

W.A.Nos.227, 243 & 247 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2025

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CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.A.Nos.227, 243 & 247 of 2023
and
C.M.P.No.2399 of 2023**

S.Ravi

... Appellant
in all W.As

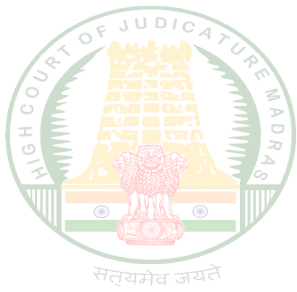
-Vs-

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009.
2. The Tamil Nadu Housing Board,
Represented by its Chairman and Managing Director,
No.493, Anna Salai,
Nadanam,
Chennai - 600 035.

... Respondents
in all W.As

COMMON PRAYER : Appeals under Clause XV of Letter Patents, against the common order dated 19.08.2020 made in W.P.Nos.38152 of 2016, 19049 of 2014 and 29012 of 2013.

For Appellant



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W.A.Nos.227, 243 & 247 of 2023

in all W.As : Mr.S.N.Ravichandran

For Respondents : Mr.R.Kumaravvel
in all W.As Additional Government Pleader for R1

Mr.V.Logesh
Standing Counsel for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

All these writ appeals were heard together and are disposed of by this common order as the issue raised in all these writ appeals are one and the same and since it arises out of the common order passed by the writ Court dated 19.08.2020 made in W.P.Nos.38152 of 2016, 19049 of 2014 and 29012 of 2013.

2. The respective prayer sought for before the writ Court in these writ appeals reads thus: these writ petitions filed by the very same petitioner, to call for records of the second respondent vide Proceedings Nos.PNT4/15954/2013 dated 30.09.2013, proceedings Memo No.PNT4/17309/2014 dated 25.06.2014, and Letter No.PNT-1/268896/2015 dated 31.03.2016, and to quash the same and consequently directing the second respondent to promote him to the post of Section Officer / Assistant Revenue Officer and also direct the respondents to pay the notional service benefits from the date of appointment of petitioner as

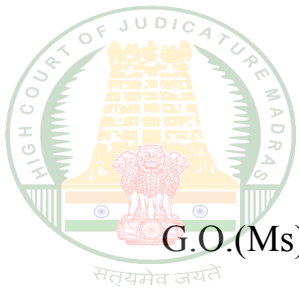


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Junior Assistant from 05.12.1991 to 24.02.2009, and as Assistant from 25.02.2009 to 08.12.2011 and from 09.12.2011 for the post of Superintendent and for post of Section Officer /Assistant Revenue Officer from 30.09.2013'.

3. The short facts which are required to be noticed for the disposal of these writ appeals are that the second respondent / Tamil Nadu Housing Board engaged people like the appellant as NMRs in the year 1986. They have been working as such for some years. Since those NMRs have made request to the Tamil Nadu Housing Board to absorb them by bringing them under regular establishment by conferring the time scale of pay, the Housing Board has requested the Government who issued a Government Order in G.O.(Ms)No.400, Housing and Urban Development Department dated 02.05.1990 whereby, the permission has been granted to the Chairman and the Managing Director of the Tamil Nadu Housing Board to regularise the services of the NMRs in the Tamil Nadu Housing Board who have been appointed initially through or not through the employment exchange and who have put in continuous service or break in service of five years as on 07.12.1988.

4. In order to have a ready reference, the relevant portion of



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G.O.(Ms)No.400, Housing and Urban Development Department dated

02.05.1990, is extracted hereunder:

"In the G.O first read above, the Chairman and Housing Director, Tamil Nadu Housing Board was permitted to regularise the services of the N.M.Rs in the Housing Board who have been appointed initially through/not through Employment Exchange and who have put in continuous service/break in service of 5 years as on 7.12.1988.

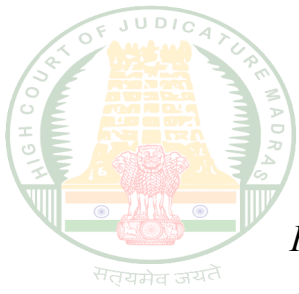
2. The Chairman and Managing Director, Tamil Nadu Housing Board has placed the matter before the Board and has addressed the Government for clarification regarding the regularisation of the services of the N.M.Rs who have completed 5 years with effect from 7.12.1988 and the creation of posts.

3. The Government have explained the matter further and they direct the following orders be implemented by the Chairman and Managing Director, Tamil Nadu Housing Board:

(i) The Tamil Nadu Housing Board should bring to the seales of pay those N.M.Rs who have completed five years of service as on 7.12.1988;

(ii) The services of the existing N.M.Rs (i.e.,) other than those referred to in item (i) above, be regularised and brought to regular time seales of pay as and when they complete five years of service;

(iii) In future, no N.M.Rs should be recruited in the



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Housing Board without the prior sanction of the Government.

