



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2024

WEB COPY

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

WA.Nos.938, 940, 941, 943, 942 and 939 of 2013
CMP.Nos.15585, 15582, 15583, 15584 and 15586 of 2016
and M.P.Nos.1 (6 Nos.) and 2 (6 Nos.) of 2013

WA.No.938 of 2013

C.Kuppusamy
S/o.N.Chinnamani,
Assistant Engineer (Electrical)
Office of the Engineer-in-Chief (Building)
Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai – 600 005.

... Appellant

Vs

- 1.The Secretary to Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai-600 009.
- 2.The Engineer-in-Chief (Buildings),
Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai – 600 005.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Greens Road, Chennai-600 006.

... Respondents



PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the Order passed by the learned Single Judge in Writ Petition No.9166 of 2012 vide its Order dated 04.02.2013.

<i>WA.Nos.</i>	<i>For Appellants</i>	<i>For Respondents</i>
W.A.No.938 of 2013	Mr.V.Sivalingam for C.S.Associates	Mr.Stalin Abimanyu (for R1 & R2) Additional Government Pleader Mr.R.Bharanidharan (for R3)
WA.Nos.939, 940, 941, 942 & 943 of 2013	Mr.V.Sivalingam for C.S.Associates	Mr.Stalin Abimanyu (for R1 & R2) Additional Government Pleader Mr.R.Bharanidharan (for R3) Mr.R.Prem Narayan (for R4, R7, R9 & R10) R5 - No Appearance R6 - Died R8 - Due in service

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

These writ appeals challenge an order passed by the writ Court on 04.02.2013. The prayers in those writ petitions were for a mandamus directing the Secretary to the Government of Tamil Nadu, Public Works Department and the Engineer-in-Chief and Chief Engineer (Buildings) of the same department to fix the petitioners' seniority with effect from various



dates, being the dates of their appointments.

WEB COPY

2. The writ petitions came to be dismissed on 04.02.2013. Inter-alia, the writ Court noted the submissions of the writ petitioners/appellants to the effect that they had been appointed on various dates between 1983 and 1989 as Assistant Engineers in the Public Works Department (PWD). Their appointments were temporary with a clear stipulation that there would be no avenue for regularization.

3. However, a few years into their appointments, taking a sympathetic view, G.O.Ms.No.69 dated 18.02.2002 had come to be passed considering the representations made by several of the employees seeking regularization. Prior thereto, the petitioners had approached the Tamil Nadu Administrative Tribunal (in short 'Tribunal') by way of Original Applications. Pending those applications, there had been a direction restraining the respondents from ousting them on the ground of their continued service in excess of six years.

4. On 11.04.1997, the petitioners had withdrawn their applications before the Tribunal and according to the learned counsel for the appellants the withdrawal is based upon the assurance that had been extended by the respondents to the effect that a sympathetic view would be taken in regard to their regularization.

5. It is hence that G.O.Ms.No.69 dated 18.02.2002 had come to be passed wherein at paragraph No.3 the respondents regularized the



appointments of 35 individuals mentioned in the annexure thereto, with effect from the dates of their appointments. However, qua the question of seniority, the respondents fixed '23.03.2001' as the date from which they may claim seniority.

6. The writ court has specifically noted that the aforesaid G.O. has not been the subject matter of challenge and this one fact would suffice to negate the prayer of the writ petitioners and confirm the order passed in writ petitions. The terms of service of the petitioners/appellants stand crystallized per para 3 of G.O.Ms.No.69 dated 18.02.2002 and in the interests of completion and clarity, the said paragraph is extracted below:-

“3. In exercise of powers conferred by Rule 48 of the General Rule contained in Part-II of the Tamil Nadu State and Subordinate Services, In Volume-I of Services Manual 1987, the Governor of Tamil Nadu hereby relaxes the rule 22 of the General Rule for the Tamil Nadu State and Subordinate Service regarding rule of reservations in favour of the 35 temporary Assistant Engineers (Electrical/Mechanical) in the Public Works Department mentioned in the annexure to this order so as to enable them to be regularly appointed as Assistant Engineers (Electrical/ Assistant Engineer (Mechanical) in the Public Works Department with effect from the date of temporary appointment mentioned against their names. The Government direct that this regularization shall not confer any right to claim on seniority and that the seniority of the 35 persons shall be fixed from 23.3.2001 the date of Tamil Nadu Public Service Commission's concurrence for the regularization of their services. The Chief Engineer (General), Public Works Department shall take action accordingly.”

7. The grievance of the appellants is that other employees who had



been appointed, directly, by way of temporary appointments, have stolen a march over then and they have been discriminated.

WEB COPY

8. The appointments of the appellants was made on various dates between 1983 and 1989. As pointed out by the respondents, they have not chosen to either challenge G.O. dated 18.02.2002 under which their seniority has been fixed but have, in fact chosen to withdraw the applications filed by them before the Tribunal. Notwithstanding this, a representation was made by them on 26.04.2007 based on which a provisional seniority list came to be released on 20.11.2009.

9. In that list, the petitioners' colleagues were placed senior to the petitioners. The aforesaid list is not a subject matter of challenge at any point of time. It is only on 11.07.2017, for the first time, that a series of representations were made raising the question of seniority. The elapse of time between 2002 and 2017 has not been explained anywhere, and is, in our view, fatal to the case of the petitioners.

10. That apart, the interim events such as the lack of challenge to G.O. dated 18.02.2002 and provisional seniority list also point to the acquiescence of the petitioners of their seniority as fixed therein. The inaction as aforesaid is equally fatal to their cause. This aspect of the matter has been dealt with by the writ Court and specific reference has been made to the judgment of the Hon'ble Supreme Court in *S.Sumnyan and Others V. Limi Niri and others*



((2010) 6 SCC 791), which touches upon the aspect of delay which we also reiterate.

WEB COPY

11. Useful reference may also be made to Rule 35 (f) of the Tamil Nadu Subordinate Service Rules, also referred to in Counter dated 19.01.2024 filed by the respondents, extracted below:-

“ Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases or rectifying orders, resulting from mistake of facts.”

12. Rule 35 (f) specifically requires that an application for revision of seniority would have to be filed within three years from the date of order of fixation of seniority. In the present case, the fixation of seniority is vide G.O. datd 18.02.2002 and the request for amendment has been made only in 2017 by which time the period provided for amendment had long gone.

13. In light of the detailed order passed by the writ court addressing all the above aspects, we see no merit in these writ appeals. Hence, these writ appeals and connected miscellaneous petitions are dismissed. No costs.

14. In light of the order passed in writ appeals, we see no reason to consider the applications filed for impleadment in CMP.Nos.15585, 15582, 15583, 15584 and 15586 of 2016 and the same are hence closed.



WEB COPY

W.A.Nos.938, 940, 941, 943, 942 & 939 of 2013



(A.S.M.,J) (G.A.M.,J)
05.08.2024

Index: Yes
Neutral Citation : Yes
Speaking Order : Yes
mpl

To

- 1.The Secretary to Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai-600 009.
- 2.The Engineer-in-Chief (Buildings),
Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai – 600 005.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Greens Road, Chennai-600 006.



WEB COPY



W.A.Nos.938, 940, 941, 943, 942 & 939 of 2013

Dr.ANITA SUMANTH,J
AND
G.ARUL MURUGAN,J.

mpl

WA.Nos.938, 940, 941, 943, 942 and 939 of 2013
CMP.Nos.15585, 15582, 15583, 15584 and 15586 of 2016
and M.P.Nos.1 and 2 of 2013 (6 Nos.)

05.08.2024