



W.P.(MD)Nos.14420 and 14421 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD).Nos.14420 & 14421 of 2022

and

W.M.P.(MD).Nos.10318, 10320, 10321 & 10323 of 2022

W.P.(MD).No.14420 of 2022:

P.Muthuvel,
Executive Engineer,
Tamil Nadu Civil Supplies Corporation,
Thanjavur,
Thanjavur District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of C0-operation,
Food and Consumer Production,
Fort St.George,
Chennai-9.
- 2.The Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.
- 3.Bhagavathy Amma,
Assistant Executive Engineer (Planning),
Tamil Nadu Civil Supplies Corporation,
Head Office, Chennai-10.



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4.G.Gunaseelan,
Assistant Executive Engineer,
Tamil Nadu Civil Supplies Corporation,
Coimbatore,
Coimbatore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.AE13/42575/2015-(1) dated 30.06.2022 and consequential impugned order passed by the second respondent vide his proceedings in Proc.No.AE13/42575/2015-(5) DATED 30.06.2022 and consequential impugned order passed by the second respondent vide his proceedings in Proc.No.AE13/42575/2015-(4) dated 30.06.2022 and quash the same as illegal.

W.P.(MD).No.14421 of 2022:

K.R.Murugan,
Executive Engineer,
Tamil Nadu Civil Supplies Corporation,
Madurai,
Madurai District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of C0-operation,
Food and Consumer Production,
Fort St.George,
Chennai-9.
- 2.The Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
No.12, Thambusamy Road,
Kilpauk, Chennai-10.



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3. Bhagavathy Amma,
Assistant Executive Engineer (Planning),
Tamil Nadu Civil Supplies Corporation,
Head Office, Chennai-10.

4. G. Gunaseelan,
Assistant Executive Engineer,
Tamil Nadu Civil Supplies Corporation,
Coimbatore,
Coimbatore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.AE13/42575/2015-(1) dated 30.06.2022 and quash the same as illegal.

For Petitioners	: Mr.M.Ajmalkhan, Senior Counsel for M/s.Ajmal Associates (In Both Petitions)
For R-1	: Mr.M.Senthil Ayannar Government Advocate (In Both Petitions)
For R-2	: Mr.Veera Kathiravan, Additional Advocate General-II, Assisted by Mr.G.Mohankumar (In Both Petitions)
For R-3 & R-4	: Mr.R.S.Anandan (In Both Petitions)



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COMMON ORDER

By consent of both the parties, these Writ Petitions are taken up for final disposal.

2. Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners, Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the first respondent, Mr.Veera Kathiravan, learned Additional Advocate General-II assisted by Mr.G.Mohan Kumar, learned counsel appearing for the second respondent and Mr.R.S.Anandan, learned counsel appearing for respondent Nos.3 and 4.

3. The petitioners have filed these Writ Petitions challenging the impugned orders passed by the second respondent, dated 30.06.2022.

4. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners submitted that earlier the petitioners herein, by names, P.Muthuvel and K.R.Murugan stood in the seniority position as 1 and 2. Subsequently, by virtue of the impugned order, dated 30.06.2022, a revised seniority order has been issued, in which, respondent Nos.3 and 4 have been placed above these



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petitioners. Consequently, one of the petitioners, by name, P.Muthuvel was reverted from the promotional post of the Executive Engineer to the Assistant Executive Engineer and one Gunaseelan/fourth respondent was promoted from the post of the Assistant Executive Engineer to the post of the Executive Engineer, vide proceedings dated 30.06.2022. Aggrieved by the revision of seniority and reverting one of the petitioners, by name, P.Muthuvel to the lower post, the petitioners have chosen to challenge the promotional proceedings issued to the respondent Nos.3 and 4 on the same day.

5. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the second respondent submitted that the dispute with regard to the seniority of the respondent Nos.3 and 4 has already been discussed in W.P. (MD).No.12094 of 2010, in which, a final order has been passed on 14.09.2010 by holding that respondent Nos.3 and 4 are seniors to both the petitioners herein. The absorption of respondent Nos.3 and 4 in the Tamil Nadu Civil Supplies Corporation in the year 2007 in the cadre of the Assistant Engineer has also been upheld and consequent to that, the seniority has been restored. The very same petitioners have challenged the said proceedings in the earlier writ petition mentioned above and lost the same. The present Writ Petitions in the above said facts were not pleaded and these Writ Petitions have been filed on



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the ground that the seniority between the petitioners and respondent Nos.3 and 4 is still under dispute.

