

(2012) 09 MAD CK 0063

In the Madras High Court

Case No : W.A. No's. 1704 of 2010 and 304 of 2011

S.P. Pethel Raj and Others

APPELLANT

Vs

V.E. Vairappan and Others
Devakumar and R.
Amirthalingam Vs S. Raghunathan and Others

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309, 320

Citation : (2012) 7 MLJ 513

Hon'ble Judges : P. Jyothimani, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : V. Prakash, for Mr. S.N. Ravichandran in W.A. No. 1704 of 2010, Mr. A.R.L. Sundaresan, for M/s. A.L. Gandhimathi in W.A. Nos. 304 and 305 of 2011, for the Appellant; Nalini Chidambaram, for Mrs. C. Uma for Respondents 1, 3, 5, 7, 9, 11, 14 to 20, Mr. Vijayanarayanan, for Mrs. Jothivani for Respondents 4 and 21, Mr. A.R.L. Sundaresan, for M/s. A.L. Gandhimathi, for Respondents 6 and 22, Mr. R. Muthukumarasamy, for Mr. R.N. Amarnath for 8th Respondent, Mr. K. Venkatramani, for Mr. T. Ayngara Prabhu for Respondents 32 to 35, 42 to 45 and 46 to 50, Mr. Silambanan, for M/s. Profexs Associates for 24th Respondent, Mr. A. Navaneethakrishnan, Advocate General assisted by Mr. I.S. Inbadurai, Special Government Pleader for Respondents 29 and 30, Mr. N.S. Nandakumar, for 31st Respondent, Mr. M. Sivavarthanan for Respondents 36 and 37, Mr. R. Thiagarajan Senior Counsel for Mr. Ramajagadeesan, for Respondents 38 to 41 in W.A. No. 1704 of 2010, Mr. K. Venkatramani, for Mr. T. Ayngara Prabhu for 1st Respondent, Mr. M. Sivavarthanan Respondents 38 and 39, Mr. R. Thiagarajan Senior Counsel for Mr. Ramajagadeesan, for Respondents 34 to 37 in W.A. No. 304 of 2011 and Mr. M. Sivavarthanan, for Respondents 35 and 36, Mr. R. Thiagarajan Senior Counsel for Mr. Ramajagadeesan, for Respondents 31 to 34 in W.A. No. 305 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—These writ appeals appertain to a dispute between the persons appointed as Assistant Engineers in and around the years

1981-1985 in the Highways and Rural Works Department of the Government of Tamil Nadu on temporary basis, who continue in service, and the

persons appointed in the said category in 1991-1992 through the examination conducted by the Tamil Nadu Public Service Commission (for

brevity, "the TNPSC"). The writ appeal in W.A. No. 1704 of 2010 has been filed against the order dated 27.4.2009 of the learned Judge in W.P.

No. 21786 of 2004 by the appellants, who are the direct recruits through the TNPSC having passed the competitive examination in the year

1991-1992 and were not parties to the writ petition, but filed the appeal after obtaining leave.

2. The appellants in W.A.Nos.304 and 305 of 2011, who are respondents 10 and 25 in W.P.Nos.21127 and 23167 of 2010 and petitioners 6

and 22 in W.P. No. 21786 of 2004, are temporary appointees to the post of Assistant Engineer in the year 1984 and they continued in service.

3. Since all these writ appeals raise a common issue, they were directed to be posted jointly and accordingly, they were heard jointly by us.

W.A. No. 1704 of 2010:

4.1. This appeal came to be filed by third parties to W.P. No. 21786 of 2004 on obtaining leave. The said writ petition was filed by 28 writ

petitioners, who were all appointed as Assistant Engineers in the Highways and Rural Works Department, being Engineering graduates registered

under the Professional Employment Exchange. They were all selected by the Chief Engineer, being the appointing authority, between 1981 and

1986 under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules, 1955 (for brevity, "the Rules"). Some of the writ petitioners

possess the qualification of M.E./M.Tech. and it is stated that they were all posted in the regular and substantial vacancies and were discharging the

normal functions as Assistant Engineers in various projects of the Highways Department.

4.2. It is stated that their services were terminated in 1985-86 without assigning any reason and subsequently they were reappointed in 1987-1988

as per G.O. Ms. No. 46, Transport Department, dated 7.1.1987 under Rule 10 (a) (i) of the Rules. It is stated that the writ petitioners thus

appointed were performing all functions involving planning, investigation, research and computerized know-how and are fully qualified engineers

according to the Highway Engineering Service Rules from the time of their first appointment.

4.3. It is their case that at the time of their original appointment through employment exchange, they were made to give an undertaking that they would work at least for one year and all their documents were retained by the Highways Department, thereby depriving them to get employment elsewhere and due to the large number of vacancies in the department, the petitioners were given to understand that their services would be continued and regularized in the course of time, since there was no selection by the TNPSC for the post of Assistant Engineers for a long period of seven years after 1982. It is also stated that they were all made to work on temporary basis without the authorities taking any action to regularize and fix their seniority.

4.4. It is their further case that during 1989-1990, 15 Assistant Engineers, fresh from college, were recruited through the TNPSC and posted in the Public Works Department and they were brought into the Highways Department and were placed above the petitioners and below the persons appointed in the 1982. It is further stated that the petitioners have made representation when the 15 Assistant Engineers of the Public Works Department were placed above them in the seniority and ultimately approached the Tamil Nadu Administrative Tribunal, which has taken a decision against the petitioners on the ground that the petitioners should have participated in the examination conducted by the TNPSC in the year 1989. While dismissing the applications, the Tribunal observed that there is no reason for ousting the petitioners in the year 1985-1986 and reappointing them in the year 1987-1988 and it is a clear fault committed by the Highways Department.

