



W.P.Nos.11779 & 18640 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.Nos.11779 & 18640 of 2017

1. C.Vijaya Baskar
2. P.Senthilkumar
3. S.Selvam
4. S.Prakash

Petitioners in
.. W.P.No.11779 of 2017

1. P.Arivalagan
2. M.Seenuvasan
3. V.Harikrishnan
4. R.Santhanakrishnan
5. B.Sakthivel
6. R.Arulmozhi Selvi
7. S.Mohammed Yaseen
8. D.Vijayaragunath
9. A.D.Tamilselvan
10. P.Prasath
11. A.Arivoli
12. A.Narayanan
13. R.Kalaiselvi
14. P.R.Jayashree
15. A.Ganesan
16. P.Prakash
17. M.Vijayakumar
18. R.Mugugesan
19. R.Valli



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20. K.Vellingiri
21. M.Elankumaran
22. R.Chandrasekar
23. V.Palanivel
24. S.Pandiyan
25. K.Eswaramoorthy
26. R.Chandran
27. N.Arun
28. P.G.Palaniswaamy
29. K.Kaneeswari
30. A.Shankar
31. R.Anburaj
32. S.Boopathyraja
33. P.Murthy
34. S.Kannan
35. T.Karthik
36. A.Saravanan
37. N.Kumaresan
38. T.Sankar
39. P.Ashokkumar
40. P.Rajeswari
41. R.Ragunathan
42. R.Saravanan
43. R.Sureshkumar
44. N.T.Thangamani
45. M.Thangavelu
46. S.Sethuraman
47. M.Jessymalathi
48. T.Mohan Babu
49. P.Ulaganathan
50. J.S.Jayaraj
51. G.Palanisamy
52. K.Kumar
53. V.M.Murugesan
54. M.Poompavai
55. N.Jagadeesh Kumar
56. S.Deepamani



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57. A.Thamhil
58. R.Manivannan
59. G.Deivani
60. R.Thiyagu
61. V.john Britto
62. T.Senthil Kumar
63. S.Ranjithkumar
64. G.R.Muthukumar
65. P.Poornadevi
66. V.Karthickkumar
67. S.Karpagam
68. M.Sivaraj
69. R.Raveendran
70. T.Tharmalingam
71. P.Karthik Kumar
72. S.Senthil Kumar
73. S.Mahalakshmi
74. K.Elango
75. S.P.Senthilkumar
76. T.Sasikumar
77. R.Krishnamoorthy
78. A.Elavanil
79. M.Sakthivani
80. V.Sakthivel
81. S.Rajendran
82. S.Srinivasaprabhu
83. K.Poonkodi
84. D.Srinivasan
85. G.Gayathiri

Petitioners in
.. W.P.No.18604 of 2017

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary
Rural Development & Panchayat Raj Department
Fort St. George, Chennai – 9.



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2. The Director of Rural Development &
Panchayat Raj Department
Panagal Building
Saidapet, Chennai – 15.

.. Respondents in
W.P.No.11779 of 2017

1. The Government of Tamil Nadu
Rep. by its Secretary
Rural Development & Panchayat Raj Department
Fort St. George, Chennai – 9.
2. The Director of Rural Development &
Panchayat Raj Department
Panagal Building, Saidapet, Chennai – 15.
3. M.Kolanjiappan
Assistant Engineer (RD)
Kalrayan Hills Panchayat Union
Villupuram District.
4. K.Kandasamy
Assistant Engineer (RD)
Kadavur Panchayat Union, Karur District.
5. S.Kanagaraj
Assistant Engineer (RD)
Sirkali Panchayat Union
Nagapattinam District.
6. D.Veeramani
Assistant Engineer (RD)
Kottampatti Panchayat Union
Madurai District.
7. R.Ilango
Assistant Engineer (RD)
Ramanathapuram Panchayat Union
Ramanathapuram District.



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8. V.Veeramanikandan
Assistant Engineer (RD)
Andipatti Panchayat Union
Theni District.
9. G.Sridharan
Assistant Engineer (RD)
Thiruvaiyur Panchayat Union
Thanjavur District.
10. M.Balakrishnan
Assistant Engineer (RD)
Thiruppulani Panchayat Union
Ramanathapuram District.
11. P.Deivakumar
Assistant Engineer (RD)
Kadayanallur Panchayat Union
Tirunelveli District.
12. M.Sahul Hameed
Assistant Engineer (RD)
Sriperumputhur Panchayat Union
Kancheepuram District.
13. K.Kunjumadan
Assistant Engineer (RD)
Mudukulathur Panchayat Union
Ramanathapuram District.
14. M.Kolanjiappan
Assistant Engineer (RD)
Kalrayan Hills Panchayat Union
Villupuram District.

