

W.A(MD)No.1823 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.04.2025

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.1823 of 2024

G.Kannan

... Appellant

vs.

1. The Government of Tamilnadu,
Represented by Principal Secretary to Government,
Housing and Urban Development,
Department Secretariat,
Chennai-600 009.

2. The Tamil Nadu Housing Board,
Represented by its Chairman,
CMDA Complex,
Koyambedu, Chennai-600 007.

3. The Managing Director,
Tamil Nadu Housing Board,
CMDA Complex,
Koyambedu, Chennai-600 007.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters
Patent, against the order dated 08.04.2024 made in W.P(MD)No.7505 of
2023.



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For Appellant : Mr.G.Thalaimutharasu
For R1 : Mr.D.Farjana Ghoushia
Special Government Pleader
For R2 & R3 : Mr.A.Kannan

JUDGMENT

(Judgment of the Court was made by **S.SRIMATHY, J.**)

This writ appeal is filed against the order dated 08.04.2024 made in W.P(MD)No.7505 of 2023.

2. The writ petition is filed for writ of Certiorarified Mandamus to quash the memo dated 25-11-2022 issued by the 3rd respondent in No.PT2/33182/2014 and consequently direct the respondents to count the past service of the appellant / writ petitioner in the Highways department along with his service in the Tamil Nadu Housing Board and consider him for promotion as Assistant Executive Engineer and to promote him as such from the date of promotion of his immediate junior with consequential benefits.

3. The appellant originally joined as a Junior Draughting



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Officer in the Highways Department on 11.12.2009 and he served in the said post till 13.09.2014. Thereafter, he joined as an Assistant Engineer in the Tamilnadu Housing Board on 04.09.2021. He made a representation to the Tamilnadu Housing Board for fixing his seniority in the post of Assistant Engineer, by taking into account of his earlier services rendered in the Highways Department. Since it was not considered, he filed a writ petition in W.P(MD)No.7391 of 2022, where, a direction was issued to consider his representation. The 3rd respondent considered the representation of the appellant and rejected it by order dated 25.11.2022, stating that there is no compatibility in these two services. Challenging the said order, the appellant filed the writ petition. The Writ Court, affirming the stand taken by the 3rd respondent, dismissed the writ petition by impugned order. Aggrieved by the dismissal of the writ petition, the writ petitioner has filed this appeal.

4. Assailing the impugned order, learned counsel appearing for the appellant among other things would contend that the appellant had not at all given resignation to his earlier service in the Highways



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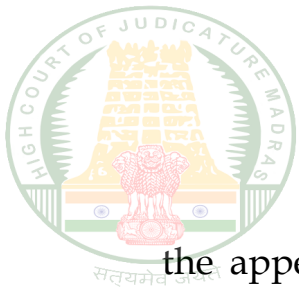
Department, whereas, after getting proper relieving order, he joined as Assistant Engineer in the respondent department. However, without considering the same, the Writ Court has misconstrued Section 49 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 and Rule 23 of the Tamil Nadu Pension Rules, 1973. He would further contend that the Writ Court failed to note that the initial appointment of the appellant in the earlier department was under Rule 10(a)(i) of the General Rules of Tamil Nadu Subordinate Service Rules on temporary basis as Junior Draughting Officer through the sponsorship of the Employment Exchange and while in the said service, he was appointed in the respondent department as Assistant Engineer on 21.08.2014 through the sponsorship of the Employment Exchange and therefore, it is deemed to be a recruitment by transfer of service and pursuant to which, he was relieved by the earlier department with the lien as per 9(B) of the General Rules of Tamil Nadu Subordinate Service Rules on 03.09.2014 and immediate on the next day i.e. 04.09.2014, he joined in the respondent department without any break in service. Therefore, he is eligible for promotion by counting his earlier service rendered in the



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Highways Department. In support of his contention, learned counsel would rely on a decision of this Court in W.P.No.13189 of 2015 dated 14.06.2017, wherein, it has been held that if the employee gets proper permission to join in the new service, it can be treated as mere technical formality and the same shall not have effect of forfeiting the length of service put in the former service by employee. Further, the method of appointment both in the Highways Department and the respondent department being through the sponsorship of the employment exchange, the appellant is very much entitled for counting of his service rendered in the former department. Learned counsel would also contend that in similar circumstances, the 3rd respondent considered one S.Nagaraj and promoted him by counting his earlier service rendered in other department, whereas, the 3rd respondent in the case of the appellant, treated his appointment in the respondent department as a fresh appointment which is erroneous. Thus, he would pray for setting aside the order passed by the learned Judge.

5. The learned Special Government Pleader appearing for the 1st respondent and the counsel for the Housing Board would state that

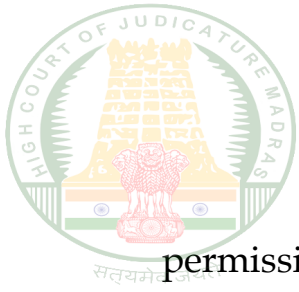


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the appellant, who was working as the Junior Drafting Officer at the Highways Department, cannot claim to be treated at par with the post of Assistant Engineer. Further Section 9(b) of the Tamilnadu Housing Board Services Regulations, 1969 is applicable only for those persons within the organization and not for the appellant who had opted to resign the post and then join with the Tamil Nadu Housing Board. Thus, they would pray for dismissal of the writ appeal.

