
(1993) 12 MAD CK 0005
In the Madras High Court
Case No : W.A. No. 1176 of 1991

C.N. Mohanraj

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 16-12-1993

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 — Section 19, 19(1), 19(2), 2, 20
Madras Metropolitan Water Supply and Sewerage Board Employees Service Regulations, 1978 — Regulation 21
Tamil Nadu Town and Country Planning Act, 1971 — Section 2

Citation : (1993) 12 MAD CK 0005

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : R. Gandhi, for K. Ravichandrababu, T.S. Sivagnanam and P. Selvaraj, for the Appellant; S.T.S. Moorthy, for 1st Respondent, P. Sathasivam, for 2nd Respondent and R. Krishnamoorthy, for S.T. Kasinathan for 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, C.J.—This Appeal is preferred against the order dated 6.8.1991 passed by the learned single Judge in Writ Petition No. 426

of 1989. In fact, there were two writ petitions filed and a common order was passed. The other Writ Petition 1368 of 1989, filed by one P.

Sivaprakasam. Both the Writ Petitions were filed for the same relief. Sivaprakasam has not come up in appeal, though the Writ Petition No. 1368

of 1989 has also been dismissed. However, the Petitioner in W.P. No. 426 of 1989, whose Writ Petition also is dismissed by the aforesaid

common order, has come up in appeal.

2. The Petitioner sought for quashing the order dated 16.10.1984 bearing G.O.

Ms. No. 347 of the Municipal Administration and Water Supply

Department, issued by the first-Respondent. He also sought for the issue of a direction to the second-Respondent to follow the seniority list

published in its Establishment, as on 1.10.1980 by placing the Petitioner over Respondents 3 and 4, S. Srinivasan and S. Sundaramoorthy.

3. Learned single Judge has held that the Petitioner and Respondents 3 and 4 were deputationists and they were placed at the disposal of Madras

Metropolitan Water Supply and Sewerage Board (hereinafter referred to as the Board), constituted under the Madras Metropolitan Water Supply

and Sewerage Act, 1978 thereinafter referred to as the Act), that the list prepared on 1.10.1980 was not prepared with reference to any statute

and that it was only a tentative seniority list, that the seniority was fixed only for the first time according to the Rules and in pursuance of the

provisions of the Act and the Madras Metropolitan Water Supply and Sewerage Board Employees' Service Regulations, 1978 (hereinafter

referred to as the Regulation), under G.O. Ms. No. 347, Municipal Administration and Water Supply Department, dated 16.10.1984, issued by

the first Respondent. Learned single Judge also held that the letter dated 5.11.1984 was served on the Petitioner. Learned single Judge has placed

reliance on Section 21 of the Act and 21-D of the Regulations and held that the impugned order dated 16.10.1984 does not call for interference.

4. Before us, it is contended by Mr. Gandhi, learned senior counsel appearing for the Appellant, that the Board was constituted on 1.8.1978 and

from that date, the Petitioner has been in the services of the Board, having exercised his option to be absorbed in the services of the Board, earlier

to that of Respondents 3 and 4. As such, Respondents 3 and 4, who came to be absorbed in the services of the Board, subsequent to that of the

Petitioner, cannot be ranked above the Petitioner and that the order dated 5.11.1984 was not served upon the Petitioner. It is also contended that

Respondents 3 and 4, having joined the Board services much subsequent to that of the Petitioner, on no principle of law, can be ranked above the

Petitioner, that the fact that they were in the services of the Board as deputationists could not come to their assistance and that service could not be

counted for the purpose of determining the seniority between the Petitioner and the Respondents 3 and 4 inasmuch as such service cannot at all be

considered to be the permanent service under the Board. As such, from any point of view, Respondents 3 and 4 cannot be considered as seniors.

Learned Counsel for the Appellant further contended that if Respondents 3 and 4, who have been absorbed in the services subsequently, are

treated as seniors on taking their previous service in the parental department, the right of the Petitioner would be affected inasmuch as he would be

made junior to them and thereby the principle laid down in *The State of Madhya Pradesh and Anr. v. Shri Prem Prakash and Ors.* JT 1993 (6)

S.C.441, will be violated and therefore the impugned order is liable to be quashed.