4.5. It is also stated that five of the petitioners were selected by the TNPSC in 1983 and 1985 for the Public Works Department, but they continued to serve the Highways Department with a fervent hope that they will be regularized from the date of initial appointment with due seniority. It is stated that similarly situated persons in other department, to wit Agricultural Engineering Department, have been regularized as per G.O. Ms. No. 444, Agriculture (Assistant Engineers II) Department, dated 13.6.1990 and such an approach has not been adopted in respect of

Highways Department.

4.6. It is stated that as per the decision of the Supreme Court, the persons who are already in service are entitled to seniority from the date of their initial appointment, however the petitioners who have been in service for nearly 20 years have been deprived of their equitable right of seniority from the date of their original appointment.

4.7. It is also stated that the Government has taken a stand to regularize the petitioners and nine others in the year 1995, but without giving due seniority from the date of their original appointment vide G.O.Ms. No. 528, Public Works (HK2) Department, dated 30.6.1995 and that was challenged on the ground that the same is unjustified and unreasonable. The petitioners have also stated that the stand of the official respondents in placing the petitioners below the persons selected through the TNPSC in 1992 is unjustified and as a result of the same, the petitioners have lost their seniority of about 13 years.

4.8. It is also stated that while the Secretary to Government, Highways Department has sent a report to the TNPSC to consider the case of the petitioners for regularization from the date of their original appointment, the TNPSC has taken a contra view and ultimately, the Government has acquiesced to the said view of the TNPSC, as it is seen in the communication of the Chief Engineer dated 29.6.2004. Therefore, the petitioners have challenged G.O.Ms. No. 528, Public Works (HK2) Department, dated 30.6.1995, by which the Government has regularized the petitioners and nine others with effect from the dates of their original appointment however without giving due seniority from the said dates.

5.1. In the counter affidavit filed by the Government in the writ petition while it is admitted that the petitioners are among those who were appointed temporarily during 1981-1985 as Assistant Engineers in the Highways Department, being sponsored by the Professional and Executive Employment Exchange, it is stated that such appointment was only to implement Self-Sufficiency Scheme launched by the Government and it was on completion of the said scheme, they were terminated gradually during 1986 and subsequently, reappointed on temporary basis in 1987-1988 and are continuing in service till date. It is further stated that their services were not regularized for the reason that they were not appointed through

the TNPSC.

5.2. It is admitted that between 1983 and 1988 there was no selection of Assistant Engineers by the TNPSC and it was in those circumstances,

the petitioners were allowed to continue due to dearth of hands. It is stated that even in the appointment order it was specifically indicated that they

could be terminated at any time.

5.3. It is stated that the 15 Assistant Engineers selected by the TNPSC were originally for Public Works Department, but were re-allotted

Highways Department based on the availability of vacancies and the same cannot be said to be invalid and the prospects of the petitioners are not

affected by including them and the petitioners cannot equate themselves with the regularly appointed persons through TNPSC in 1989-1990.

5.4. It is stated that few of the candidates selected through the TNPSC in 1989-1990 but placed in the reserve list for regular appointment as

Assistant Engineers approached the Tamil Nadu Administrative Tribunal by filing O.A. Nos. 3715, 3716, 2562 and 5635 of 1992 and the

Tribunal in its order dated 21.1.1994 while observing that the temporary Assistant Engineers are liable to be replaced by regular candidates

selected by the TNPSC, directed that they may be allowed to appear for selection in relaxation of rules to the extent necessary to give them a

chance to qualify for regular appointment and that was only on sympathetic grounds.

5.5. It is stated that five of the petitioners selected by the TNPSC were regularized from the date of their first appointment and in respect of the

other petitioners, the Government after considering the views of the TNPSC has issued the impugned government order regularizing the services of

the petitioners, but directing to place them in the seniority below the candidates selected by the TNPSC in the year 1991-1992 and, therefore,

according to the Government, the petitioners, who were not regularly appointed, have no manner of right to claim seniority, inasmuch as their claim

for regularization has been considered.

6. While disposing of the writ petition, the learned Judge considering the request made on behalf of the petitioners that they may be permitted to

make fresh representation to the Secretary to Government, State of Tamil Nadu, Highways Department, with regard to their claim for

regularization and fixing of seniority from the date of their original appointment, gave liberty to the petitioners to make representation to the

Secretary to Government, State of Tamil Nadu, Highways Department with regard to the relief sought in the writ petition within a period of four

weeks from the date of the order and directed that on receipt of such representation, the Secretary to Government, State of Tamil Nadu,

Highways Department shall pass orders on merits and in accordance with law after hearing those who may be adversely affected by such re-

fixation of seniority and by taking into consideration the recommendations made by the Chief Engineer (General), Highways Department and the

TNPSC, to wit respondents 2 and 3, dated 1.3.2002 and 23.4.2002 respectively, within a period of four months.

7. It is as against the said order, the third parties, who were appointed through the TNPSC in the year 1991-1992, on obtaining leave have filed

the above appeal contending inter alia as under:

(i) that the writ petition ought not to have been ordered without impleading the appellants who are the necessary parties;

(ii) that even otherwise the Secretary to Government, Highways Department and the Chief Engineer, Highways Department cannot modify the

impugned government order in G.O. Ms. No. 528, Public Works (HK.2) Department, dated 30.6.1995 and therefore no direction ought to have

been given to the said respondents who have no statutory obligation;

(iii) that the original writ petitioners have suppressed the material facts about the rejection of their earlier request by the TNPSC;

(iv) that based on G.O.Ms. No. 528, Public Works (HK.2) Department, dated 30.6.1995, which was impugned in the writ petition, the original

petitioners were given one promotion as Assistant Divisional Engineers and that was accepted by them and having accepted the promotion, they

are estopped from challenging the government order after a lapse of 15 years and, therefore, the writ petition ought to have been dismissed on the

ground of laches;

(v) that the claim of the petitioners is illegal and against Rule 10 (a) (i) (1) of the Rules; and

(vi) that the order passed by the learned Single Judge is against the law laid down by the Supreme Court in M.P. Palanisamy and Others Vs. A.

