



W.P.No.26338 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 29.01.2025

ORDERS PRONOUNCED ON : 29.04.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

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- 1.N.Suresh Kumar
- 2.R.Jeyakumar
- 3.S.Pradeesh
- 4.D.Akilan
- 5.J.John Devakumar
- 6.M.Sudhakar
- 7.P.Gopi
- 8.D.Rajeswar Babu
- 9.V.Ponraj
- 10.S.Vetrivel

... Petitioners

Vs.

- 1.The Government of Tamilnadu,
Rep. By its Secretary,
Public Works Department,
Fort St. George, Chennai – 9.



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2.The Engineer-in-Chief WRD &
Chief Engineer (GI),
Public Works Department,
PWD Campus, Chepauk, Chennai – 5.

3.P.Sekar

4.C.Balamuralidharan

5.T.Venkatesan

6.M.Muthukrishnan

7.V.Arivumani

8.N.Muregesan

9.P.S.Sivakumar

10.M.Pandiselvi

11.R.Thangarathinam

12.G.K.Gnanasekaran

13.R.Thiyagarajn

14.T.Sellan

15.P.Karthikeyan

16.S.S.Santhi

17.J.Amutha

18.R.Chandraekaran

19.S.Jagannathan

20.D.Elangovan

21.M.Thanumoorthy



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22.G.Balasubramanian

23.A.Singaravadivelu

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Ceriorari, calling for the records relating to the issue of impugned order viz., proceedings No.S2(2)/29148/2004 dated 28.07.2014 issued by the second respondent and quash the same.

For Petitioners : Mr.N.Subramaniyan

For Respondents : Mr.P.Ganesan,
Addl. Govt. Pleader for R1 & R2
Ms.R.Meenaloshini &
Mr.I.Muthusamy for R3, R5, R7,
R18, R9, R13, R15, R16 and R12
Mr.R.Venkatachalapathy
for Mr.S.Kadarkarai for R6, R8,
R10, R11, R14, R17, R20, R22 & R23

ORDER

This Writ Petition has been filed by 10 petitioners challenging the proceeding No.S2(2)/29148/2004 dated 28.07.2014 issued by the second respondent regularising the service of respondents 3 to 23 in the cadre of Assistant Engineer (Civil) from the date of their initial appointment.



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2. A perusal of the impugned proceedings discloses that the respondents 3 to 23 were appointed in terms of the orders issued by the Government in G.O.Ms.No.1, Public Works Department, dated 02.01.1990. It also discloses that the respondents 3 to 23 were appointed through a letter No.S2(2)/29148/2004-24/ dated 27.02.2006.

3. All the petitioners herein are claiming to be the persons appointed as Assistant Engineers in Tamil Nadu Engineering Subordinate services by way of direct recruitment. Whereas, the respondents 3 to 23 are the persons who were appointed by recruitment by transfer from various categories in Tamil Nadu State and Subordinate Services. The impugned order is being challenged by the petitioners on the ground that their initial appointments as Assistant Engineers by recruitment by transfer is bad on various counts, including on the ground that the Government order issued in G.O.Ms.No.1, Public Works Department, dated 02.01.1990 is only takes a policy decision to fill up the post of Assistant Engineers by way of recruitment by transfer from various categories in the subordinate service



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subject to condition of acquiring the BE degree and on completion of five years of service.

4. According to the learned counsel for the petitioners, the said Government Order only contemplates to amend the service Rules governing the post of Assistant Engineers and in the absence of actual amendment to the special Rules, governing the post of Assistant Engineer, the appointments made in favour of respondents 3 to 23, by acting upon the orders issued in G.O.Ms.No.1, Public Works Department, dated 02.01.1990 is totally irregular and illegal. Besides the said grounds, several other grounds were also raised to contend that the very appointment of the respondents 3 to 23 is illegal and contrary to law.

5. Admittedly, the respondents 3 to 23 herein were appointed on temporary basis as early as on 27.02.2006. Whereas, the petitioners herein were all appointed only in the year 2007 ie., almost after a period of more than a year. The grievance of the petitioners as stated in the affidavit filed



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in support of the Writ Petition is only that in case, if the impugned order is allowed to stand, the respondents 3 to 23 would become seniors to the petitioners herein and thereby, prejudicially affecting the interest of the petitioners in the matter of consideration of their case for promotion to the post of Assistant Engineer. As already noted above, the respondents 3 to 23 were appointed as Assistant Engineers much prior to the appointment of the petitioners herein. In other words, by the date of appointment of the respondents 3 to 23, the petitioners herein were not even borne in the cadre of Assistant Engineer.