4. The Chairman and Managing Director, Tamil Nadu Housing Board is requested to acknowledge the receipt of this order.

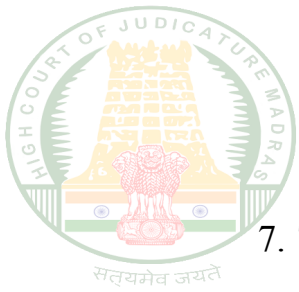
(By order of the Governor)

C.Chellappan

Secretary to Government"

5. As per the said G.O.(Ms)No.400, the appellant and the similarly placed persons have been regularised by the order of the Tamil Nadu Housing Board dated 05.12.1991 by creating a Department called 'Work Charge Establishment' (in short 'WCE'). The category in which these people have been absorbed is 'Work Assistant'.

6. It is the grievance of the appellant and the similarly placed persons seems to be that, though they have been working in the capacity as 'Work Assistant' under WCE, no promotional avenues have been made available to them and no promotions have been given to them, therefore they made request to the Tamil Nadu Housing Board to consider them for grant of promotion by bringing them under the regular establishment instead of WCE.



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7. That kind of request made by the appellant since has been rejected at various point of time those proceedings have been questioned in the respective writ petitions with the prayer as has been extracted herein above.

8. The writ Court heard all the three writ petitions together and disposed of by the common impugned order. It has been recorded by the writ Court that there was no representation on behalf of the respondents, especially, Tamil Nadu Housing Board and no counter affidavit seems to have been filed before the writ Court.

9. Therefore, based on the case projected by the appellant / petitioner, the writ Court has decided those writ petitions and dismissed those writ petitions through the impugned order, against which, these writ appeals have been filed.

10. Heard Mr.S.N.Ravichandran, learned counsel appearing for the appellant, Mr.R.Kumaravel, learned Additional Government Pleader appearing for the first respondent and Mr.V.Logesh, learned Standing Counsel appearing for the second respondent / Tamil Nadu Housing Board.

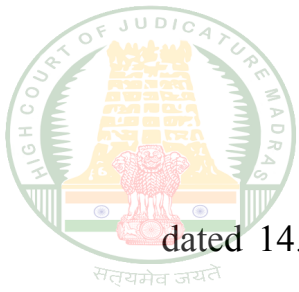
11. The learned counsel appearing for the appellant has brought to our notice that in an earlier occasion, i.e., in 1970 when similar NMRs were engaged by the Tamil Nadu Housing Board, those NMRs also have been



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brought under regular time scale of pay under the regular establishment of the Tamil Nadu Housing Board by issuance of Government Order in G.O.(Ms)No.1603, Housing and Urban Development Department dated 07.12.1988.

12. Despite the Government Order having been issued those NMRs have not been brought under the regular establishment of the Tamil Nadu Housing Board instead they have been brought under 'Work Charge Establishment' and because of which, the promotional avenues and other service benefits had been denied to them. When that was brought to the notice of the State Government, the State Government by letter dated 09.11.2012 has sought for a clarification from the Tamil Nadu Housing Board which has been replied by the Tamil Nadu Housing Board on 10.01.2013, where the Tamil Nadu Housing Board has stated that the issue has been placed before the Board of the Tamil Nadu Housing Board after compiling the particulars of the eligible candidates for its approval and the source of scale of pay adopted to these NMRs who have completed five years of service as on 07.12.1988 was based on the scale of pay now adopted to the existing personnel's who are brought into the regular establishment from the Work Charge Establishment personnel's and working under various categories as per G.O.(Ms)No.484 dated 22.5.1975 and G.O.(Ms)No.51, Finance (FRII)



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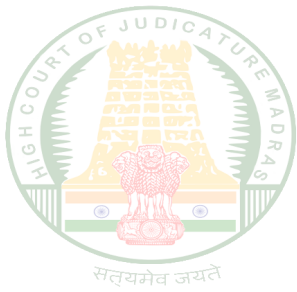
dated 14.01.1977. For the purpose of pension, gratuity and general provident

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fund, the incidence shall be met from the respective funds of the Board constituted for regular establishment.

13. This is the reason that has been stated by the Tamil Nadu Housing Board as to why they have been kept under 'Work Charge Establishment' and once the proposal for having regularised these incumbents is ratified, they would be brought under the regular establishment, that was the stand taken by the Tamil Nadu Housing Board.