Krishnan and Others, .

8.1. Mr. V. Prakash, learned Senior Counsel appearing for the appellants in W.A. No. 1704 of 2010 would submit that the original writ

petitioners having obtained the benefit of promotion based on the government order impugned in the writ petition are estopped from challenging the

government order or making a representation for the purpose of altering the contents of the government order. It is his submission that by the

conduct of the original writ petitioners in accepting the promotions based on the impugned government order, they have waived their right.

8.2. He would also contend that the writ petitioners even though were given an opportunity to appear regularly for the competitive examination

conducted by the TNPSC, they failed, and therefore they cannot be said to be qualified and even the benefit given under the impugned government

order to regularize them but placing them in the seniority list below the persons appointed through regularly conducted examination by the TNPSC

is a matter of sympathy or compassion. He would rely upon the judgment of the Supreme Court in H.S. Vankani and Others Vs. State of Gujarat

and Others, . He would also rely upon the decisions in M.P. Palanisamy and Others Vs. A. Krishnan and Others, and K. Madalaimuthu and

Another Vs. State of Tamil Nadu and Others, to substantiate his contention that settled seniority position cannot be unsettled.

9.1. The learned Advocate General appearing for respondents 29 and 30, while supporting the contention of the learned Senior Counsel for the

appellants, would submit that the government order, impugned in the writ petition granting regularization to respondents 1 to 28 in the appeal from

the date of their original appointments, but placing them in the seniority list after the persons appointed on regular basis through the TNPSC in last

selection in 1992, cannot be said to be either invalid or arbitrary.

9.2. It is his submission that respondents 1 to 28, who are not persons appointed by regular process through the examination conducted by

TNPSC but were appointed as per Rule 10 (a) (i) of the Rules, cannot as a matter of right claim themselves to be seniors to the persons who are

regularly appointed through the competitive examination conducted by the TNPSC and, therefore, it is his contention that the government order

cannot be held to be invalid and in such circumstances, there is no possibility or

necessity for the Government to reconsider the case of

respondents 1 to 28 for placing them in the seniority list above the persons who were selected by the due process through competitive examination

conducted by the TNPSC after the notification issued in the year 1989.

9.3. He further submitted that, in fact, the TNPSC has conducted examination in respect of the said post in the years 1985-1986, 1989-1990 and

1991-1992 and even in the year 1991-1992 the respondents 1 to 28, who are the original writ petitioners, have not made any effort for the

purpose of getting through the examination conducted by the TNPSC and, therefore, even after opportunity was given to them to enter through the

proper channel, they have not utilized the same.

9.4. He would lastly submit that respondents 1 to 28 having accepted further promotion based on the impugned government order cannot go back

and challenge the said order.

10. Mr. N.S. Nandakumar, Learned Counsel appearing for the 31st respondent/ TNPSC also reiterates the contentions made by the learned

Advocate General.

11.1. On the other hand, it is the contention of Mrs. Nalini Chidambaram, Mr. Vijayanarayanan, Mr. AR.L. Sundaresan, Mr. R.

Muthukumarasamy, Mr. Silambanan, learned Senior Counsel appearing for various respondents, who were appointed as per 10 (a) (i) of the

Rules and are the original writ petitioners working as Assistant Engineers on temporary basis appointed in and about the year 1984, ousted in the

year 1987, and reappointed in 1987-1988 on temporary basis and continued till date and who are affected by the impugned government order

insofar as it fixes their seniority below the persons who were appointed through TNPSC notification in the year 1989, contended that while it is

true that the said respondents were appointed as per Rule 10 (a) (i) of the Rules, it remains a fact that ever since their appointment in 1984, except

for a brief period in the year 1987, they all continued in service throughout till date and in the absence of any rule prohibiting their seniority to be

fixed based on their experience, they are entitled to claim seniority above the persons who were appointed subsequent to their appointment, even

though such subsequent appointment was through the TNPSC.

11.2. It is further contended that when the TNPSC has not conducted the examinations regularly and the Government has continued the services of the said respondents on temporary basis, there is no fault on their part.

11.3. It is their submission that when the TNPSC, which is a constitutional authority, has taken a decision, as it is seen in the communication of the

TNPSC dated 12.8.2010 addressed to the Government, and accorded its concurrence in respect of the original writ petitioners and similarly

situated persons numbering 37, who were appointed on temporary basis as Assistant Engineers, that their case should be treated as special case

for re-fixing their seniority in the Highways Department with reference to the date of their regularization and that they should be placed between

1982 and 1986 directly recruited Assistant Engineers after hearing those who may be adversely affected, the same has to be treated as final and

there is nothing wrong on the part of the Government in re-fixing the seniority. This claim was specifically made by Mrs. Nalini Chidambaram,

learned Senior Counsel in her contention.

11.4. It is the submission of Mr.A.R.L.Sundaresan, learned Senior Counsel that, in fact, the Government in the letter dated 27.8.2009 has

requested the TNPSC to submit its views on the re-fixation of seniority in respect of 37 persons, including the petitioners, based on the

observation made by the learned Single Judge in the impugned order dated 27.4.2009 and it was in those circumstances, the TNPSC has given its

views on 12.8.2010 to the Government, as stated above, giving its concurrence for the purpose of re-fixing the seniority of 37 persons, including

the writ petitioners, by placing them between 1982 and 1986 and, therefore, by such a direction issued by the learned Judge in the impugned order

no one is affected and the appeal is premature.