.. Respondents in
W.P.No.18604 of 2017



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Common Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of declaration, declaring the impugned ad hoc Rules framed in G.O.Ms.No.15 Rural Development (E1) Department dated 25.01.2000 in respect of the post of Assistant Executive Engineer is concerned as illegal and unconstitutional and consequently direct the respondents not to consider a Junior Engineer appointed as Junior Engineer in a particular year or with lesser experience in the category of Junior Engineer earlier to an Assistant Engineer, appointed in the same year during which the said Junior Engineer was appointed or with longer experience than the said Junior Engineer in the category of Assistant Engineer, for appointment to the category of Assistant Executive Engineer.

For the Petitioners : Mr.N.Subramaniyan
in both W.Ps

For the Respondents : Mr.K.M.D.Muhilan
in both W.Ps Additional Government Pleader

COMMON ORDER

(Made by the Hon'ble Chief Justice)

The petitioners herein are Assistant Engineers under the Tamil Nadu Panchayat Department Service. The *prima donna* grievance of the petitioners is that the post of Assistant Engineer is the feeder category for the post of Assistant Executive Engineer, however the post of Junior Engineer, which is lower than the post of Assistant Engineer is also the feeder category for the post of Assistant Executive Engineer.



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2. Learned counsel for the petitioners submits that the Junior Engineers are from Subordinate Services, while Assistant Engineers are from the State Services. The scale of pay for Junior Engineers is lower when compared with the Assistant Engineers.

2.1. Assistant Engineers possess higher qualification by holding a Degree in Civil Engineering, while the Junior Engineers are holding only Diploma in Civil Engineering. The prescribed qualification mandates service period of not less than five years for both Assistant Engineers and Junior Engineers for the promotional avenue to the post of Assistant Executive Engineer is bad in law, as Assistant Engineers are higher in rank compared with the Junior Engineers.

2.2. It is further submitted that there is a quota for the Assistant Engineers and the Junior Engineers for such promotion to the post of Assistant Executive Engineers, viz., 6:2, with higher quota in favour of the Assistant Engineers.



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2.3. According to learned counsel for the petitioners, higher qualification would naturally result in higher efficiency, as laid down by the Apex Court in the case of *State of Jammu & Kashmir vs. Triloki Nath*¹. The very quota of 6:2 between the Assistant Engineers and the Junior Engineers for promotion to the post of Assistant Executive Engineer, giving clear edge to Assistant Engineers than the Junior Engineers is defeated.

2.4. The impugned Rules, insofar as enabling the Junior Engineers, who are lower in category possessing lower qualification to get promoted as Assistant Executive Engineer earlier before the Assistant Engineers, possessing higher qualification, is violative of Article 14 and 16(2) of the Constitution of India. Thus, lesser qualified and lesser experience became the basis for qualification, which does not have any rational nexus with the object of efficiency in public administration mandated under Article 335 of the Constitution of India.

¹ (1974) 1 SCC 19



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2.5. The impugned Rules are required to be declared as void insofar as making the Junior Engineers, who are in lower category with lesser qualification and lesser experience, eligible to be appointed as Assistant Executive Engineers earlier to Assistant Engineers, who are in higher service with higher qualification and longer experience. Reliance is placed on the judgment of the Apex Court in the case of *Sakuntala Sharma vs. High Court of H.P., Shimla*².

3. *Per contra*, learned Additional Government Pleader submits that the appointment of Junior Engineers is only by way of promotion and not by direct recruitment. The feeder category to the post of Junior Engineer is the post of Overseer. Before a person reaches the post of Junior Engineer, he should have served for a minimum period of fifteen years in the post of Overseer, thereby gaining vast experience. Whereas, the appointment of Assistant Engineers is by direct recruitment and the qualification prescribed is a Degree in Engineering.

² (1994) 2 SCC 411



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3.1. It is further submitted that minimum service of not less than five years is prescribed for both Assistant Engineers and the Junior Engineers before they are considered for promotion to the post of Assistant Executive Engineer. Though qualification prescribed for promotion to the post of Assistant Executive Engineer is a minimum experience of not less than five years for both Assistant Engineers and Junior Engineers, in reality, Junior Engineers would have rendered service of not less than twenty years, while the Assistant Engineers would have rendered service of only five years.

3.2. Though Assistant Engineers possess higher qualification by way of a Degree in Engineering and Junior Engineers possess lower qualification of a Diploma, such difference is equated by taking into account the total experience of twenty years of service gained by the Junior Engineers.