5. On the contrary, it is contended on behalf of the Board, as well as by Respondents 3 and 4 that the Petitioner as well as Respondents 3 and 4

from the date of constitution of the Board, were in the services of the Board as deputationists only and their services came to be transferred u/s 21

of the Act. As such, the seniority of each one of them has to be determined on the basis of the length of service rendered by them in the cadre in

which they were absorbed in the Board's service on transfer. It is also contended that the impugned order was served upon the Petitioner. In

support of that, the records are also produced to show that the impugned order was served upon the Petitioner.

6. Therefore, the question for consideration is as to whether the impugned order determining Respondents 3 and 4 as seniors to the Petitioner in

the cadre of superintending Engineers is in accordance with law.

7. The Board came to be constituted under the Act with effect from 1.8.1978. As per the provisions of Section 19 of the Act, the Board has to

appoint such officers and other employees, as it considers necessary for the efficient performance of its functions, provided that the Board shall

not, without the previous approval of the Government, create any post, the maximum monthly salary of which exceeds of Rs. 2,500/- or appoint

any person to any post, the maximum monthly salary of which exceeds of 2,000/- . Sub-section (2) of Section 19 further provides that without

prejudice of the provisions of Sub-section (1), it shall be lawful for the Board to utilise such employees of the Government or any local authority or

other institution on such terms and conditions, as may be agreed upon between the Board and the Government, or local authority or institution, as

the case may be. Therefore, it is clear that the Board cannot create any post or appoint any person to any post, the monthly salary of which exceeds Rs. 2,500/- . In the case of the Petitioner and Respondents 3 and 4, whose monthly salary exceeded Rs. 2,500/- , the Board could not have appointed without the prior approval of the Government. Section 20 of the Act provides that subject to the provisions of Sub-section (2), every person, who immediately before the notified date, is an employee of local authorities and who has been serving in connection with the water supply or sewerage system maintained in respect or the Madras Metropolitan Area shall, as from that date be transferred to the service under the Board in accordance with the provisions of this section. The Proviso thereto further provides that nothing contained in the section shall apply to any employee of the Tamil Nadu State Housing Board or the Tamil Nadu Slum Clearance Board of any other existing authority who has, by notice, in writing intimated his intention of not becoming an employee of the Board within a period of three months from the notified date. The expression "local authority" occurring in Sub-section (1) of Section 20 has also been defined in Clause (f) of Section 2 of the Act. According to that definition, Clause (p) of Section 2 will include the municipal Corporation of Madras and the Tamil Nadu water Supply and Drainage Board. The Petitioner, on the date when the Board was constituted was serving in the Municipal Corporation of Madras, whereas Respondents 3 and 4 were serving in the Tamil Nadu Water Supply and Drainage Board. Thus, the Petitioner and Respondents 3 and 4 were serving under the local authorities on the date when the Board was constituted. Therefore, they could be transferred to the service under the Board in accordance with the provisions of Section 20. It has already been pointed out that the Board cannot create any post or appoint any person to any post, carrying a monthly salary exceeding Rs. 2500/- . Therefore, even though on the formation of the Board, the Petitioner and Respondents 3 and 4 were serving in the Board, their services could not be transferred to the Board until the State Government accorded its approval for it. Such an order of approval was passed by the State Government in Letter No. (Ms) 1781, dated 20th November, 1980, which reads thus:

I am directed to refer to the letters cited above and to inform that the Government have examined the case in detail with reference to the relevant

provisions of the Madras Metropolitan Water Supply and Sewerage Act, 1978. It is specified in Sub-section (1) of Section 20 of the MMWSS

Act 1978 that for transfer to the service under the MMWSS Board the following conditions should be satisfied:

(i) the person should be an employee of local authorities immediately before 1.8.1978; and

(ii) the person should be serving in connection with the Water Supply or Sewerage System maintained in respect of the Madras Metropolitan

Area.