6. Be that as it may, the very appointment of the respondents 3 to 23 through proceedings dated 27.02.2006 was challenged by the Association of Engineers by filing a Writ Petition before this Court vide W.P.No.11184 of 2007 and the said Writ Petition was originally allowed by a Single judge of this Court by an order dated 23.12.2014. However, the Writ Appeal filed there against was allowed by a learned Division Bench and ultimately, the matter landed before the Hon'ble Apex Court in Civil



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Appeal Nos.4886 to 4888 of 2023. The Hon'ble Apex Court has been pleased to consider the matter in elaborate and also taking into consideration of the fact that the orders issued in G.O.No.1, Public Works Department dated 02.01.1990 was upheld by this Court. The Hon'ble Apex Court also took into consideration the decision of the learned Division Bench of this Court in W.P.No.7253 of 1997 holding that the orders issued in G.O.Ms.No.1 Public Works Department, dated 02.01.990 are in the nature of filling up the gap by way of issuing the executive instructions under Article 309 of the Constitution of India and upheld the appointment of respondents 3 to 23 herein as Assistant Engineers through proceedings dated 27.02.2006. The Hon'ble Apex Court also has taken note of the regularisation of the services of the 72 Assistant Engineers (Civil) including the private respondents herein. All the contentions that are raised by the learned counsel for the petitioners in the present Writ Petition were all considered by the Hon'ble Apex Court.

7. In the light of the fact that the Hon'ble Apex Court has



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confirmed and upheld the appointment of respondents 3 to 23 after having taken note of the regularisation of their service as well, in the considered view of this Court, it is not open for this Court to re-examine the very same aspect. In this regard, it would be appropriate to extract the relevant portion from the decision of the Hon'ble Apex Court in Civil Appeal Nos.4886 to 4888 of 2023, dated 16.04.2024.

“15. G.O.No.1 which includes Technical Assistants for being appointed as the Assistant Engineers on transfer of service on acquiring B.E./A.M.I.E. qualification, came to be challenged by Engineering Graduates who had obtained the degree by joining regular courses, before the High Court of Judicature at Madras. The same was negatived by the Madras High Court by order dated 8th March 1991. It is further pertinent to note that the Association of Engineers, who is one of the lead appellants herein, had filed a petition challenging the order dated 17th April 1997 passed by the Tribunal in O.A. No. 3348 of 1994.

16. The said O.A No.3348 of 1994 was filed challenging the Advertisement No.9/94 issued by the TNPSC for the post of Assistant Engineer and for consequentially considering the claim of Junior Draughting Officers, Draughting Officers and Technical Assistants for appointment as Assistant Engineers on the basis of



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G.O. Ms. Nos. 1 of 1990 and 88 of 1991. The Tribunal, vide order dated 17th April 1997, allowed the applications filed by the Junior Draughting Officers and Draughting Officers, however, dismissed the applications filed by Technical Assistants. The Tribunal observed that the Technical Assistants are not part of feeder category from which recruitment by transfer can be made for the post of Assistant Engineers. The order of the learned Tribunal was challenged by the appellants herein by filing a writ petition being Writ Petition No.7523 of 1997 titled Association of Engineers' v. The Tamil Nadu Administrative Tribunal and Others (supra) before the Madras High Court. The Division Bench of the said High Court rejected the claim of the appellants herein and upheld the order of the Tribunal. It will be relevant to refer to para (13) of the said order, which reads thus:

“13. It is also brought to our notice that the Special Rules were amended by G.O.Ms.No.1745 dated 10.10.1972, which were subsequently modified by G.O.Ms.No.1356 dated 02.08.1980 and on the basis of representation, the Government reconsidered those executive orders and issued G.O.Ms.No.1 PWD dated 02.01.1990, stating that with effect from the date of the said order, Junior Drafting Officer, Drafting Officer, Overseers and Technical Assistants, who have put in five years of service will be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.E.E. degree qualification. We are satisfied that Rule 5 of the Special Rules in no way affects the implementation of the decision of the Tribunal in view of Rule 2(a)(5) of the Special Rules. As observed earlier, it is our