6. A categorical finding has been given by the learned Single Judge in W.P.(MD).No.12094 of 2010 in the order dated 14.09.2010 by holding that the petitioners cannot claim any seniority over and above respondent Nos.3 and 4 have already been absorbed by the Department and who had already have a seniority over and above them. The relevant portions of the said order are extracted hereunder:

“9. As already referred to the Government has passed the G.O. directing permanent absorption of the employees from other State Public Sector Undertakings and Co-operative Institution under closure as early as on 24.01.2000 and the same is not challenged by any of the employees in the second respondent/Corporation. The petitioners 1 to 3 are recruited in the second respondent/Corporation only after the G.O. is passed. Though the petitioners 4 and 5 were working as Assistant Engineers on the date of G.O. they did not challenge the authority of the Government to pass one such G.O. as such the petitioners cannot be, at this length of time,



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permitted to raise any objection against the very permanent absorption of the respondents 3 to 9. Even in this writ petition what is challenged is the correctness of the GO which gives the date from which the absorption is given effect to and not the permanent absorption G.O. In that event, the terms and conditions laid down in the earlier G.O., is not only binding on the employees so absorbed but also the employees who are already working in the second respondent/Corporation in the category in which the deputationists are appointed on permanent absorption.

10. As already referred to the main issue to be decided herein the date from which the permanent absorption is to be given effect and the answer for the same lies in clauses v, vi and ix of the absorption G.O. Ms. No.27 which are extracted as below:

"Clause v - The employees to be absorbed in the Undertakings/Government Departments will be given pay protection. However they will not be given any service rights for the purpose of promotion, selection grade appointments etc.,

Clause vi - They will be appointed to the post as junior most in that particular category to



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which they are appointed consequent on permanent absorption

Clause ix - The employees of State Public Sector Undertakings/Co-operatives working on deputation/ contract with the other State Public Sector Undertakings/ Government Departments may be considered for permanent absorption only after they completed two years of service in the foreign body. It is also clarified that the permanent absorption in the SPSUs, Government Departments will take effect from the date from which they are continuously working in the foreign body on deputation/contract."

11. It is earnestly argued by the learned counsel for the petitioners that the deputationists shall be permanently absorbed after completing two years service in the foreign body with effect from the date of their permanent absorption that too as the junior most in the category to which the appointment is so made and the permanent absorption will not entitle them to claim any service for the purpose of promotion, selection grade, appointment etc. whereas the respondents 3 to 9 would contend that the deputationists will be considered for permanent absorption after



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completion of two years service in the foreign body but the order of permanent absorption will be as and when made to take effect from the date of their deputation but without any right to claim their past service in the parent body for the purpose of promotion, selection, appointment etc. This Court is inclined to accept the explanation put forth on the side of the respondents 3 to 9 for the following reasons:

12. Even in the judgment cited on the side of the petitioners, what is denied to the deputationists is their the past services rendered in original department for the purpose of promotion, seniority etc. and the clause v is a similar clause dealt within the case reported in 2006 8 SCC 129 wherein the employees having been appointed on absorption claimed benefit of their past service after absorption and the Supreme Court rejected the same on the ground that the same was contrary to the condition subject to which the absorption is ordered. As such the service rights referred to in clause v in G.O. Ms. No.27 as rightly argued by the learned senior counsel for the respondents 3 to 5 is only the past service rendered in the parent department and not the service rendered by the



deputationists in the category to which they are appointed on permanent absorption in the second respondent/corporation.

13. The combined appreciation of clauses vi and ix would only lead an irresistible conclusion that though the eligibility for being considered for permanent absorption will arise only after their completion of two years of service in the foreign body on deputation. Once they completed two years of their service and once they are declared to be eligible for permanent absorption, it shall take effect from the date from which they are continuously working in the foreign body on deputation and the seniority is to fixed as junior most in the particular category as on that date. It is rightly argued by the learned senior counsel for the fourth respondent that the period to be considered for permanent absorption is different from the date on which the permanent absorption is to be given effect to and the seniority in the particular category to which they are appointed in permanent absorption is only from the date on which it is given effect to. The learned standing counsel for the second respondent/ Corporation has also supported the stand so taken by the



deputationists that the permanent absorption of the respondents is as per G.O. Ms. No.27 from the date of their deputation and the same is under the impugned G.O. rightly ratified by the Government.

