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W.P.Nos.10974, 21027, 25161 & 35808 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.01.2024

Pronounced on : 06.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.10974, 35808, 21027 & 25161 of 2023 and
WMP.Nos.10873, 10874, 35806, 20397, 20400, 24580 & 24583 of 2023
and WMP.Nos.257, 260, 262, 523 of 2024 & 27659 of 2023

WP.No.10974 of 2023

1.R.Venkatachalam
2.K.C.Anandaraj Umapathy
3.J.Arulneri Selvan
4.C.Jeyadurai
5.A.Srinivasan
6.M.S.Hemalatha
7.R.Selvarajan

... Petitioners

Vs.

1.The Government of Tamilnadu,
Rep. By its Secretary,
Public Works Department,
Fort St.George, Chennai-9
2.The Government of Tamilnadu,
Rep. By its Secretary,
Water Resources Department,
Fort St.George, Chennai-9
3.The Engineer-in-Chief &
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-5



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4.The Engineer-in-Chief &
Chief Engineer (General),
Water Resources Department,
Chepauk, Chennai-5

5.S.Kulanthaiyan

6.B.Devan

7.P.Senthil Kumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order viz., GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021 issued by the first respondent and to quash the same insofar as ordering in para-9(E) making the option final and irreversible and consequently direct the official respondents to get fresh options from the petitioners and to allot them accordingly to Public Works Department and consequently to revise the promotions already made pursuant to GO.(2D) No.23 Public Works (A1) Department dated 30.08.2022 and issue consequential promotion orders to the eligible petitioners based on their revised options that would be given to Public Works Department.

For Petitioners : Mr.N.Subramanian

For Respondents

For R1 to 4

: Mr.J.Ravindran
Additional Advocate General
Assisted by
Dr.T.Seenivasan,
Special Government Pleader



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For R5 : Mr.R.Saravanakumar
Standing Counsel

For R7 : Mr.G.Sankaran,
Senior Counsel
for Mr.K.Sathiya Singh

WP.No.35808 of 2023

P.Dhanalakshmi

... Petitioners

Vs.

- 1.The Government of Tamilnadu,
Rep. By its Secretary,
Public Works Department,
Fort St.George, Chennai-9
- 2.The Government of Tamilnadu,
Rep. By its Secretary,
Water Resources Department,
Fort St.George, Chennai-9
- 3.The Engineer-in-Chief &
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-5
- 4.The Engineer-in-Chief &
Chief Engineer (General),
Water Resources Department,
Chepauk, Chennai-5

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order viz., GO.(Ms) No.158 Public



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Works (D2) Department dated 01.11.2021 issued by the first respondent and to quash the same insofar as ordering in para-9(E) making the option final and irreversible and consequently to direct the official respondents to get fresh options from the petitioner and to allot her accordingly to Public Works Department and consequently to consider her for promotion to the category of Superintending Engineer in Public Works Department.

For Petitioners : Mr.N.Subramanian

For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by
Dr.T.Seenivasan,
Special Government Pleader

WP.No.21027 of 2023

R.Santhi

... Petitioner

Vs.

- 1.The Government of Tamilnadu,
Rep. By its Additional Chief Secretary,
Public Works Department(PWD),
Fort St.George, Chennai-9
- 2.The Government of Tamilnadu,
Rep. By its Secretary,
Water Resources Department(WRD),
Fort St.George, Chennai-9
- 3.The Engineer-in-Chief &
Chief Engineer(General),
Public Works Department(PWD),
Chepauk, Chennai-5
- 4.The Engineer-in-Chief &
Chief Engineer (General),



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Water Resources Department(WRD),
Chepauk, Chennai-5
5.R.Durga
6.P.Senthil Kumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order viz., GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021 issued by the first respondent and to quash the same insofar as ordering in para-9(E) making the option final and irreversible and consequently to direct the official respondents 1 to 4 to get fresh options from the petitioner and to allot her accordingly to Public Works Department and consequently to revise the promotions already made pursuant to GO.(2D) No.23 Public Works (A1) Department dated 30.08.2022 and issue consequential promotion orders to the eligible petitioner based on their revised options that would be given to Public Works Department.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents
For R1 to 4 : Mr.J.Ravindran
Additional Advocate General
Assisted by
Dr.T.Seenivasan,
Special Government Pleader

For R5 : Mr.P.Mathiyalagan
for Mr.R.Sampath Kumar



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For R6

: Mr.G.Sankaran,
Senior Counsel
for Mr.K.Sathiya Singh

WP.No.25161 of 2023

1.K.Vijayakumar
2.V.Suganthi

... Petitioners

Vs.