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duty to mention that in order to implement the orders passed in G.O.Ms.No.1 PWD dated 02.01.1990, the Government have conducted meeting with various Engineering Associations, including the petitioner Association on 10.12.1996 and 03.06.1997 and took a decision to maintain 3:1 ratio between the direct recruitment and recruitment by transfer. As rightly pointed out, members of the petitioner Association are being considered for the number of vacancies apportioned as per the ratio out of total estimated vacancies. We have already referred to the order of this Court dated 08.03.1991 in W.P.No.3309 of 1991, upholding the G.O.Ms.No.1 PWD dated 02.01.1990. It is also not in dispute that executive instructions can be issued to fill up the gap till necessary Rules are framed under Article 309 of the Constitution. All these and other materials have been correctly considered by the Tribunal; and we are in agreement with the conclusion arrived at by it.”

17. It can thus clearly be seen that the Division Bench of the Madras High Court held that G.O. No. 1 provided that from the date of the said order, Junior Drafting Officer, Drafting Officer, Overseers and Technical Assistants, who have put in five years of service will be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.I.E. degree qualification.

18. It is sought to be urged that, before the Tribunal, the Technical Assistants had failed and that they had not challenged the said order of the Tribunal.

19. However, we find that the Division Bench of the



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Madras High Court clearly referred to G.O. No. 1 and approved it. It is further to be noted that the appeal challenging the aforesaid order of the Madras High Court dated 6th November 2006 has also been dismissed by this Court vide order dated 14th September 2017 in the case of Association of Engineers v. Government of Tamil Nadu and Others.

20. Insofar as the issue in the case of B. Thirumal (supra) is concerned, the same would not be applicable to the facts of the present case. In the said case, the appellant was working as a Junior Engineer (Electrical). He was appointed to the said post by direct recruitment. Aggrieved by the prevalent practice of Assistant Engineers (Electrical) being empanelled for promotion to the post of Assistant Executive Engineer (Electrical) only against 25% quota apportioned for members of the Subordinate Engineering Service, he had filed a representation. The said representation came to be rejected. It was sought to be contended in the said case that an Assistant Engineer promoted from Junior Engineer cadre and having obtained a degree in engineering was also entitled to compete with the Assistant Engineers directly recruited for 75% of the quota earmarked for the direct recruits. The Court found that the degree holder Junior Engineers continue to be members of the Subordinate Engineering Service even after they are redesignated as Assistant Engineers upon getting a degree qualification. Upon their



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getting degree qualification, they could be considered only against the 25% quota apportioned for the Subordinate Service and not against 75% apportioned for the State Service members directly recruited to that service or appointed by transfer in terms of the Rules.

21. Such is not the situation here. The Technical Assistants are not claiming against the 75% posts available for direct recruits. Their claim is only towards 25% posts which are required to be filled in from Junior Draughting Officers, Overseers and Technical Assistants who have put five years service and have acquired B.E./A.M.I.E. qualification. It is thus clear that the Technical Assistants are, in no way, encroaching upon the quota apportioned for directly recruited Assistant Engineers. Even if their contention is accepted that once they are brought in the cadre of Assistant Engineers, they would lose their birthmark, in view of the judgment of this Court in the case of B. Thirumal (supra), for the higher post, and there will be no competition amongst direct recruits and promotees. Whereas the direct recruits would be entitled to get promotional posts from 75% quota apportioned for them, the Technical Assistants along with other placed amongst them would be entitled to promotional posts only from 25% posts apportioned for them.



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22. *It is further to be noted that the contention of the appellants that, the services of the Technical Assistants are not regularized, is also contrary to record. It will be relevant to refer to Clause 4 of G.O. Ms. No. 155 dated 13th August 2015, issued by the Government of Tamil Nadu, which reads thus:*

“4. In accordance with the powers delegated under the general rule 48 of the Tamil Nadu State and Subordinate Services Rules Volume II, the Governor of Tamil Nadu orders relaxing the rule 2(a) and rule (5) of the Tamil Nadu Engineering Service (Category-I, Public Works) the so as to regularize the 72 Assistant Engineers (Civil) as per the Annexure of this order who were appointed retrospectively from the category of Junior Engineers and promoted from the category of Technical Assistants who acquired B.E., Civil Degree before promotion as Junior Engineers so as to enable them for regularization of the services in the category of Assistant Engineers (Civil). Further, the Government also order exempting them from the purview of the G.O.(Ms).No. 1, Public Works Department dated 02.01.1990 for regularization of the personnel stated in the Annexure to this order.”