14. As a matter of fact the second respondent has in the counter furnished the particulars about similar order made in respect of one S.B.R. Kannan who was originally employed as Site Engineer in Highways Department and later he was while on deputation, permanently absorbed as Assistant Engineer in the second respondent/Corporation with effect from 10.01.1996 the date on which he was deputed to the service of the second respondent/Corporation. Thus, the impugned G.O. thereby permanently absorbing the respondents 3 to 9 from the date is in strict compliance with the terms and conditions laid down in the permanent absorption G.O. and is well within the jurisdiction of the first respondent. The petitioners herein who were not even in the service of the second respondent/Corporation on the date of the deputation of the respondents 3 to 9 and the petitioners 4 and 5 who failed to challenge the absorption G.O. cannot be now permitted to raise any objection or grievance against the



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orders passed in favour of the respondents 3 to 9 herein. If in the event of the implementation of the absorption G.O. the permanent absorption of the respondents 3 to 9 is likely to replace the petitioners below the deputationists in the matter of fixation of seniority, it cannot be questioned and the claim of the petitioners to place them over and above the respondents 3 to 9 is to be hence rejected as baseless and unfounded. In the considered view of this Court, the seniority of the petitioners and the respondents 3 to 9 in the category to which the respondents 3 to 9 were appointed consequent on the permanent absorption is subject to the date of the permanent absorption of the respondents 3 to 9 as per the impugned G.O. and the petitioners are not entitled to get any benefit contrary to the terms of absorption and ratification G.Os.”

7. It appears that the petitioners, who lost the matter of seniority in the earlier litigation, have not chosen to prefer any appeal by challenging the above order. Having known that the respondent Nos.3 and 4 are above in the list of seniority, the petitioners had filed these Writ Petitions challenging the impugned order on a wrong premise that they have a right of seniority over and above respondent Nos.3 and 4. Having lost the dispute of seniority, over the



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petitioners have filed these Writ Petitions by claiming the relief which would re-agitate the very same issue that has already been settled in the earlier W.P. (MD).No.12094 of 2010.

8. Now, Mr.Ajmal Khan learned Senior Counsel appearing for the petitioners submitted that the earlier Writ Petition is only with regard to the absorption of respondent Nos.3 and 4 into service and hence, that has got nothing to do in the matter of seniority or the subsequent reversion of one of the petitioners herein. But, it goes without saying that at the time, when respondent Nos.3 and 4 have absorbed permanently, the petitioners have been designated as Assistant Engineers only on 24.11.2005 and 21.07.2005 respectively.

9. However, the fact remains that absorption of the respondent Nos. 3 and 4 in the post of Assistant Engineer was done much earlier to the petitioners on 05.06.2002 and 04.03.2004 respectively. In whatever way looked into, the petitioners cannot have a better stand in the list of seniority above the respondent Nos.3 and 4 and hence, I find no reason to interfere with in the impugned orders. However, the respondents shall do the needful to consider the candidature of the petitioners, viz., P.Muthuvel and K.R.Murugan to the next available vacancy and accord promotion as expeditiously as possible.



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10. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners would submit that as per G.O.(Ms).No.27, Finance (BPE) Department, dated 24.01.2007, respondent Nos.3 and 4 will be given only with pay protection in the event of their absorption and they will not be given any service benefits. He further submitted that as per G.O.(Ms).No.61, Co-Operation, Food and Consumer Production Department, dated 21.05.2010, the services of the petitioners have been regularized only with effect from 12.02.2007 and 09.01.2009 respectively and hence, respondent Nos.3 and 4 are much juniors to them.

11. Mr.R.Veera Kathiravan, learned Additional Advocate General appearing for the second respondent would submit that subsequent proceedings dated 09.12.2010 issued by the second respondent, pursuant to the orders of the High Court made in W.P.(MD).No.12094 of 2010, wherein absorption of the respondent Nos.3 and 4 in the post of Assistant Engineer was done much earlier to the petitioners on 05.06.2002 and 04.03.2004 respectively, have not been put to challenge.



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12. The above proceedings have been passed only consequent to the orders issued by the High Court in W.P.(MD).No.12094 of 2010 and hence, the petitioners cannot have a quarrel over the above proceedings as well.

13. Even though the matter of seniority cannot be the subject of dispute once again before reverting one of the petitioners to a lower post, an opportunity could have been given to the petitioners. However, much water has flown under the bridge. Now, it is submitted that the next vacancies are going to arise on 01.05.2024 and petitioners herein, P.Muthuvel and Murugan will be accommodated therein.

14. In view of the above observations, these Writ Petitions stand **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

12.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG



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To

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2.The Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
No.12, Thambusamy Road,
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3.The Assistant Executive Engineer (Planning),
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4.The Assistant Executive Engineer,
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R.N.MANJULA, J.

TSG

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