11.5. Mr. A.R.L. Sundaresan, learned Senior Counsel also brought to the notice of this Court that accepting such concurrence of the TNPSC, the

Government in respect of Agricultural Engineering Department has, in fact, revised the seniority list, as it is seen in G.O. Ms. No. 444, Agricultural

AE(II) Department, dated 13.6.1990. He has also brought to the notice of this Court that even in the Highways Engineering Department, while

regularizing the services, the Government in G.O. Ms. No. 265, Highways (HK-2) Department, dated 24.9.2004 has re-fixed the seniority. He

has also relied upon the decision of the Supreme Court in Rudra Kumar Sain and Others Vs. Union of India and Others, , apart from the decision

of a Division Bench of this Court in Indian Council of Medical Research and Others Vs. K. Rajalakshmi and Another, to buttress the said

contention.

11.6. Mr. A.R.L. Sundaresan, learned Senior Counsel has also submitted that inasmuch as no seniority was subsequently drawn, the writ

petitioners cannot be thrown out on the ground of laches, especially when representations have been made to the Government and the same were

pending. It is his submission that copy of the impugned government order was not served on them and, therefore, they were unable to approach

the Court at the earliest point of time and even otherwise when once their seniority is ignored, there is no bar against the writ petitioners in

challenging the government order.

11.7. It is the further submission of Mr.A.R.L.Sundaresan that even in the impugned order passed by the learned Judge, he has only directed the

Government to consider the case of the writ petitioners along with the persons who are likely to be affected and it is ultimately for the Government

to pass orders and inasmuch as the Government is yet to pass orders, the same cannot be questioned by the appellants.

12.1. Respondents 32 to 35 and 42 to 50 in the writ appeal, to wit the persons selected through the TNPSC based on the notification issued in the

year 1989 as Assistant Engineers, got themselves impleaded as parties. Likewise, respondents 36 to 41, who were also appointed through

TNPSC and were directed to be placed under the impugned government order above the original writ petitioners in the inter se seniority list, have

also got themselves impleaded and Mr. K. Venkataramani, Mr.R.Thiagarajan, learned Senior Counsel, apart from Mr. Sivavarthanan, Learned

Counsel appearing for respondents 36 and 37, have made their submissions in line with the submissions made by Mr.V.Prakash, learned Senior

Counsel appearing for the appellants.

12.2. Mr. R. Thiagarajan, learned Senior Counsel would submit that when once 37 persons, including the writ petitioners, have got themselves

regularized from the date of their original appointment and only in respect of their inter se seniority they were directed to be placed below the

regularly appointed persons through the TNPSC, they cannot have any grievance at all and, in fact, regularizing their services from the date of their

original appointment on temporary basis under Rule 10 (a) (i) of the Rules itself is a matter of grace.

12.3. It is his submission that the persons appointed as per Rule 10 (a) (i) of the Rules, to wit 37 persons including the original writ petitioners,

have challenged the notification issued by the TNPSC in O.A. No. 1612 and 1791 of 1989 before the Tamil Nadu Administrative Tribunal and the

said applications were dismissed on 21.1.1994 and thereafter they made representation for regularization and it was based on that G.O.Ms. No.

528, Public Works (HK2) Department, dated 30.6.1995 came to be passed and it was subsequently, the Government has passed orders by

relaxing the rules as per the powers conferred under Rule 48 of the Rules to enable the 37 persons appointed with effect from their original date of

appointment for regularization, but directing the seniority to be placed below the candidates selected by the TNPSC in the last selection, as per the

approved list in the year 1992, and therefore the request of the Highways Department to reconsider and confer them seniority from the date of

their original appointment was rejected by the Government in the letter dated 5.4.2004 and that has become final and when that is so, it would be

improper for the Government or the Highways Department to write a letter on 27.8.2009 to the TNPSC to give its opinion on the same issue once

again and, therefore, according to the learned Senior Counsel, the letter of the TNPSC dated 12.8.2010 has no legal basis at all.

12.4. It is his submission that insofar as the decision taken by the Government on 5.4.2004 against the 37 persons, including the writ petitioners,

stands final and is not challenged by any one, the letter of the TNPSC cannot confer any right. He would also submit that when the 37 persons,

including the writ petitioners, were regularized under the impugned government order as early as 30.6.1995, no reason has been adduced by the

writ petitioners for challenging the same in the year 2004, especially when they have accepted the regularization from the date of their appointment

and subsequent promotions.

12.5. Mr. K. Venkataramani, learned Senior Counsel while adopting the arguments of Mr.R.Thiagarajan, learned Senior Counsel, as stated

above, would submit that the respondents who were appointed through the examination conducted by the TNPSC in 1986 have been regularized

on 25.3.1987, 9.4.1987 and 10.4.1987 and were promoted as Assistant Divisional Engineers in 2004 and Divisional Engineers in 2011, whereas

the original writ petitioners were appointed as per Rule 10 (a) (i) of the Rules in 1971, 1972, 1981, 1984, 1985 and 1986 and ousted in the year

1987 and again reappointed and the persons who were selected through the TNPSC were not given posting and it was in those circumstances the

persons selected through TNPSC have filed O.A. No. 3715 of 1992 before the Tamil Nadu Administrative Tribunal to terminate the persons

appointed as per Rule 10 (a) (i) of the Rules, since they cannot hold the post beyond three years as per Rule 35(f) of the Rules, and the Tribunal

has passed the final order on 21.1.1994, in which the Tribunal while directing that one more opportunity must be given to 10 (a) (i) appointees to

appear for regular examination to be conducted by the TNPSC, has made it very clear that in the meantime, the regularly appointed candidates are

to replace the 10 (a) (i) candidates in the regular vacancy and that order has become final and is not challenged by anyone and when the 37

persons, including the writ petitioners, have not chosen to get through in the subsequently conducted examination by the TNPSC as per the

direction of the Tamil Nadu Administrative Tribunal, there is no question of reconsideration, as stated by the learned Single Judge in the impugned

order.

12.6. In order to support his contention that the claim of the writ petitioners is affected by laches, he would rely upon the decisions in M.P.

