

(2010) 01 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 3256 of 2008

Assistant Engineers Association Tamilnadu Slum Clearance
Board

APPELLANT

Vs

Tamil Nadu Slum Clearance Board and Others

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)
Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 — Section 598
TNSCB Engineering Officers Service Rules — Rule 3, 41, 5, 7

Citation : (2010) 01 MAD CK 0057

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

**Advocate : N. Subramanian, for the Appellant; R. Chellamuthu, for R. 1 and 2
and G. Ravishanker, for R. 5, 6 and 8, for the Respondent**

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petition is filed by the Assistant Engineers Association of Tamil Nadu Slum Clearance Board (TNSCB) for a

declaration that the appointments of Junior Engineers as Assistant Executive Engineers in excess of the 3:1 ratio prescribed under Rule 5(a) of the

TNSCB Engineering Officers Service Rules as illegal and for a direction to the respondents to replace all Junior Engineers appointed in excess as

Assistant Executive Engineers with Assistant Engineers with retrospective effect from the date of such appointment.

2. The petitioner Association is a Society registered under the Tamil Nadu Societies Registration Act, 1975 comprising of Assistant Engineers and

Assistant Executive Engineers of TNSCB. It is stated that out of 55 members 47 are Assistant Engineers and the writ petition is filed on behalf of

the said Assistant Engineers. The service conditions of the Engineers of TNSCB are governed by two service rules, viz., TNSCB Engineering

Officers Service Rules relating to higher service from the posts of Assistant Engineers and above and TNSCB Technical Subordinate Service

Rules for Junior Engineers and lower categories.

2(a) It is stated that the Junior Engineer post is the first category in the subordinate service while Assistant Executive Engineer post is the 5th

category and Assistant Engineer post is the 6th category. The appointment to the post of Assistant Executive Engineer is effected as per the Rules

by promotion from the category of Assistant Engineer and by transfer from the category of Junior Engineer in the ratio of 3:1.

2(b) As per the TNSCB Engineering Officers Service Rules, the method of appointment for category-4 viz., Assistant Executive Engineer and

category-5 viz., Assistant Executive Engineer (Planning) is by way of promotion from category-6 viz., Assistant Engineers or by transfer from the

category Nos. 1 and 2 of the TNSCB Technical Subordinate Service Rules in respect of category-4 and by transfer from category-1 of TNSCB

Technical Subordinate Service Rules, the category-1 of TNSCB Technical Subordinate Service Rules, as stated above is the Junior Engineers.

2(c) The authority to appoint the post of Assistant Executive Engineer which is in category Nos. 4 and 5 of the Officers Service Rules is the Slum

Clearance Board. Rule 5(a) contemplates for the above said appointment to the post of Assistant Executive Engineers in the ratio of 3:1 of total

number of vacancies. Rule 7 contemplates that for appointment of Assistant Executive Engineer from the post of Assistant Engineer in category-6,

an Assistant Engineer must have five years of experience while a Junior Engineer must have 10 years of experience.

2(d) It is also stated that as per TNSCB Service Rules, especially Rule 41, in respect of matters where no provision is made in the rules, the

members of the TNSCB service are governed by the provisions applicable to Government servants of similar status. It is the complaint of the

petitioner Association that the first respondent Slum Clearance Board has not followed the said 3:1 ratio in making appointment to the post of

Assistant Executive Engineers from among the Assistant Engineers and Junior Engineers by promotion and transfer respectively and the seniority in

the panel has not been communicated to individuals and there has been irregularity which has come to light recently.

2(e) The temporary panel prepared by the second respondent on 28.12.2007 shows that there has been excess appointment by transfer from

among Junior Engineers to the posts of Assistant Executive Engineers and according to the petitioner Association, it is violative of Articles 14 and

16(1) of the Constitution of India. The petitioner Association made a representation on 10.12.2006 to the first respondent to revert the Junior

Engineers appointed as Assistant Executive Engineers in excess to the ratio 3:1 and to promote Assistant Engineers at the ratio 3:1 and also

requested information under the Right to Information Act in that regard, by the representation dated 28.5.2007.

2(f) The said information was furnished on 18.6.2007 which shows that so far 80 Assistant Engineers and 43 Junior Engineers were appointed as

Assistant Executive Engineers which is opposed to 3:1 ratio. It is the case of the petitioner that Slum Clearance Board passed a resolution dated

8.8.2007 and decided to constitute a Three Member Committee to go into the details and accordingly, the matter has been referred to the

Government to constitute a Committee by the letter dated 1.9.2007.