3.3. Learned Additional Government Pleader relied upon the judgment of the Apex Court in the case of *Dilip Kumar Garg and Ors.*



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*vs. State of U.P.*³, and in the case of *P.Murugesan and Ors. vs. State of Tamil Nadu and Ors*⁴. It is held that the Rule prescribing the ratio of 3:1 between Graduates and Diploma-holders in promotion, as also the longer qualifying period of service for Diploma-holders is valid. Reliance is also placed on the judgment of the Apex Court in the case of *Union of India vs. Pushpa Rani and Ors*⁵.

3.4. It is further submitted by learned Additional Government Pleader that for appointment to the post of Assistant Executive Engineer from Assistant Engineers and Junior Engineers in Rural Development Department is fixed as 3:1 as per the Government Order in G.O.(Ms.) No.259, Rural Development (E1) Department dated 14.12.2001.

4. We have considered the submissions canvassed by learned counsel appearing for the parties.

3(2009) 4 SCC 753

4(1993) 1 LLJ 944 SC

5 (2008) 9 SCC 243



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5. The phraseology "recruitment" includes various methodologies for inducing a person into public service. Recruitment could be by promotion, selection, appointment, deputation and transfer. Recruitment to public services and various other posts could be regulated by framing Rules and Regulations, resorting to Article 309 of the Constitution of India. The State is empowered to take a policy decision and frame Rules and Regulations with regard to the manner of recruitment.

6. This Court, in exercise of its powers under Article 226 of the Constitution of India, would not readily interfere with the policy, unless it is satisfied that the Rule making Authority has acted arbitrarily, unreasonably or in such a capricious manner so as to erode upon the Fundamental Rights guaranteed under Articles 14 & 16 of the Constitution of India.

7. In the present case, the appointment to the Assistant Executive Engineer post is governed by Notification 3 of the Tamil Nadu Panchayat Department Service Rules framed vide G.O.(Ms) No.15,



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dated 25.01.2000 of the Rural Development (E1) Department. The method of appointments are:

1. (a) Recruitment by transfer from the categories of Junior Engineer and Senior Draughting Officer of the Tamil Nadu Rural Development Department and;
(b) Promotions from the category of Assistant Engineer in the Rural Development Department.

2. The ratio for the appointment to the post, by promotion from the category of Assistant Engineer and by recruitment by transfer from the categories of Junior Engineer and Senior Draughting Officer shall be 6:2:1.

The manner of rotation to be followed is also detailed under the said Rules.

8. The qualification for appointment as an Assistant Executive Engineer is a Degree in Civil Engineering or pass in Sections A and B Examinations (AMIE) conducted by the Institution of Engineers and should have served as an Assistant Engineer for a period of not less than five years. The other methodology is recruitment made by transfer from the category of Junior Engineer in Rural Development



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Department and Senior Draughting Officer and the qualification is Diploma in Civil Engineering and should have served as a Junior Engineer or Senior Draughting Officer, as the case may be, for a period of not less than five years in the Tamil Nadu Rural Development Department.

9. Assistant Engineers are appointed by direct recruitment only and there is no source of appointment by promotion and the minimum qualification is a Degree in Engineering. Whereas, the post of Junior Engineers are filled only by promotion and not by direct recruitment. The feeder category for promotion to the post of Junior Engineer is the post of Overseer. Before a person reaches the post of Junior Engineer, he should have served for a minimum of fifteen years in the post of Overseer. A person working as an Assistant Engineer for a period of five years is considered for promotion to the post of Assistant Executive Engineer, so also the person working for not less than five years as a Junior Engineer can also be considered, but prior to that, the Junior Engineer necessarily has to render service of fifteen years in the post of Overseer before he is promoted to the cadre of Junior



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10. The qualifications prescribed for promotion to the post of Assistant Executive Engineer is a minimum experience of not less than five years for both Assistant Engineers and Junior Engineers. Though Assistant Engineers possess a qualification of a Degree and the Junior Engineers that of a Diploma, still Junior Engineers are considered for promotion to the next higher post after rendering five years of service, but prior to that, he has to render service of fifteen years as an Overseer.

11. More over, the ratio for appointment to the post of Assistant Executive Engineers from Assistant Engineers and Junior Engineers in the Rural Development Department is fixed as at the ratio of 3:1 as per G.O.(Ms).No.259 Rural Development (E1) Department dated 14.12.2001. So, if four posts are vacant, three are filled-up from the cadre of Assistant Engineer and one post from the post of Junior Engineer. It is not merely that a person after completing service of five years is automatically designated as an Assistant Executive Engineer. It



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depends upon the availability of the vacancies in the post and that too by maintaining the ratio of 3:1. Such methodology cannot be considered to be illegal and ultra vires of Articles 14 and 16 of the Constitution of India.