Palanisamy and Others Vs. A. Krishnan and Others, and P. Mariyappan v. The Government of Tamil Nadu, rep. by the Secretary to Government,

Forest and Fisheries Department, Madras, 1985 WLR 349.

W.A. Nos. 304 and 305 of 2011:

13.1. In the meantime, the said impleaded respondents in W.A. No. 1704 of 2010, who were selected in the examination conducted by the

TNPSC as Assistant Engineers as per the notification of the year 1989, have challenged the letter of the Government dated 27.8.2009 by which

the Government has requested the TNPSC to give its views on the re-fixation of seniority of the 37 Assistant Engineers appointed and continued

under 10 (a) (i) basis; the recommendations of the Chief Engineer of the Highways Department dated 29.5.2009 addressed to the Principal

Secretary to the Government, Highways Department recommending the revision of seniority to confer the 10 (a) (i) appointees their seniority from

the date of their original appointment; and the subsequent letter of the TNPSC dated 12.8.2010 recommending that the 37 persons appointed

under Rule 10 (a) (i) can be regularized and their inter se seniority can be fixed between 1982 and 1986 directly recruited Assistant Engineers by

filing W.P.Nos.21127 and 23167 of 2010 and a learned Single Judge of this Court in the common order dated 4.2.2011 while disposing of the

said writ petitions has issued directions to the Government of Tamil Nadu to give one more hearing to the petitioners in these writ petitions as well

as respondents 5 to 31, who are also similarly situated as that of the writ petitioners, and form an independent opinion with regard to their claim

and take a decision regarding their seniority, ignoring the recommendations made by the Chief Engineer to the Government or the recommendation

of the TNPSC dated 12.8.2010 and pass a speaking order.

13.2. Respondents 10 and 25 in the said writ petition, who are among the 37 persons appointed under Rule 10 (a) (i) of the Rules and whose

services were regularized in G.O.Ms. No. 528, Public Works (HK2) Department, dated 30.6.1995 with effect from the date of their original

appointment however directing them to be placed in the seniority below the persons who were appointed through the TNPSC as Assistant

Engineers pursuant to the notification issued by the TNPSC in the year 1989, have challenged the said order of the learned Single Judge in

W.A.Nos.304 and 305 of 2011 insofar as it relates to the direction given to the Government under the impugned order to independently consider

the case of the writ petitioners ignoring the recommendations of the Chief Engineer, Highways Department and the TNPSC contending inter alia

that the learned Judge ought to have dismissed the writ petitions when the writ appeal in W.A. No. 1704 of 2010 filed by the Assistant Engineers

recruited through the TNPSC examination conducted in 1989 was pending before the Division Bench; that the recommendations are the internal

communication between the department and the TNPSC and cannot be challenged and there cannot be a direction to ignore such

recommendations.

13.3. The respective counsel who are appearing for the parties have made the submissions as enumerated above in W.A. No. 1704 of 2010.

14. We have considered the rival submissions made in these cases and have given our anxious thought to the issues involved.

15. On a perusal of the records it is seen that 37 persons, out of whom some are diploma holders and some are degree holders, were appointed

on temporary basis as Assistant Engineers in the Highways and Rural Works Department of the Government of Tamil Nadu during 1971, 1972,

1981, 1984, 1985 and 1986 on temporary basis under Rule 10 (a) (i) of the Rules by the Chief Engineer, even though such recruitment to the post

should be done by the TNPSC. However, those 37 persons who were appointed as Assistant Engineers were ousted in the year 1987 for want of

vacancies and subsequently reappointed as per Rule 10 (a) (i) of the Rules and they are continuing till date and it is not in dispute that they were

not selected till date through the TNPSC, even though they have been originally appointed by sponsorship through the employment exchange.

16. Under the Tamil Nadu State and Subordinate Service Rules, 1955, Rule 10 (a) (i) contemplates in the public interest, in cases where there

would be undue delay in making appointment in accordance with the Rules, that temporary appointments can be filled up otherwise than through

the TNPSC. The Rule also contemplates that any such person appointed shall be replaced as soon as possible by a member of a service or an

approved candidate qualified to hold the post and cannot be continued for a period more than one year from the date of the temporary

appointment. They are also not to undergo the period of probation. A reference to the appointments made during the said period shows that the

appointment orders while referring to Rule 10 (a) (i) of the Rules show that the candidates were sponsored through employment exchange and they

were informed that their appointment was purely temporary on account of non availability of selected candidates and their services are liable to be

terminated without any reason.

17. In the meantime, the TNPSC issued a notification on 15.9.1989 inviting applications to fill up 60 posts of Assistant Engineers (Civil) in the

Tamil Nadu Highways and Rural Works Department prescribing a degree in Civil

Engineering as qualification. Even though the notification was in respect of 60 vacancies, the select list of 47 candidates was prepared by the TNPSC and 12 candidates were placed in the reserve list. The TNPSC again has issued a notification on 30.11.1992 inviting applications for 20 posts. Those candidates who have been selected through TNPSC as well as the candidates temporarily appointed as per Rule 10 (a) (i) of the Rules have approached the Tamil Nadu Administrative Tribunal in various batch of cases in O.A. No. 1612 of 1989, etc. While regularly selected candidates through the TNPSC would contend that they have to be posted since they were selected in accordance with the Rules through the TNPSC, it was the contention of the candidates who have been appointed on 10 (a) (i) basis temporarily that they have been sponsored through the employment exchange and it was also their case that even though the TNPSC has notified for examination in 1989 and 1992, they have been wrongly advised not to appear since they have continued in service.

