbitrarily change the procedure and criteria to cadre strength.

10. Per contra, the learned Additional Advocate General-II would contend that the respondent board did not prepare a panel of eligible



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Assistant Engineers based on communal roster, since this Court as well as the Honb'le Supreme Court has clearly held that communal roster should not be followed. According to the learned Additional Advocate General-II though common seniority is prepared for the posts of Junior Draughting Officers and Technical Assistants carrying equal scale of pay, as they perform different nature of work, they cannot be interchanged. According to the learned AAG-II, the Writ Petitioners were promoted as AE's in the year 2010 as per cadre strength and subsequently as AEE in March 2019. He would place strong reliance on G.O.Ms.No.1069 laying down minimum eligibility criteria for promotion and contend that at the relevant point of time there were 67 vacancies out of which 10 posts were reserved for Electrical Superintendents and Draughting Officers carrying higher scale of pay and the balance of 57 vacancies was alone available to be filled up from amongst the junior Draughting Officers and Technical Assistants. He would also contend that there is no irrationality or erroneous fixation in arriving at a ratio 78:22 between JDO's and TA's which has been followed in preparing the seniority list of AE's. He would also refer to the observations of Late Justice



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Mr.Krishna Iyer that when two posts are merged there will be heart burns which cannot be avoided.

11. The learned AAG-II would therefore, pray for dismissal of the Writ Petition as the ratio of 78:22 has been rightly followed as a policy of the Government and the petitioners have not been able to justify or even point out as to why adoption of such a ratio was incorrect. According to the learned AAG-Ii, the Writ Court exercising jurisdiction under Article 226 should not interfere with such a policy of the Government as it is not one that shocks the conscience of the Court or one that is not against public policy. He would also further contend that G.O.Ms.No.1069 dated 13.10.1984 has not been challenged and therefore, even on this ground, the Writ Petition needs to be dismissed. Finally, he would state that sympathetic considerations cannot prevail and result in issuance of a Writ merely because the Writ Petitioners have been fighting the case for several years.

12. Learned counsel for the private respondents would adopt the



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arguments of the learned AAG-II and justify the action of the 1st respondent Board in placing the private respondents above the Writ Petitioners.

13. First and foremost, it would be relevant to note that G.O.Ms.No.1069 dated 13.10.1984 was issued in connection with the procedure to be followed while making appointment to higher post where there is more than one feeder category. In furtherance to the said G.O, the Government of Tamil Nadu thought it fit to amend R.22 and Schedule III,III(A)and IV of the General Rules vide G.O.Ms.No.105 dated 20.06.2000. The selection committee narrowed down 67 departmental candidates by following the rule of reservation. The same was challenged before this Court successfully and Appeal as well as Review filed by the respondent Board came to be dismissed. One another important and relevant circumstance is the fact that G.O.Ms.No.1069 dated 13.10.1984 contained two distinct parts, one pertaining to cadre strength where scales of pay were the same and another pertaining to cases where the scales of pay were different and the procedure to be followed in such cases. Admittedly, the said G.O contained a clause that



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the TNSSS Rules would be amended separately incorporating the import of the G.O. However, for the reasons best known to the State only the second part of the G.O.Ms.No.1069 came to be incorporated as a Second Proviso to R.36(a) of the TNSSS Rules. Therefore, consciously the State did not choose to give effect or statutory force to the first part pertaining to cadre strength. Therefore, the first part of the said G.O only survives as an executive instruction without any statutory force.

14. It is also seen that the basic qualification for being appointed as an AE by way of transfer from amongst departmental candidates was to hold a B.E degree. However, placing reliance on first part of G.O.Ms.No.1069, candidates who had not even qualified by completing a B.E degree were also considered while fixing the cadre strength. The issue of cadre strength was specifically taken before the Hon'ble Supreme Court. With the dismissal of S.L.P.Civil Nos.23349 and 23350 of 2016, the only conclusion that can be arrived at is that the said plea was rejected by the Hon'ble Supreme Court and therefore it cannot be implemented by the respondent Board thereafter. It is



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also observed that while appointment A.E's by way of transfer of service from amongst departmental candidates for the year 1998, the respondent Board has adopted only the combined length of service/seniority and not cadre strength. While so, when it came to 2007 and 2010, the respondent Board has, without any justification, chose to change the criteria, without any legal basis whatsoever, especially after the dismissal of the review as well as the S.L.P's before the Hon'ble Supreme Court.