12. On the basis of facts of the case of *Shankuntala Sharma*² (*supra*), the Apex Court observed that it is not necessary to go into the question whether Rule 11 of 1990 Rules, which provided for the promotion to the post of the Superintendent was valid or not. The Apex Court observed that the basic weakness in Rule 10 is that it places two unequal set of posts on par with each other and also prescribes qualifying service for higher post as well.

12.1. In the said case, Rule 10 provides that appointment to the post of Superintendent was "by promotion from amongst Graduate Deputy Superintendents / Revisors with minimum 3 years of service as such in the ratio of 4:1, failing which, by promotion from amongst Senior Assistants / Translators with minimum 6 years' service as such

² (1994) 2 SCC 411



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12.2. The Apex Court observed that the substance of the Rule is that the appointment to the post of Superintendent is to be made by promotion from amongst the Graduate Deputy Superintendents and Revisors with a minimum of three years of service in the ratio of 4:1, i.e., four from Deputy Superintendents and one from Revisors. Appointment from Revisor to the post of the Superintendent is to be made only after four from Deputy Superintendent are promoted to the said post. If none from the Deputy Superintendents and Revisors with the minimum of three years' service is available, appointment is to be made from amongst the Senior Assistants and Translators with minimum service of six years in the said posts.

12.3. In the said judgment, the Apex Court has held that if none from the Deputy Superintendents and Revisors with the minimum of three years' service is available, the appointment is to be made from amongst the Senior Assistants and Translators with minimum service of six years in the said posts. The appellant therein had not put in



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three years' service as Revisor. She was dis-entitled to the post of Superintendent. On the relevant date, i.e, on 03.12.1992, there was no Deputy Superintendent or Revisor with minimum three years' service in the respective posts, hence, the post was given to the second respondent therein, as he was Senior Assistant with more than six years' service.

13. In the present case, the ratio of 6:2:1 or 3:1 is fixed. The Junior Engineers cannot encroach upon the post earmarked for promotion from the feeder category of Assistant Engineers to the post of Assistant Executive Engineer. The ratio is nowhere to be deviated, even if Assistant Engineers are not available.

14. In the case of *The State of Jammu and Kashmir*¹ (*supra*), classification was between the Assistant Engineers of Degree-holders and Diploma-holders. In the said case, the Apex Court observed that classification on the basis of educational qualification, made with a view to achieving administrative efficiency, cannot be said to rest on

¹ (1974) 1 SCC 19



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any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.

15. It is settled that when the State makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14 of the Constitution of India. The Apex Court in the case of *Dilip Kumar Garg and Ors. vs. State of U.P.*⁶, held that the decision of the Government treating the Diploma-holders on the same footing of Degree-holders was not unconstitutional and that the Government is the best judge to take a policy decision in this regard. The Courts cannot act as an appellate body.

16. In the case of *P.Murugesan and Ors. vs. State of Tamil Nadu and Ors.*⁷, the Apex Court upheld the Rule prescribing the ratio of 3:1 between the Graduates and the Diploma-holders for promotion,

⁶ (2009) 4 SCC 753

⁷ (1993) 1 LLJ 944 SC



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observing the longer period of service rendered by the Diploma-holders. The facts in the case of *P.Murugesan*⁷ (*supra*) are nearer to the facts involved in the present case.

17. The Administrative Authorities are in the best position to decide the requisite qualifications for promotion to the post of Assistant Executive Engineer from Junior Engineer and it is not for the Court to sit over their decision like a Court of Appeal.

18. The power of Judicial Review in the mode of recruitment, restructuring the cadres prescribing qualification, are matters that fall in the employers' domain and the scope of Judicial Review would be in a narrow campus. The Court would exercise its power of Judicial Review only if the State action is contrary to the Constitutional or statutory provisions or is vitiated by *malafides* and/or is arbitrary. Some leverage will have to be given to the employers to adopt to the methodology of recruitment.

⁷ (1993) 1 LLJ 944 SC



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19. In the light of the aforesaid discussions, we do not find that G.O.Ms.No.15, Rural Development (E1) Department dated 25.01.2000 suffer from arbitrariness nor are violative of Articles 14 and 16 of the Constitution of India.

20. The writ petitions, as such, are dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.20178 & 12754 of 2017 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

21.08.2023

Index : Yes/No
Neutral Citation : Yes/No

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The Government of Tamil Nadu
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Panagal Building, Saidapet, Chennai – 15.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU, J.

(drm)

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