18. The Tribunal in the order dated 21.1.1994, while dealing with the merits of the contentions and comparative merit of the appointees through the TNPSC and temporary appointees, has referred to its earlier order in O.A. No. 2115 of 1989, etc. batch dated 24.7.1991 extracting the portion of the decision as follows:

When recruitment is made through the Public Service Commission an advertisement is issued calling for applications in the papers. Wide publicity is thus given so that all eligible persons may apply if they so desire. Thereafter a competitive selection is made by a written examination followed by an interview. Appointments through the Employment Exchange on the other hand does not afford the same scope for all the eligible candidates to apply if they so desire. No doubt all such eligible candidates may register themselves with the Employment Exchange but the Employment Exchange sponsors only some candidates with special reference to the seniority of registration. Therefore, it cannot be said that all eligible candidates as contemplated under the rules are considered when the recruitment is made of candidates sponsored by the Employment Exchange.

Recruitment by open advertisement and competitive selection is from a much wider base of eligible candidates and it can certainly be said that the

employment by calling for candidates from the Employment Exchange excludes persons otherwise eligible, from competing in the selection. The class of persons to be considered in this context is persons who are qualified in accordance with the rules for such direct recruitment and who are eligible to compete in the selection to be made by the Public Service Commission. When the rules contemplate that the selection should be made by affording opportunity to all such eligible candidates, the selection made through the employment exchange from a limited body of persons sponsored by the Employment Exchange from among those who have registered, which class again may not cover all the persons eligible because such registration with the Employment Exchange is not compulsory and the Employment Exchange is not the only means through which the recruitment could be made to Government Service. Such open selection through a competitive examination in which all eligible persons can compete and due publicity is given to enable all such eligible persons to compete is consistent with the principles of Art. 14 and 16 of the Constitution conferring the equality before the law and equal opportunities in the matter of Government Service. When the rules specifically provides that regular employment for a category of post should be done in this manner employing persons in violation of the rules from a smaller body of persons would be denial of rights conferred by Art. 14 and 16 of the Constitution which had been incorporated in the rules, and service following such appointment cannot be treated on par with regular service or as conferring any right to regular employment.

The Tribunal has also referred to another order passed in O.A. No. 1451 of 1990, dated 26.6.1992 in the same terms. Following the said orders, while dealing with the claim of the regularization of the temporarily appointed Assistant Engineers, the Tribunal while observing as follows:

In this case, the applicants being terminated in 1986, the re-employment thereafter in 1987-88 was totally unjustified. A selection by the Public

Service Commission had been notified in 1989, within two years of such re-appointment. Therefore it cannot be said that they have continued fairly

long time following temporary appointment. The earlier spell of temporary appointment cannot be taken into account in this context, when that had

been terminated in 1985-86. That is barely after short period, except in a few cases, C. Swaminathan who had been employed about 5 years. But,

they had also been terminated and been re-employed only after a further period of over a year. While Government may on compassionate grounds

consider their cases, on account of the extended temporary service, there will be no justification for such consideration in respect of others, in view

of the limited period of their tenure before and after the break. The failure to apply for the selection notified in 1989 cannot be excused. There has

been failure on both sides.

has ultimately held while referring to G.O. Ms. No. 185, P. & A.R. Department, dated 15.5.1991 in respect of temporary appointments as

follows:

"The practice of conducting Special Qualifying Tests by Tamil Nadu Public Service Commission/Teachers Recruitment Board be dispensed with.

All temporary employees who were in service as on 31.3.1991 and all other persons who were recruited to Government service under General

Rule 10 (a) (i) and who were discharged from service after serving continuously for a minimum period of one year between 1.4.1986 and

31.3.1991 be permitted to appear for the next regular recruitment examination to be conducted by the Tamil Nadu Public Service

Commission/Teachers Recruitment Board. They will be given age relaxation if necessary, to appear for the above competitive examination. The

services of temporary employees who do not appear for the regular recruitment Examination and also do not get selected by the Tamil Nadu

Public Service Commission/Teachers Recruitment Board will be terminated....

A total ban be imposed on recruitment of temporary employees through Employment Exchange for a period of one year in the first instance, from

the date of issue of this order. Even according to the General Rule 10 (a) (i) no temporary appointment shall be made of persons other than the

ones sponsored by the Tamil Nadu Public Service Commission to any of the posts within the purview of the Tamil Nadu Public Service

Commission. The appointing authorities are thus divested of their powers of making temporary appointments of candidates sponsored by the

Employment Exchanges."

We would expect the Government to take action strictly in accordance with the rules for recruitment by the Commission promptly and make

temporary appointments during the interim period only from the reserve list of

the Commission and to deal with the past cases of temporary employment which have been allowed to continue contrary to rules on account of slackness in taking action for regular recruitment and deliberately as in this case when the temporary appointment have been allowed to continue even after selection by the Commission and the vacancies had not been notified to the Commission even though the temporary appointments had been in operation only for a limited period of less than two years when the selection was notified, in accordance with these orders without making any exceptions and relaxations. As we have stressed in our earlier orders we would expect the Government to adhere to the extended temporary employment to be followed by request for regularization in relaxation of the rules.

The applicants in O.A.Nos.2562, 3715, 3716, 5635 and 5806/92 who have been selected by the Public Service Commission following the notification in 1989 and placed in the reserve list should be appointed regularly in replacement of temporary incumbents, if necessary. The temporary candidates, who are applicants in O.A. Nos. 1612, 1791, 2023/89 and 6671 & 6672/93 should take their chance in the selection in progress, following the notification issued in 1992, if the Commission can so consider or in the next selection. In the meantime, they are liable to be replaced by regular candidates selected by the Public Service Commission. However, they may be allowed to appear for one selection in relaxation of the rules to the extent necessary, to give them a chance to qualify for regular appointment, even though they had not availed themselves of such chance in the current selection as they should have.

(emphasis supplied)

19. The said order passed by the Tamil Nadu Administrative Tribunal in the batch of cases has become final. In fact, it was based on the said decision, the Government has passed the Government Order in G.O. Ms. No. 528, Public Works (HK.2) Department, dated 30.6.1995 impugned in the writ petition. A reference to the said impugned order makes it clear that the order has been passed based on the direction issued by the Tamil Nadu Administrative Tribunal dated 21.1.1994.