2. The term "local authority" has been defined in Clause (f) of Section 2 of the MMWSS act and that Sub-section (v) of Clause (f) of Section 2

specifies the TWAD Board as local authority. The staff of the special project have been drafted from the TWAD Board. Therefore, the staff of the

Special project satisfies the first condition that they are employees of the local authority immediately before 1.8.1978.

3. The Special project personnel have been serving in connection with the Water supply or Sewerage System, maintained in respect of the Madras

Metropolitan Area. The Madras Metropolitan Area is defined in Clause (h) of Section 2 of the MMWSS Act, to mean the Madras Metropolitan

Planning Area as defined in Clause (23-A) of Section 2 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 36 of 1972).

The Project Personnel are responsible for the investigation and design aspects of the maintenance of Water Supply and Sewerage Systems. As

such, they are actually furnishing the means of keeping up of Water Supply and Sewerage Systems and therefore they are deemed to be serving in

connection with the Water Supply or Sewerage System maintained as provided in Sub-section (1) of Section 20 of the MMWSS Act 1978.

Moreover, emphasis should be given only to the expression serving in connection with the Water supply or Sewerage System" occurring in Section

20(1) of the Act. Inasmuch as the project personnel were serving previously in connection with the investigation and design aspects of the

maintenance of Water Supply and Sewerage Systems, they are deemed to have been transferred to the Board.

4. As the conditions referred to in para 1 above are satisfied in the case of project personnel, the Government have decided that they are to be

treated as transferred to the service under the Board u/s 20 (1) of the MMWSS Act, 1978. I am, therefore, directed to inform that the Special

Project personnel should be treated as transferred to the service under the Board u/s 20(1) of the MMWSS Act 1978 and to request you to take action accordingly.

5. The Government have also examined the representation of Thiru S. Srinivasan, Executive Engineer that he should also be absorbed in the

MMWSS Board, since he was on deputation on an ad hoc basis before the formation of the regular ad hoc Board. In view of the decision of the

Government the Tamil Nadu Water Supply and Drainage Board staff not covered by special project but associating with the new Board from the

beginning should also be absorbed in the new Board provided they are willing to remain in the Board as they were actually performing the

functioning of Water Supply and Sewerage System in Madras Metropolitan Area and this category of persons are also equally covered by Section

20 of the MMWSS Act. Hence, the analogy of special project staff will also apply to this category of persons. I am, therefore, directed to inform

that the employees referred to in this para should also be treated as transferred to the service under the Board u/s 20(1) of the MMWSS Act,

1978, and to request you to take action accordingly.

The above letter directed that Sri. S. Srinivasan, Executive Engineer, should also be absorbed in MMWSS Board, since he was on deputation on

an ad hoc basis before the formation of the regular ad hoc Board. It was also further stated that in view of the decision of the State Government,

the Board staff not covered by special project, but associating with the new Board from the beginning should also be absorbed in the new board

provided they are willing to remain in the Board as they were actually performing the functions of Water Supply and Sewerage System in Madras

Metropolitan Area and this category of persons were also equally covered by Section 20 of the Act. Hence, the analogy of Special project staff

will also apply to this category of persons. Therefore, the Government informed that the employees referred to in the order should also be treated

as transferred to the services under the Board u/s 20(1) of the Act and the Managing Director of MMWSS was requested to take action

accordingly. Pursuant to this, the Board has passed an order dated 21.4.1982 in

Proc. No. P. and A/STF/R and A5/20095/80, which reads thus:

The personnel of the TWAD Board listed in the Annexure who were serving in the VHO/UND Project prior to 1.8.1978 have exercised their

option for permanent absorption in the service of the MMWSS Board.

The TWAD Board in its proceedings third cited has permitted the MMWSS Board to absorb the personnel mentioned in para 1 above

permanently in the service of the MMWSS Board.