2(g) It is stated that without waiting for Government's decision to constitute the Committee which would go into the merits of the dispute, the first

respondent prepared a temporary panel of Assistant Executive Engineers consisting of 16 Assistant Engineers and 6 Junior Engineers in the

proceedings dated 28.12.2007 seeking for objection within 15 days and the petitioner Association made an objection on 11.01.2008 and

apprehending that the second respondent is attempting to issue posting orders to the Junior Engineers as Assistant Executive Engineers, the present

writ petition is filed for the relief as stated above on the grounds that the proposed appointment of respondents 3 to 8 as Assistant Executive

Engineers is illegal as it is against the ratio 3:1 and the same is without any authority and that the proposed appointment based on the temporary

panel of the second respondent dated 28.12.2007 is opposed to the resolution of Slum Clearance Board dated 8.8.2007, apart from many other

grounds.

3. In the counter affidavit of the TNSCB, the respondents 1 and 2 herein, it is

stated that the person who has signed the affidavit filed by the petitioner Association, viz., Mr. K. Marimuthu, was appointed in the Slum Clearance Board in 1986 as Assistant Engineer and promoted as Assistant Executive Engineer on 4.1.2008 by the second respondent and the petitioner Association is not a recognized Association under the TNSCB Servants Service Associations Recognition Rules 1981 and therefore, the petitioner Association has no locus standi and the writ petition is not maintainable.

3(a) It is also stated that the proceedings of the second respondent dated 28.12.2007 are passed by the Board by exercising its statutory powers and if the petitioner has any grievance, the same can be challenged by way of appeal to the Government u/s 598 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and therefore, the writ petition is not maintainable.

3(b) While it is admitted that the post of Assistant Engineer comes under 6th category of the TNSCB Engineering Officers Service Rules (hereinafter called, ""Officers Service Rules"") and the post of Junior Engineer comes under category-1 of TNSCB Technical Subordinate Service Rules (hereinafter called, ""Technical Subordinate Service Rules""), it is denied that the Junior Engineer post is lower in category.

3(c) It is stated that an Assistant Engineer should possess 5 years experience to become Assistant Executive Engineer and a Junior Engineer should possess 10 years experience to become Assistant Executive Engineer and the promotion is based on 3:1 ratio and the same is being followed. It is stated that the ratio of 3:1 has been followed in the Slum Clearance Board and no irregularity has been committed.

3(d) It is stated that Mr. R. Mohan Babi, P. Dhanapathy and N. Usha were appointed to the posts of Assistant Executive Engineers from Junior Engineers as per 3:1 ratio and those three persons were originally appointed as Draftsmen and thereafter, promoted as Junior Engineers and after serving 10 years in the said post, they were promoted as Assistant Executive Engineers.

3(e) It is also admitted that based on the representation made by the Assistant Engineers as well as one Junior Engineer under the Right to Information Act, particulars were furnished and the Slum Clearance Board also

passed a resolution No. 42 dated 6.8.2007 to constitute a Three

Member Panel consisting of the Joint Secretary to Government, P & AR Department, the Joint Secretary to Tamil Nadu Housing and Urban

Development and the Secretary to TNSCB as a measure to take note of the demands of the petitioner Association.

3(f) It is stated that four Assistant Engineers who have sought information, viz. Thiru Manoharan, K.S.A. Shabeek Ahmed, Pon Rock Feller and

Mohan have been promoted to the posts of Assistant Executive Engineers as per proceedings dated 4.2.2008 in Serial Nos. 8, 21, 20 and 22

respectively and they have assumed office on 6.2.2008, even before the passing of interim order by this Court. Since the construction work under

the Tsunami Rehabilitation Scheme was taken up, the Board had to fill up the posts of Assistant Executive Engineers urgently and that was done as

per proceedings dated 4.2.2008 and in that promotion, the person who has filed the affidavit in the writ petition was also promoted as Assistant

Executive Engineer and if there is any grievance, the petitioner Association has only to file an appeal to the Government.

4. The petitioner Association has filed a rejoinder reiterating the earlier stand and it is also stated that having known that the writ petition has been

filed, the appointment has been made in a hurried manner.

5. While it is the contention of Mr. N. Subramanian, learned Counsel for the petitioner Association that on the face of it, there has been violation of

the ratio 3:1, Mr. Ravisankar, learned Counsel for the respondents 3 to 8 would submit that the writ petition is not maintainable since the contents

of the affidavit are vague and the writ petition has been filed on the basis of assumptions. On the other hand, it is the contention of the learned

Counsel for TNSCB that if really the petitioner Association is aggrieved, it can only file an appeal to the Government and hence, the filing of the

writ petition is not permissible.

6. Mr. N. Subramanian, learned Counsel appearing for the petitioner Association would heavily rely upon the judgment of the Supreme Court in

Secretary, State of Karnataka and Others Vs. Umadevi and Others, to show that the appointments made illegally cannot be approved. He would

also rely upon the judgment of the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd.

and Others, to substantiate his contention. It is also brought to the notice of this Court that the TNSCB has already recommended for the

constitution of a Committee and the Committee has been formed by the Government in the letter dated 12.3.2008 and the Committee is unable to

proceed further because of the pendency of the writ petition.