20. It is not in dispute that in spite of such directions having been given, in the examination conducted by the TNPSC by inviting applications on

30.11.1992, these temporary appointees have not chosen to appear. Therefore, it is not as if there was no opportunity for them to come under the regular stream. In fact, it was taking note of the contention raised on their behalf that they were wrongly advised not to appear in examination conducted in 1982, they were given another opportunity to appear in 1992. It was after considering the representations made on their behalf to regularize their services on the ground that they were continued from 1971, 1972, 1981 1984, 1985 and 1986 on temporary basis and the observation made by the Tamil Nadu Administrative Tribunal, the Government has decided to obtain concurrence from the TNPSC for regularization of the temporarily appointed persons in the services as Assistant Engineers.

21. Regulation 16(b) of the Tamil Nadu Public Service Commission Regulations, 1954, which is as follows:

16. It shall not be necessary for the Commission to be consulted:

(a)....

(b) as respects any of the matters mentioned in sub-clauses (a) and (b) of clause (3) of the Article 320 of the Constitution in the case of posts

specified in Annexure-IA to these regulations and other posts in respect of which the State Government have directed or may with the concurrence

of the Commission, direct that appointment may be made without reference to the Commission.

contemplates that the State Government may make appointments in respect of the posts specified in Annexure I-A to the Regulations without

reference to the TNPSC, but with the concurrence of the Commission. In Annexure I-A, Item No. 106 relates to the appointment of Assistant

Engineers in the Highways and Rural Works Department. Item 106 reads as under:

106. Assistant Engineers in the Highways and Rural Works Department when appointment to the post is made from among the holders of the

posts of Head Draftsman and Draftsman Grade I on acquiring A.M.I.E. or B.E. degree qualifications.

22. Ergo, it is in accordance with the Constitutional mandate and the TNPSC Regulations, 1954, the Government has sought concurrence from the

TNPSC and it is seen that in respect of 37 temporary appointees, including the

original writ petitioners, the TNPSC has given concurrence for regularizing their appointment suggesting that the relevant Rules, including the rules relating to the method of recruitment/reservation, may be relaxed in order to regularize their services. The TNPSC has also made it clear, as it is seen in the Government Order challenged, that the retrospective regularization of these candidates will not confer any right on seniority and they should be placed below the candidates selected by the TNPSC in the last selection, to wit 1992 approved list.

23. It was thereafter, the Government has passed the above said government order, impugned in the writ petition, by relaxing the rules relating to reservation and other aspects so as to enable these 37 Assistant Engineers to be regularized and they were all regularized from the date of their original appointment. However, the Government Order states that they should be placed in the seniority below the candidates selected by the TNPSC in the last selection in the year 1992 and it is this part of the government order which came to be challenged by these temporary appointees in the Highways Department by way of writ petitions in the year 2004.

24. First of all, as submitted by Mr. K. Venkataramani, learned Senior Counsel appearing for the regularly appointed candidates, the order of the Tamil Nadu Administrative Tribunal, which was the basis for the Government to pass the government order impugned in the writ petition, to the effect that the temporary appointees are liable to be replaced by regular candidates selected by the TNPSC, but eligible for appearing in the selection in relaxation of the Rules to the extent necessary to give them a chance to qualify for regular appointment even though they have not availed chances earlier, as elicited above, has become final and the said 37 persons, except few have not chosen to appear in the subsequent selection process and in spite of that the Government has passed the order which is impugned in the writ petition after obtaining the concurrence of the TNPSC regularizing all these 37 persons from the date of their appointment which can be only said to be a matter of grace and not as a matter of right, for no one of these writ petitioners have availed the opportunity of appearing before the TNPSC and getting themselves regularly appointed and enter into the service and, therefore, in our view, they are not entitled, as a matter of right, to claim that they should be placed in the

seniority above the persons who appeared in the regularly conducted selection process of the TNPSC in the year 1989. While the regularization of their services with effect from the date of their regular appointment was itself on humanitarian ground, they cannot as a matter of right claim to be seniors to the persons who are regularly appointed.

25. It is further relevant to note that the writ petitioners have taken advantage of the said government order and got themselves regularized in

services from the date of their original appointments and based on the same they have also obtained various promotions subsequently which is not

in dispute and is also evident from the seniority list produced before this Court. While so, they are certainly not entitled now after a lapse of nearly

9 years to approach the Court in the year 2004 by filing a writ petition challenging the government order of the year 1995. There is no earthly

reason given by the writ petitioners for such long delay, for they cannot approbate and reprobate.

26. When that is the position, we do not understand the reason for directing the Government to consider the representation once again as it is seen

in the order dated 27.4.2009 passed by the learned Single Judge in W.P. No. 21786 of 2004. The writ petitioners having accepted the order of

the Tamil Nadu Administrative Tribunal, which has become final as far as their service conditions are concerned, cannot under the guise of giving

representation attempt to unsettle the settled position.

27. The contention by the learned Senior Counsel appearing for some of the respondents who are the temporary appointees that the direction

given by the learned Judge in the impugned order is only to consider the representation without expressing any opinion on the merits of the matter

and therefore the regularly appointed persons have no grievance since they will also be heard at the time when the Government takes a decision

has absolutely no meaning. If such sort of representations are directed to be considered again and again when the judicial pronouncement has

become final, there is no end to any dispute.