Accordingly the 35 persons listed in the Annexure who stand transferred to service under the MMWSS Board u/s 20(I) of the MMWSS Act,

1978 are permanently absorbed in the service of this Board with effect from 1.8.1978

The annexure to the said order includes the name of the Petitioner as well as Respondents 3 and 4. Thereafter, the impugned order came to be

passed, by which the seniority of the Petitioner and Respondents 3 and 4 was determined. The Petitioner was shown as junior to Respondents 3

and 4. In this case, the following service particulars of the Petitioner and Respondents 3 and 4 are not in dispute:

Sl. Name Date of Qualification Date of first Date of Date of

No. birth appointment appointmentMMWSS

in the Board

present post

and name of

the post

1. Tvi.S. 30.12.35B.E. (C)M. Sc.10.5.56 JE 31.10.92 1.8.78

Srinivasan (Engg.)R.I.E. 2.9.63AE An

(now AEE) Director)

4.11.79 EE

25.6.81 SE

2. Dr. S. 15.12.43B.E.(C)M. Sc. 12.3.65 JE 4.5.91 1.8.78

Sundaramoorthy (PH. Engg.) 10.10.69 AE Engineer)

Ph.D. (Now AEE)

26.11.76 EE

28.12.81 SE

3. C.N. Mohanraj 8.9.37 BE (Mech. 29.12.60 28.12.81 1.8.78

MIWRA(USA)Overseer (S.E.)

24.7.61 AE

(Now AEE)

16.2.77 EE.

Thus, from the aforesaid service particulars of the Petitioner and Respondents 3 and 4, it is clear that the Petitioner entered the cadre of Executive

Engineer much subsequent to that of Respondents 3 and 4. In the case where the personnel from the several departments are dratted to the Board,

regulation 21(d) provides for determination of their seniority. It clearly states thus:

Whenever the need arises for the Board to take over the services of officers and staff working in other institutions like the Madras Municipal

corporation, Local Bodies or the State Government, the inter-se- seniority of such officers and staff in any category or grade on the Board's

service shall be determined on the basis of the length of service rendered by them in that category or grade in the previous institution.

It is on the basis of the aforesaid regulation, the seniority has been determined. Regulation 21(d) provides for determination of the seniority on the

basis of the length of service in the cadre. Such a principle cannot be held to be either unfair, unjust or arbitrary. In fact, the seniority is determined

on such principle only. However, it is the contention of Mr. R. Gandhi, learned senior counsel appearing for the Appellant, that Respondents 3 and

4 came to be absorbed in the Board services subsequent to that of the Petitioner. Therefore, they cannot be treated as seniors to the Petitioner on

taking into consideration the length of service in the cadre of Executive Engineers, though the Petitioner and Respondents 3 and 4 entered the

Board service in the cadre of Executive Engineers. It is contended that if the seniority is determined on that basis, without taking into consideration

of the fact that from the beginning the Petitioner was in the Board service, it would cause great injustice and at the same time it would amount to

taking into consideration of the services of Respondents 3 and 4, which cannot be considered as regular and confirmed service in the Board, as

they were deputationists until they were absorbed into the Board's service, and the service rendered as deputationists cannot be equated to that of

the regular service put in by the absorbed employee of the Board. In this connection, reliance is placed on the judgment of the Supreme Court

reported in *The State of Madhya Pradesh and Anr. v. Shri Prem Prakash and Ors.* JT 1993 (6) S.C. 441. Before referring to the aforesaid

judgment, we may point out that the services of Respondents 3 and 4 were not temporary. Respondents 3 and 4 in the permanent service of the

parent department, from which they were drafted to the Board on deputation until they were absorbed, and therefore their services did not

become temporary. They continued to be the permanent employees of the parental Board. Therefore, the services rendered by them, on

deputation, cannot at all be said to be either temporary or in eligible for counting the seniority, whereas in the case of *Snri Prem Prakash*. It was

not so. In that case, the Appellant was first appointed as foreman, Cycle Parts Factory, by the erstwhile Madhya Bharat Government, on

31.10.1956. That appointment was for one year on contract basis. The Appellant joined on 4.1.1957, after the formation of the new State of

Madhya Pradesh on 1.11.1956. Subsequently, the contract service of the Appellant was extended from time to time by the State Government.