14. Therefore, *pari materia*, since these NMRs also who have been engaged in the year 1986 including the appellant had been similarly placed and they have been brought to an establishment called 'Work Charge Establishment' by G.O.(Ms)No.400 and the criteria fixed under G.O.(Ms)No.400 is on *pari materia* equal to G.O.(Ms)No.1603 dated 07.12.1988, the benefit conferred to those covered under G.O.(Ms)No.1603 be extended to these NMRs also by way of bringing them under regular establishment of Tamil Nadu Housing Board by conferring all promotional avenues and other service benefits as they have been covered under G.O.(Ms)No.400, that is the submission made by the learned counsel for the appellant.

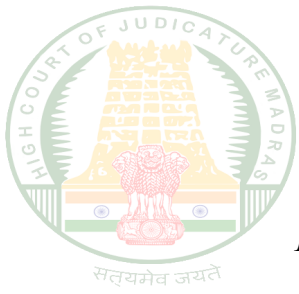


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15. However, Mr.V.Logesh, learned Standing Counsel appearing for the second respondent / Tamil Nadu Housing Board has relied upon the following averments made in the counter affidavit:

"4. I respectfully submit that the appellant was engaged on daily wages basis in the Scheme w.e.f. 27.10.1986. The Appellant had completed the requisite 5 years on 05.12.1991. Accordingly, he was brought into regular time Scale of Pay provided for the post of Work Assistant as done in similar cases. The Appellant is contention is that he should have been appointed as Junior Assistant on 05.12.1991 itself instead of Work Assistant, after completion of 5 years of work on daily wages basis. The Appellant had further stated that whenever vacancies arose in the post of Junior Assistant, it was filled up directly under Compassionate Grounds only instead of promoting persons from the Work Charged Establishment to which the Appellant belonged.

5. I respectfully submit that the Appellant is not the lone person from the Work Charged Establishment category waiting for promotion to the post of Junior Assistant. There were 181 Persons in the Work Charge Establishment and the Appellant is one among them. These 181 Persons were brought into regular time Scale of Pay in the Work Charged Establishment between 07.12.1988 to 29.11.1992. The



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Petitioner was brought into regular time Scale of Pay of Work Assistant on 05.12.1991. There were more than 100 Persons senior to the Appellant working in the category of Work Assistant."

16. By relying upon these averments, the learned Standing Counsel would contend that, there were totally 181 persons who are presently working at Work Charge Establishment and the appellant is one among them and these 181 people have been brought under Work Charge Establishment between 07.12.1988 and 29.11.1992 and the appellant was brought in under regular time scale of pay as Work Assistant on 05.12.1991 since there has been atleast 100 people seniors above the appellant, the appellant cannot seek for any such benefits like the promotion.

17. The learned Standing Counsel would also state that, at any rate, the promotions have been given in the year 2012 and 2014 and ultimately, in the year 2018, the appellant has been given promotion to the post of Superintendent and on 09.11.2024, he has been given further promotion as Assistant Revenue Officer. When these promotions have been given to the appellant periodically based on the seniority in the Work Charge Establishment, no other benefits can be expected by the appellant as if that he is also one of the employee under the



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regular establishment.

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18. We have considered these rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

19. Though some promotions have been earned by the appellant and lastly on 09.11.2024, the promotion to the post of the Assistant Revenue Officer also has been conferred on him and since having the service of about four to five years, whether still any promotion for which he is entitled to be considered is the question now.

20. In this context insofar as the import of G.O.(Ms)No.400, Housing and Urban Development Department dated 02.05.1990 is concerned, nowhere it has been stated by the Government directing the Tamil Nadu Housing Board to bring these NMRs to the Housing Board under the Work Charge Establishment.

21. The language used in the Government Order merely states that the Tamil Nadu Housing Board should bring to the regular time scale of pay of those NMRs who have completed five years of service as on 07.12.1988. The services of existing NMRs, i.e., other than those referred to in Item No.(i)



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above, be regularized and brought to regular time scale of pay as and when they

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22. In the earlier occasions when the similar issue came up for consideration before the State Government at the time those NMRs have been brought under regular time scale of pay by virtue of G.O.(Ms)No.1603 dated 07.12.1988, clarification has been sought by the Government by letter dated 09.11.2012 and which was replied by the Tamil Nadu Housing Board on 10.01.2013.

23. If those employees have been brought to the regular establishment by virtue of G.O.(Ms)No.1603, no different yardstick can be adopted insofar as these employees covered under G.O.(Ms)No.400.