1.The Government of Tamilnadu,
Rep. By its Additional Chief Secretary,
Public Works Department,
Fort St.George, Chennai-9
2.The Government of Tamilnadu,
Rep. By its Secretary,
Water Resources Department,
Fort St.George, Chennai-9
3.The Engineer-in-Chief &
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-5
4.The Engineer-in-Chief &
Chief Engineer (General),
Water Resources Department,
Chepauk, Chennai-5
5.S.Kulanthaiyan
6.B.Devan
7.P.Senthil Kumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order viz., GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021 issued by the first respondent and to quash the same insofar as ordering in para-9(E) making the option



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final and irreversible and consequently direct the official respondents to get fresh options from the petitioners and to allot them accordingly to Public Works Department and consequently to revise the promotions already made pursuant to GO.(2D) No.23 Public Works (A1) Department dated 30.08.2022 and issue consequential promotion orders to the eligible petitioners based on their revised options that would be given to Public Works Department.

For Petitioners : Mr.N.Subramanian

For Respondents
For R1 to 4 : Mr.J.Ravindran
Additional Advocate General
Assisted by
Dr.T.Seenivasan,
Special Government Pleader

For R5 : Mr.R.Saravanakumar
Standing Counsel

For R7 : Mr.G.Sankaran,
Senior Counsel
for Mr.K.Sathiya Singh

COMMON ORDER

All the writ petitions have been filed challenging the Government Order in GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021 on the file of the first respondent insofar as paragraph 9(E) thereby making option final and irreversible.



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2. The petitioners are working as Executive Engineer and Assistant Executive Engineer in Tamilnadu Water Resources Department(hereinafter called as 'WRD'). Originally, they were selected through Tamilnadu Public Service Commission(TNPSC) in the Combined Engineering Services Examination conducted for the year 1997-1998 for the post of Assistant Engineer in Tamilnadu Public Works Department. The Public Works Department (hereinafter called as 'PWD') was in charge of the works relating both to Water Resources and Construction & Maintenance of Public Buildings. The Government, as a policy matter, decided to bifurcate the Public Works Department into two Departments i.e. Water Resources Organisation and Building Organisation vide GO(Ms.)No.217 Public Works (D2) Department dated 08.11.2006. In order to effect the said bifurcation, a committee was constituted and by its recommendation, the first respondent passed order in GO(Ms.)No.36 Public Works Department dated 11.02.2008. Accordingly, options for the wings of Buildings / Water Resources were obtained often, but then were not given effect to. From the year 2006, recruitments to the lower category of Assistant Engineer was done



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separately for Water Resources Organisation and building organisations.

After bifurcation and recommendations of the committee, issued various orders including ordering that transfer between two Departments is not possible and if at all any such situation arises, it will be considered as on deputation to other departments. In fact, all Senior Engineers, happened to be overlooked in getting promotions later to their juniors because of the options made in selecting departments, the overlooked seniors would be designated as well as be paid on par with their juniors.

2.1 Further, the engineers recruited before 2006 were continued to be transferred and promoted commonly to both the buildings wing and water resources wing by maintaining common seniority. While being so, seniority list of Assistant Engineers was prepared on the basis of the roster point of selection list based on the provisions under Section 40 (1) of the Tamilnadu Government Services(COS) Act, 2016 was enacted to override the decision of the Hon'ble Supreme Court of India dated 22.01.2016 thereby confirmed the order passed by this Court in WA.No.2730 of 2012 dated 31.03.2015. This Court struck down Section



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40(1) by the judgment dated 15.11.2019 in WP.No.6649 of 2017. After bifurcation of Ministry for both the Public Works Department into Buildings and Water Resources Department, the fourth respondent once again sought for option from the engineers in this regard, expressing their option either to migrate to Public Works Department or Water Resources Department. The petitioners and others had given their option thereby expressing their willingness to migrate to WRD. As directed by the Hon'ble Supreme Court of India, the fourth respondent published revised seniority for the Assistant Engineers of 2000 batch on merit dated 13.10.2021. The petitioners were expecting of revised option based on the revised seniority.

2.2 However, based on the revised merit based seniority and options of the other engineers based on the seniority list dated 12.01.2018, the Government passed order in GO.Ms.No.158 dated 01.11.2021 thereby bifurcating the engineers of the erstwhile Public Works Department and brought them under two bifurcated departments i.e. PWD and WRD in accordance with their options. Therefore, the



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petitioners submitted representation for seeking revised options since the earlier options causes serious discrimination as several Assistant Executive Engineers in their Public Service Commission batch who are Junior to them got promoted as Executive Engineer while the petitioners in the cadre of Assistant Executive Engineer are still stagnating in WRD. Therefore, they challenged GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021 insofar as the order paragraph 9(E) making the option final and irreversible.