The post of Foreman was a class III Post (non-gazetted). The State Government by its order dated 18.12.1959, decided the post as Gazetted

Class-II with effect from 16.1.1959. Thereafter the applications were called for, for filling up that post by the Public Service Commission. The

Appellant therein was also one of the applicants. He was selected for the post and was appointed but the State Government by the order dated

12.5.1960 with effect from 4.1.1957. Therefore, the order of appointment of the Appellant in so far as it was made with retrospective effect from

4.1.1957 was challenged on the ground that the post was filled up by recruitment and the appointment was made on 12.5.1960 and that when the

post itself was upgraded as Gazetted Class II on 16.1.1959. The Appellant therein could not have been appointed with retrospective effect from

4.1.1957, because on that very date the post itself was not in existence. Such appointment affected the seniority of the Respondent therein, who

had by then come to be promoted to the higher post. It was under these circumstances, the Supreme Court held that the previous service of the

Appellant therein, which was temporary and which related to Class III post could not have been taken into account and he could not have been

appointed with retrospective effect from 4.1.1957. The relevant portion of the order is found at paragraphs 7 and 8, which reads as follows:

From time to time, this Court has considered, as to what is the relevant date for fixing inter se seniority of entrants in the same cadre, either by the

same process or by different processes of recruitment. Ultimately, the matter was examined by a Constitution Bench, in the case of *The Direct*

Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, . It was said that once the appointment is

made to a post according to Rules, the seniority of the person so appointed is to be counted from the date of his appointment and not with regard

to the date of his confirmation. It was also said that the corollary of the above rule is, that where the initial appointment is only ad hoc and not

according to Rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The

same view has been reiterated in the case of *State of W.B. and Others Vs. Aghore Nath Dey and Others*, .

There cannot be any dispute that the appointment of the Appellant, according to rules, was made on basis of the recommendation of the

Commission, on 12.5.1960. In this background, there was no occasion to take into consideration the period when the Appellant was continuing on

ad hoc basis, especially, during the period when the post itself was anon-gazetted post. The Appellant was given seniority with effect from

4.1.1957, but the post of the Foreman which the Appellant was holding itself became a gazetted post since 16.1.1959. Any officiation on the post

when it was a non-gazetted post cannot be held to be a continuous officiation on the post so as to entitle the Appellant to count that period

towards his continuous officiation. The High Court has rightly held that while appointing him on the basis of the recommendation of the

Commission, the date of appointment could not have been ante dated and made to be effective with effect from 4.1.1957. this Court has

repeatedly struck down and decried any attempt on the part of the appointing authority to give a notional seniority from a retrospective date,

especially, when this process affects the seniority of those who have already entered into the service. In the present case, the Respondent No. 1

had been appointed as Assistant Director of Industries on 18.7.1959 on basis of an advertisement made in the year 1958 and on the

recommendation of the Commission. His seniority in the service could not have been affected by the State Government, by giving notional date of

appointment of the Appellant with effect from 4.1.1957.

Thus it is clear that the aforesaid decision cannot at all be applied to the present case, in which neither the Petitioner nor Respondents 3 and 4 were

temporary employees. They held the permanent post in their respective departments and came to be absorbed into the service of the Board on the

formation of the Board. The fact that Respondents 3 and 4 were absorbed subsequently will not affect their service or the grade, specially so when

Regulation 21(d) specifically provides for determination of the seniority in such circumstance. Therefore, looked from any point of view, it is not

possible to hold that the seniority determined under the impugned order is either opposed to Regulation 21(d) or Section 21(1) or Section 19 of

the Act, nor it is arbitrary or unjust or unfair. It is also not possible; to hold that the Petitioner has been deprived of his chances of promotion by

reason of absorption of Respondents 3 and 4, because it is open to absorb such of the officials, whose services are required for the Board, with

the prior approval of the State Government, if the post carries a maximum monthly salary exceeding Rs. 2,500/- . As Respondents 3 and 4 had put

in longer period of service in the cadre of Executive Engineers they were promoted as Superintending Engineers, much earlier to the Petitioner, and

therefore, the impugned order determining Respondents 3 and 4 as seniors to the Petitioner cannot be held to be illegal. For the reasons stated

above, the point raised for determination has to be answered against the Appellant. Accordingly, it is answered against the Appellant.

Consequently, the Appeal fails and it is dismissed. There will be no order as to costs.