24. Therefore we do not find any reasons to deny such benefits to bring



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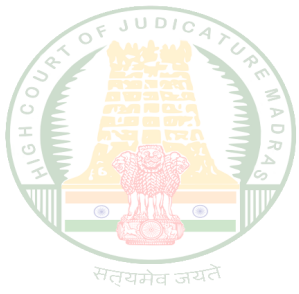
under regular establishment for those NMRs who have been regularised under

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Housing Board cannot be sustained.

25. But at the same time, merely because these NMRs have been brought under regular time scale of pay by virtue of G.O.(Ms)No.400 they stood transferred from Work Charge Establishment to Regular Establishment under various categories where they have already been promoted. With regard to the further promotion and service benefits under regular establishment, what is the entitlement for these NMR employees can be decided by the Tamil Nadu Housing Board based on the Tamil Nadu Housing Board Service Regulations as well the fulfilment of the educational and other qualification including the experience if any fixed in the service regulations.

26. Further as has been pointed out by the Tamil Nadu Housing Board since there has been number of seniors available even under the category of NMRs above the appellant, the appellant cannot straight away seek for any such benefit by way of mandamus as has been sought for herein even if the orders impugned before the writ Court are quashed by this Court.



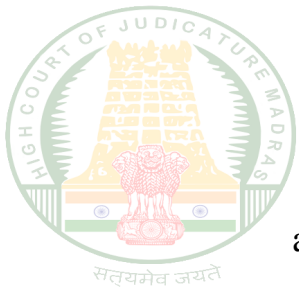
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27. But at the same time, the appellant may be entitled to seek such benefits once he stands in que along with other NMRs who have been brought under regular time scale of pay by virtue of G.O.(Ms)No.400 and whenever the turn comes to every such incumbents apart from those who have already been superannuated, according to the turn, the appellant also would be entitled to seek such benefits. Except this observation, no other relief can be granted by this Court at this juncture.

28. In view of the aforestated discussions, the following orders have been passed in these writ appeals:

(i) that the orders passed by the writ Court which are impugned herein are set aside and the writ petitions to the following effect are allowed. There shall be a direction to the second respondent / Tamil Nadu Housing Board to bring all the employees including the appellant who have been brought under regular time scale of pay under G.O.(Ms)No.400, Housing and Urban Development Department dated 02.05.1990 into regular establishment of Tamil Nadu Housing Board.

(ii) After bringing them under regular establishment of Tamil Nadu Housing Board, they can be fixed in the concerned criteria based on the promotion which they



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already earned. For instance, if the appellant has earned the promotion to the post of Assistant Revenue Officer as on 09.11.2024 among the Assistant Revenue Officers, his seniority can be fixed based on the promotion he earned on 09.11.2024.

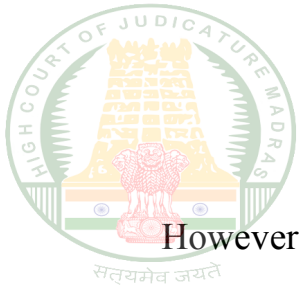
(iii) Thereafter, had they been brought under regular establishment by virtue of G.O.(Ms)No.400 even at the initial stage, what would have been their seniority position can be worked out and based on which, if at all they are entitled for any notional promotion, that can be conferred on them.

(iv) In this context, the seniority among NMRs covered under G.O.(Ms)No.400 shall be strictly maintained along with *inter se* seniority of the employees of the regular establishment to which these NMR employees are going to be fit in by virtue of our directions.

(v) The needful as indicated above shall be undertaken by the Tamil Nadu Housing Board within a period of three months from the date of receipt of a copy of this order.

(vi) It is made clear that the benefit, if any, to be conferred as directed in this order, that shall be conferred to all eligible employees who are covered under G.O.(Ms)No.400 strictly in accordance with the directions which we have made herein above.

29. With these directions, these Writ Appeals are ordered accordingly.



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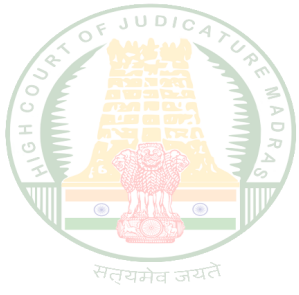
However, there shall be no order as to costs. Consequently, connected

miscellaneous petition is closed.

(R.S.K., J.) (A.D.M.C., J.)
05.03.2025

NCC : Yes
Index : Yes
Speaking Order : Yes

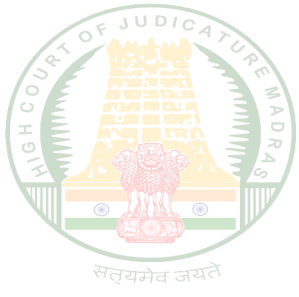
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To

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