6. Heard Mr.G.Thalaimutharasu, the Learned Counsel appearing for the appellant, Ms.D.Farjana Ghoushia, the Learned Special Government Pleader appearing for the 1st respondent and Mr.A.Kannan, the Learned Counsel appearing for the 2nd and 3rd respondents and perused the documents.

7. The primary contention of the appellant is that the section 49 first proviso states that “provided that nothing contained in this section shall affect the operation of the proviso to Rule 23 and Rule 25 of Tamil Nadu Liberalized Pension Rule, 1978”. The proviso of Rule 23 states that resignation shall not forfeit past service if it is taken with prior



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permission. The said contention of the petitioner is applicable only for the purpose of pension alone. While calculating pension if the new service is taken up with prior permission of the past employee, then the past service can be taken up for calculating pension. The said principle is not applicable for the purpose of seniority, promotion etc.

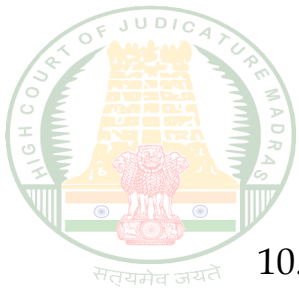
8. The petitioner had relied on the judgment rendered in W.P.No. 13189 of 2015 dated 14.06.2017, on perusal of the said judgment it is seen that the persons thereunder were selected in the same recruitment process, some of them were granted judicial service, subsequently after six months a list of vacancy was published due to non-reporting and non-joining the said posts in other departments. All the persons joined in judicial service tendered resignation and took the other posts published in the list stated supra. In such circumstances, the Court held that the resignation is simpliciter. Therefore, this Court is of the considered opinion that the said judgment is not applicable to the present case, since in the present case the petitioner is already in the service of the Highways Department from 2009 onwards. The petitioner



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had participated in the fresh recruitment process conducted by the Tamil Nadu Housing Board during 2014. The selection for the post in TNHB was by calling the list of candidates from the employment exchange, then the employer had conducted examination, interview, then followed reservation, thereafter selected the meritorious candidate. The petitioner being meritorious candidate was selected and appointed. In such circumstances, the claim of the petitioner that the selection is by recruitment by transfer is incorrect. And the judgment cited supra is also not applicable to the present facts of the case.

9. Further in the present case the petitioner was appointed in the Highways Department under Rule 10(a)(i) which is only temporary employment, hence the temporary employee is not entitled to any benefits as a permanent employee. Even though the petitioner was declared probation the said service is only for the Highways Department and not for TNHB. And as held supra there was a fresh recruitment process to the Board service in TNHB.

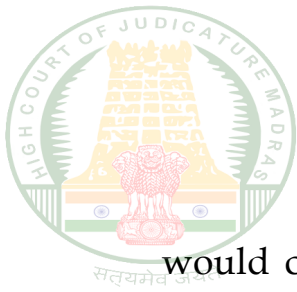


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10. Further earlier the petitioner was in the government department and then was appointed as new appointee in the Board service. The two services are not equal service as claimed by the petitioner. The government department service is totally different from the Board service, the service rules and regulations are totally different. Therefore, basically the claim of the petitioner itself is incorrect.

11. Infact the petitioner had confused with the “lien” granted to the petitioner in the Highways Department. The said lien is granted for the sole reason, if the petitioner is intended to come back to the same post in the Highways Department, then the petitioner would be allowed to do so, however such benefit has limitation of one year. The same will not grant any other benefits except for the one stated supra.

12. The petitioner is claiming to take past service rendered in Highways Department and add with the Board service and grant promotion. The petitioner is incorrectly interpreting the provisions and claiming promotion. If such a plea is entertained, then all employees



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would claim promotion in other departments, then there will be utter confusion among the employees.

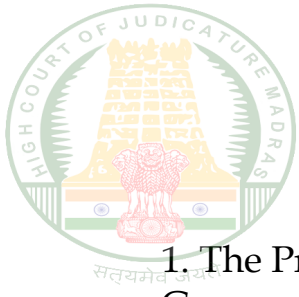
13. The Writ Court had elaborately considered the issue by referring to the relevant provisions. Therefore, this Court is of the considered opinion that the same need no interference. However, it is made clear that the petitioner is entitled to add the past service only for the pension purpose, if he is otherwise entitled to pension.

14. For the reasons stated supra, the writ appeal is liable to be dismissed and accordingly dismissed. No Costs. Connected Miscellaneous petition is closed.

[J.N.B, J.] [S.S.Y, J.]
28.04.2025

Index : Yes / No
Neutral Citation : Yes / No
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To



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1. The Principal Secretary to Government,
Government of Tamilnadu,
Housing and Urban Development,
Department Secretariat,
Chennai-600 009.

2. The Chairman,
Tamil Nadu Housing Board,
CMDA Complex,
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