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23. *It is thus clear that the contention of the appellants that the services of the Technical Assistants have not been regularized is contrary to record. In any case, the State Government, in its affidavit dated 10th March 2023, has categorically reaffirmed this position.*

24. *It is further relevant to note the relevant extract from the Proceedings No. S2(2)/2918/2004-24 dated 27th February 2006 conducted before the Engineer-in-Chief, W.R.D and Chief Engineer (General), PWD, which reads thus:*

“During the year from 1999-2000 to 2001-2002 the number of 369 vacancies have been apportioned to the post of Assistant Engineer to be filled up by direct recruitment and the number of 122 vacancies have been apportioned to the post Asst. Engineer to be filled up by recruitment by transfer.

Out of 122 vacancies apportioned to the post of Assistant Engineer to be filled up by recruitment by transfer, only 29 vacancies have been filled up so far, from the Junior Draughting Officers, Draughting Officers and Overseers. The remaining number of 93 vacancies are still vacant due to dearth of eligible candidates.

Under these circumstances and also pursuant to the directions of the Government, PWD issued in the letter fourth cited the personnels in the category of Technical Assistant, who possessed B.E/A.M.I.E qualification in civil Engineering and rendered 5 years of service, furnished to this proceedings are appointed as Asst. Engineer(civil) in the time scale of pay of Rs.65-00-200-11, 100 on temporary basis under rule



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10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service, subject to the outcome of W.P.No.7523/97 pending in the High Court of Madras in this matter.”

25. It can thus clearly be seen that the State Government was required to take a decision to appoint Technical Assistants as Assistant Engineers on temporary basis as it was found that out of 122 vacancies apportioned to the post of Assistant Engineer to be filled up by recruitment by transfer, only 29 vacancies had been filled so far. It appears that the attempt of the appellant association is to grab all the posts available even those apportioned for the candidates promoted from subordinate services. In our view, the said attitude is totally unequitable.”

8. The learned counsel for the petitioners, having been confronted with the order passed by the Hon'ble Apex Court as extracted above, further contended that the said decision of the Hon'ble Apex Court cannot be treated as a precedent and the issue as to the regularisation of services of the respondents 3 to 23 needs to be examined independently by placing reliance on a decision of the Hon'ble Apex Court in the case of ***Delhi Administration (Now Act of Delhi) Vs. Manohar Lal*** reported in (2002) 7 ***SCC 222***, wherein it was held as under:



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“We have carefully considered the submissions of the learned counsel appearing on either side. Apparently, the learned Judge in the High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers under the Criminal Laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them. Considered in that context, we could not find from the decisions reported in Sukumaran and Santosh Kumar any law having been declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a disposal. The same could not have been mechanically adopted as a general formula to dispose of,



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as a matter of routine, all cases coming before any or all the courts as an universal and invariable solution in all such future cases also. The High Court had no justifying reason to disturb the conclusion of the first Appellate Court, in this regard.”

9. This Court has carefully considered the said submissions made by the learned counsel for the petitioners as well as the decision relied upon by him.

10. It is not a case of precedent, but here is a case where the very validity of the appointment of the respondents 3 to 23 as Assistant Engineers (Civil) in terms of G.O.Ms.No.1, Public Works Department, dated 02.01.1990 has fallen for consideration before the Hon'ble Apex Court and the same was decided in favour of the respondents 3 to 23. Therefore, the decision relied upon by the learned counsel for the petitioners has no application to the case on hand. Once the appointment of the respondents 3 to 23 was upheld by the Hon'ble Apex court, in the considered view of this Court, it is not open for this Court to re-examine the said issue at the



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instance of the petitioners herein. In the circumstances, this Court does not find any merit in the Writ Petition and the same is accordingly dismissed.

There shall be no order as to costs.

29.04.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes

vsm

To

- 1.The Secretary,
Government of Tamilnadu,
Public Works Department,
Fort St. George, Chennai – 9.
- 2.The Engineer-in-Chief WRD & Chief Engineer (GI),
Public Works Department,
PWD Campus, Chepauk, Chennai – 5.



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MUMMINENI SUDHEER KUMAR, J.

vsm

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