3. Heard, the learned counsel appearing on either side.

4. On perusal of counter filed by respondents 1 to 4 and on considering the submissions made by the learned counsel for the other respondents, it is seen that the petitioners have been selected by the Tamilnadu Public Service Commission in the Combined Engineering Services Examination for the year 1997-1999. Thereafter, they have been promoted to the post of Assistant Executive Engineer and they are currently working in WRD. After recommendation of one man



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committee, the Public Works Department has been bifurcated into two separate departments as per GO.Ms.No.36 dated 11.02.2008. The Government also had published the options exercised by the Engineers and the said options executed by the Engineers is final and irreversible. However, the common seniority of the engineers appointed for Public Works Department prior to the year 2006 was in existence until the year 2011 and promotion to the higher posts of Assistant Executive Engineer, Executive Engineer, Superintending Engineer and Chief Engineer have been made on the basis of the common seniority for the vacancies in both departments since the process of bifurcation was not completed in entirety. Further, as per the Government order, migration of Engineers against their option may be resorted to only under exceptional circumstances and as such migration will be treated as deputation in respect of such engineer migrated against the option.

5. The Government issued Government Order in GO.(Ms) No.55 Personnel and Administrative (A) Department dated 07.06.2021, thereby made amendments to the Tamilnadu Government Business



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Rules, 1978 wherein the subjects relating to Water Resources which have been already in existence under the heading 'Public Works Department' have been omitted and those subejcts have been inserted under the heading 'WRD' separately. Thereafter, on 09.06.2021, the fourth respondent had again sought options from the Engineers recruited / appointed commonly to PWD prior to 2006, to exercise their options either migrate to PWD or WRD. Accordingly, they had exercised their option either migrate to PWD or WRD irrespective of the options already exercised vide GO.(Ms.)No.36 Public Works (D2) Department dated 11.02.2008. As per GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021, paragraph 9E reads as follows:

The Option exercised by the Engineering personnel belonging to the common seniority, working in the categories from Junior Engineer / Assistant Engineer to Chief Engineer would be final and non-reversible.

If the number of officials opted to a particular Department surpasses the number of sanctioned posts in that Department, they shall be considered for deployment in either of the Department based on their existing Batch Seniority.



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The allocation of Engineers between Public Works Department and Water Resources Department shall be done on tentative basis, subject to the outcome of the pending court case before the Supreme Court of India regarding revision of seniority based on merit.

The list of option exercised by Chief Engineers, Superintending Engineers, Executive Engineers, Assistant Executive Engineers and Assistant Engineers as on 30.06.2021 to Water Resources Department and Public Works Department are attached as Annexure-I and Annexure-II respectively to this order.

6. Thus, the options exercised by the Engineering personnel belonging to the common seniority working in the categories from Junior Engineer / Assistant Engineer to Chief Engineer would be final and non reversible. Further, if the number of official opted to a particular department surpasses the number of sanctioned posts in the department, they shall be considered for deployment in either of the department based on their existing batch seniority, which implies that deployment of official in either of the department would be temporary. Further, the allocation of engineers between both the departments shall be done on



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tentative basis, in an eventuality, where the number of officials opted to a particular department surpasses the number of sanctioned posts in that department subject to the outcome of the pending court cases before the Hon'ble Supreme Court of India regarding revision of seniority based on merit. Therefore, the request made by the petitioners cannot be considered since the earlier seniority assigned to them would be revised on the basis of merit as per the orders of the Hon'ble Supreme Court of India. In fact, they had already re-exercised their option for the second time during the year 2021. By the time, the Hon'ble Supreme Court of India ordered for revision of seniority in respect of the petitioners based on merit. Therefore, their seniority would be revised on the basis of merit in the near future in compliance to the orders of the Hon'ble Supreme Court of India.

7. In view of the above discussion, this Court finds no infirmity or illegality in the Government order in GO.(Ms) No.158 Public Works (D2) Department dated 01.11.2021 insofar as paragraph 9E is concerned. As such, these writ petitions are devoid of merits and liable to



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be dismissed. Accordingly, all the writ petitions are dismissed.

Consequently, connected miscellaneous petitions are closed. There shall

be no order as to costs.

06.02.2024

Internet: Yes

Index: Yes/No

Speaking/Non-speaking order
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To

1. Secretary,
The Government of Tamilnadu,
Public Works Department,
Fort St.George, Chennai-9
2. Secretary,
The Government of Tamilnadu,
Water Resources Department,
Fort St.George, Chennai-9
3. The Engineer-in-Chief &
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-5
4. The Engineer-in-Chief &
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G.K.ILANTHIRAIYAN, J.

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