7. It is seen that originally when the writ petition came up for admission on 7.2.2008, this Court granted an order of injunction restraining the first

and second respondents from considering any Junior Engineers including the respondents 3 to 8 to be included in the temporary panel issued by

the second respondent dated 28.12.2007 for appointment as Assistant Executive Engineers. However, when an application was filed on behalf of

the respondents for vacating the said order on the ground that even before the order of injunction was granted by this Court, appointment to the

post of Assistant Executive Engineer had been filled up and that in the subsequent panel issued by the TNSCB the ratio 3:1 was followed, by an

elaborate order dated 10.9.2009, this Court vacated the order of injunction.

8. The main grievance of the petitioner Association is that the appointment to the posts of Assistant Executive Engineers has been made by the

TNSCB against the ratio 3:1. As submitted by the learned Counsel for the petitioner, it is true that the posts of Assistant Executive Engineers and

Assistant Engineers are governed by the Officers Service Rules. In fact, a reference to the said Rules of the year 1972 shows that the Officers

Service Rules would apply to seven categories viz.,

Category 1 ... Chief Engineer

Category 2 ... Superintending Engineer

Category 3 ... Executive Engineer

Category 4 ... Assistant Executive Engineer

Category 5 ... Assistant Executive Engineer(Planning)

Category 6 ... Assistant Engineer

Category 7 ... Junior Architect

Out of the said seven categories, category Nos. 4 and 5 are relating to Assistant Executive Engineers while 6th category is Assistant Engineers and

as per the said Rules, the appointing authority for Assistant Executive Engineers is the TNSCB while for the posts of Assistant Engineers and

Junior Architect, it is the Chief Engineer. Rule 3 which speaks about the method of appointment in respect of category Nos. 4 and 5, Assistant

Executive Engineers, is as follows:

Rule 3. Method of Appointment:

Appointment to the categories shown in column (1) of the table below shall be made by the method given in column (2) thereof.

TABLE

1

2

Category 4

Assistant Executive Engineer

(i) By promotion from category 5; or

(ii) By transfer from Categories 1 and 2 of the Tamil Nadu Slum Clearance Board Technical Subordinate Service; or

(iii) By appointment of an Assistant Executive Engineer of the Tamil Nadu Engineering Service; or the Tamil Nadu Highways Engineering Service

or the Town Planning Service; or in the service of a local or an autonomous body on foreign service terms.

Category 5.

Assistant Executive Engineer(Planning)

(i) By promotion from category 6; or

(ii) By transfer from Category 1 of the Tamil Nadu Slum Clearance Board Technical Subordinate Service.

9. Rule 5(a) which stipulates the appointment to the post of Assistant Executive Engineer at the ratio 3:1, contemplates that when three posts are

filled up by way of promotion from the post of Assistant Engineer, one post is to be filled up by way of transfer from Technical Subordinate

Service Rules. The said Rule 5(a) is as follows:

5(a) Recruitment to category 4 (Assistant Executive Engineer) by promotion from Category 6 (Assistant Engineers) and by transfer from the Tamil

Nadu Slum Clearance Board Technical Subordinate Service shall be made at the ratio of 3:1 of the total number of vacancies.

It is also stated in the said Rules, especially in Rule 7 that for the purpose of

promotion to the post of Assistant Executive Engineer from the post of Assistant Engineer, minimum five years experience is required while in respect of appointment by transfer from category-1 of Technical

Subordinate Service Rules (Junior Engineer), such candidate must have a minimum of 10 years experience as Junior Engineer. Rule 7 which relates to category No. 4 is as follows:

Rule 7. Special Qualification.

No person shall be appointed to the Category mentioned in column (1) of the table below unless he possess the qualification mentioned in column

(2) thereof.

[Explanation: The prescribed qualification relating to passing of the Special department tests may be relaxed by the Board with the prior approval

of the government in favour of those persons who satisfy the following criteria to enable them to be appointed to the respective post on a regular basis.

- i. that they should not be less than 50 years of age
- ii. that they should have made atleast five attempt to pass the test and
- iii. that their record of service should be such as to merit the concession.]

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Category 4.

[Assistant Executive Engineer]

1. For promotion

- (a) All qualification prescribed for category 5; and
- (b) a minimum period of 5 years service as Assistant Engineer.

[2. For appointment by transfer from category 1] of the Tamil Nadu Slum Clearance Board Technical Subordinate Service.