15. By following the said methodology the respondent Board has brought about a situation where several juniors who were appointed much subsequent to the Writ Petitioners under the guise of cadre strength came to be placed above the Writ Petitioners, especially when the Government consciously decided not to incorporate the first part of G.O.Ms.No.1069 dated 13.10.1984 while amending the TNSSS Rules to include only the second part of the said G.O. The net result of such arbitrary action and change of criteria by the respondent Board has only resulted in a situation where their own service regulations have been thrown to the winds. When



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promotion is to be made only on the grounds of merit and ability and seniority coming into play only when merit and ability are more or less the same, by placing reliance on an executive instruction without having any statutory backing or force, the respondent Board has promoted the private respondents and placed them above the Writ Petitioners. Equally, when the Division Bench of this Court held that the selection process followed by the respondent Board was liable to be quashed and also quashed and a fresh selection process was directed to be adopted in accordance with Rules viz., R.8 and 22 already referred herein above, the respondent Board is estopped from now relying on G.O.Ms.1069 part one and follow cadre strength, ignoring length of service and seniority which was affirmed by the Division Bench of this Court and also resulted in a dismissal order before the Hon'ble Supreme Court, though with a liberty to file a Review. The Review Application also subsequently came to be dismissed. Under such circumstances, I am unable to subscribe to the arguments advanced by the learned AAG-II and the counsel for the private respondents that the mandate of G.O.Ms.No.1069 dated 13.10.1984 has been followed and no illegality or



irregularity can be alleged.

16. One another factor is that admittedly there were about 307 JDO's and 85 TA's from amongst which ratio of 78:22 was adopted and in so far as the 57 available vacancies while applying the same ratio of 78:22 44 vacancies were allotted to JDO's and 13 to TA's. This procedure of carving out a percentage combining two distinct posts of JDO's and TA's for whom basic eligibility criteria itself was different would only result in an unfair practice, depriving eligible Technical Assistants from being appointed/promoted. The reliance placed on by the respondent Board that cadre strength being adopted as a policy decision of the Government and therefore no interference can be warranted in this regard, I am unable to accept such a contention for the simple reason that persons from two distinct posts, admittedly even according to the respondent Board having different nature of service cannot be put in one basket and thereafter undergo a selection process. Such an approach would only lead to treating unequals equal, certainly amounting to violation of principles of natural justice and



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fundamental rights of the Writ Petitioners. The argument that there is no discrimination or arbitrariness in adopting the said ratio of 78:22 is wholly unsustainable as I am able to clearly see a distinct and clear discrimination and arbitrariness while adopting such a ratio on the basis of cadre strength. No doubt, the petitioners have not challenged G.O.Ms.No.1069. However, I am of the view that the same is not fatal to the case of the petitioners, especially since the very same issue has been the bone of contention in earlier Writ Appeal proceedings, Review proceedings as well as S.L.P proceedings before the Hon'ble Supreme Court and merely because the petitioners have sought to challenge the selection list for the years 2007 and 2010 alone would not deprive them relief. As already discussed herein above, the very same issue has been canvassed right from this Court upto the Hon'ble Supreme Court and the grievance of the petitioners is only that despite the issue being settled upto the Hon'ble Supreme Court, the respondents have violated the judgment of the Division Bench of this Court, by drawing reference and strength from an executive instruction in G.O.Ms.No.1069 dated 13.10.1984, which admittedly has no statutory force. More so, as



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already seen and discussed herein above, the issue of cadre strength was virtually given a go by the State Government when it thought it fit to amend only the TNSSS Rules to incorporate only the second part omitting the first part viz., cadre strength.

17. For all the above reasons, the petitioners are entitled to relief and accordingly the Writ Petition is allowed as prayed for. The 1st respondent shall prepare a revised panel for AE's for the years 2007 and 2010 following the length of service in feeder categories and not cadre strength and publish the same within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected W.M.P is closed.

04.08.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

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To

1.The Managing Director
Tamil Nadu Water Supply and Drainage Board
Chepauk, Chennai-600 005

20/21



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P.B.BALAJI, J.,
kpr

Pre-delivery order in
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