(a) All qualifications prescribed for category 1 (Junior Engineer) the Tamil Nadu Slum Clearance Board Technical Subordinate Service; and

(b) (i) a minimum period of service of 10 years as [Junior Engineer] in the Tamil Nadu Slum Clearance Board Technical Subordinate Service; or

(ii) an Engineering degree or its equivalent qualification after entering service with a minimum period of service of 5 years as [Junior Engineers] in

Tamil Nadu Slum Clearance Board Technical Subordinate Service out of which three years of service should be after acquiring such qualification.

[Explanation: The seniority of the [Junior Engineer] on their acquiring the Engineering degree or its equivalent qualification, shall be fixed placing

them below the [Assistant Engineers] recruited through the Employment Exchange during the year in which the Junior Engineer acquired the

qualification, or, if there is no such recruitment, the Junior Engineer shall be placed below the [Assistant Engineer] list.]

(3) For appointment by transfer from category 2 of the Tamil Nadu Slum Clearance Board Technical Subordinate Service.

(a) All qualifications prescribed for category 1 [Junior Engineer] the Tamil Nadu Slum Clearance Board Technical Subordinate Service; and

(b) a minimum period of service as Draughtsman, Grade I for years.

10. In the counter affidavit filed by the TNSCB it is stated that in respect of Mr. R. Mohanbabi, Mr. P. Dhanapathy and Ms. N. Usha whose

names are mentioned by the petitioner Association as having been appointed as Assistant Executive Engineers by way of transfer as against the

ratio 3:1 in the proceedings of the second respondent dated 28.12.2007, they were originally working as Draftsmen and thereafter, they were

promoted as Junior Engineers and later appointed as Assistant Executive Engineers. The relevant portion of the counter affidavit is as follows:

Sl. No. Name Draughtsman Draughtsman Junior Engineer Asst. Exe. Engineer

1 R. Mohanbabi 21.11.1979 30.6.1986 21.04.87 17.11.04

2 P. Dhanapathy 16.04.1982 .. 22.04.87 20.04.05

3 N. Usha 10.11.80 .. 21.04.87 2.10.6

11. In any event, the proceedings of the second respondent dated 28.12.2007 are not under challenge. As correctly submitted by the learned

Counsel for the respondents 3 to 8, from the averments contained in the affidavit filed by the petitioner Association, there are no particulars to

come to a conclusion that there has been violation of the ratio 3:1 and even in respect of those three candidates, they have admittedly joined in the

post of Assistant Executive Engineer much prior to the filing of the writ petition viz., 2004, 2005 and 2006 and without impleading those persons in

the writ petition it is not possible to hold otherwise.

12. As far as the subsequent proceedings of the second respondent dated 28.12.2007, by which respondents 3 to 8 were proposed to be posted

as Assistant Executive Engineers by way of transfer from Junior Engineers under the Technical Subordinate Service Rules are concerned, on the

basis of petitioner's objection, a Committee has been constituted to go into the grievance. It is seen from the particulars furnished by the TNSCB

under the Right to Information Act that a Committee with the members, viz., (i) Joint Secretary to Government, Housing and Urban Development

Department (Personnel), (ii) Deputy Secretary to Government (Rules) P & AR Department, and (iii) Joint Director, Finance (BPE) Department,

has been constituted and the Government has granted approval for the said Committee by its letter No. 1366/S2-2(2)07-4 dated 12.3.2008.

Therefore, the Government has constituted a Committee to look into the grievance of the petitioner Association as well as the grievance of Junior

Engineers and to find out as to whether 3:1 ratio has been followed or not. As it is seen in the information, the Committee is unable to proceed

further because of the pendency of the writ petition.

13. It is no doubt true that after the interim injunction was vacated by this Court on 10.9.2009, there was no impediment for the Committee to

proceed. In such view of the matter, I am not inclined to go into the merits of the matter to decide as to whether the TNSCB has followed the ratio

3:1 in the matter of appointment to the posts of Assistant Executive Engineers, since it is not possible for this Court to decide at this stage for want

of various materials, especially when there is a Committee duly constituted by the Government to look into the matter. Therefore, to meet the ends

of justice, I am of the considered view that a direction should be given to the first respondent, TNSCB to take further steps to enable the

Committee constituted by the Government to look into the grievance of the petitioner Association as well as any other persons in the category of

Junior Engineer who are affected and submit an appropriate report so as to enable the first respondent to pass further orders.

14. In such view of the matter, the writ petition stands dismissed, however, with a direction to the first respondent to initiate steps to enable the

Committee constituted by the Government consisting of (i) Joint Secretary to Government, Housing and Urban Development Department

(Personnel), (ii) Deputy Secretary to Government (Rules) P & AR Department, and (iii) Joint Director, Finance (BPE) Department, to proceed

with the enquiry about the complaints made by the petitioner Association as well as any other persons who are affected in the category of Junior

Engineers and the said Committee shall complete the enquiry and submit its report to the concerned authorities expeditiously, in any event within a period of six months from the date of receipt of a copy of this order. No costs.