28. When a similar question arose before the Supreme Court in *M.P. Palanisamy and Others Vs. A. Krishnan and Others*, in respect of

appointment of teachers in Matriculation Schools in the State of Tamil Nadu vide G.O.Ms. No. 1813, dated 12.12.1988, by which the teachers

temporarily appointed as per Rule 10 (a) (i) were regularized from the date of their original appointment, however directing them to be placed in

the seniority below the last candidate selected by the TNPSC, while confirming the said government order, the Apex Court has, in fact, referred to

Rule 23 (a) (i) of the Tamil Nadu State and Subordinate Service Rules, 1955, which is as follows:

23. (a)(i) Date of commencement of probation of persons first appointed temporarily." If a person appointed temporarily either under sub-rule (a)

or sub-rule (b) of the Rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment

thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in

accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from

such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person

who had been appointed thereto either under General Rule 10(a) or 10(d) is subsequently recruited thereto by transfer and included in the list of

approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first

temporary appointment or from such subsequent date, as the appointing authority may determine:

Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of

commencement of probation of the junior most person already in service:

Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess

all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Tamil

Nadu Public Service Commission or the appointing authority, as the case may be.

and took particular reference to the first proviso stated above, and rejected the contention of the temporary appointees to have their seniority

placed above the persons appointed through TNPSC and has held as follows:

42. We are not impressed by this, as we have already pointed out that under Rule 23 (a) (i) of the Tamil Nadu State and Subordinate Services

Rules, the persons who were in service, could not be rendered junior by the regularisation of the ad hoc candidates at a later stage. This G.O. Ms.

No. 1813, therefore, has to be interpreted in the light of Rule 23 (a) (i) which was a general rule and applicable to all the appointments. After all,

when a clear reference was made to Rule 10 (a) (i) (1), which was from the General Rules, there was no reason to make any exception and not to

read Rule 23 (a) (i) of the General Rules. For this reason, the argument must fail.

29. A similar issue regarding the appointments made in the Director of Statistics and promotions effected to persons above the persons who are

regularly appointed affecting the vested right of the directly recruited candidates came up for consideration before a Division Bench in P.

Mariyappan v. The Government of Tamil Nadu, rep. by the Secretary to Government, Forest and Fisheries Department, Madras, 1985 WLR

349. That was a case where by exercise of the power under Article 309 of the Constitution of India, Government gave retrospective effect to the

rules and a proviso was introduced to the effect that the qualification of possessing a degree with Statistics, Mathematics and Economics shall not

be insisted for Supervisors and Junior Assistants who entered service prior to 18.11.1968. However, by accepting the qualification such persons

were given seniority by unsettling the seniority of persons who were already holding the posts appointed through the TNPSC. In those

circumstances, it was held by the Division Bench of this Court as follows:

Undoubtedly rules under Article 309 of the Constitution of India can be made with retrospective effect. Making the rules retrospective in operation

and making appointments in accordance with such rules are two different things. The power to make rules is a legislative power and, therefore, can

be exercised retrospectively. When in the light of such rules some appointments are being made with retrospective effect, it is purely an

administrative act, if it prejudicially affects vested rights of other Government employees, then to that extent such administrative act will become

unfair and arbitrary. It is this that has happened in the present case. When the rules were given retrospective effect and a proviso was introduced to

the effect that the qualification of possessing a degree with Statistics, Mathematics and Economics shall not be insisted upon in the case of

Supervisors and Junior Assistants who entered service in the Department of

Statistics prior to 18.11.1968, that did not have the effect of enabling the State Government to make appointments retrospectively to the prejudice of those who were already appointed in clear vacancies through the Public Service Commission. The effect of the amended rules and the introduction of the proviso was that those of the Junior Assistants and Supervisors who were promoted temporarily by the order dated 4th September, 1971, and who were not qualified originally merely became qualified for being considered for appointment. Becoming qualified for being considered for appointment cannot be equated with getting a right to be appointed retrospectively with effect from the date on which all temporary appointments were made. 77 of the vacancies having been filled by direct recruitment and these 77 vacancies being the first available vacancies, any appointment made even in accordance with the new rule would have effect only after 1.2.1974. The Director of Statistics was, therefore, clearly not entitled to give seniority to the persons whose appointments have been regularised so as to adversely affect the vested rights of the directly recruited persons who hold the posts in a substantive capacity. They could not have, therefore, become junior to those whose appointments were regularised merely because by way of temporary arrangements they were appointed on 4th September, 1971, under Rule 39(a) of the General Rules. We are, therefore, of the considered view that the Director of Statistics was clearly in error in making the seniority list relying upon the amended Rules dated 14th October, 1978, so as to give the originally temporary appointed persons seniority over the directly recruited persons. Accordingly to this limited extent we quash the seniority list and direct the State Government not to disturb seniority of the appellant and the other persons who have been appointed directly and the benefits of regularisation would be given to those persons only after the date of appointment of the directly recruited Assistant Statistical Investigators. The appeal is therefore allowed.

(emphasis supplied)

30. The principle that the seniority once settled cannot be directed to be unsettled, which has been reiterated in a plethora of cases, came to be confirmed by the Apex Court in *H.S. Vankani and Others Vs. State of Gujarat and Others*, in the following words:

38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant

depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward

march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads

harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the

instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm

to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and

poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the

advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may

not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption.

Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from

the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

31. In *K. Madalaimuthu and Another Vs. State of Tamil Nadu and Others*, Altamas Kabir, J. speaking for the Bench while considering about the

10 (a) (i) appointees, in categorical terms has held that such persons who are appointed on temporary basis without recourse to the recruitment rules

cannot be said to be holding the regular appointment at all in the following paragraph:

24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view

appears to be the one canvassed on behalf of the appellants. The decisions cited by Mr. Rao have been rendered in the context of Rule 10 (a) (i)

(1) and the other relevant rules which are also applicable to the facts of the instant case. Apart from the above, the law is well settled that initial

appointment to a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2(1) of the

General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact,

Rule 39(c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible

by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person who is appointed temporarily to

discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment

is regularised. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in

the cadre.

32. The settled legal position that seniority list once settled cannot be unsettled after a lapse of long time was reiterated again by the Supreme

Court in *Union of India and another v. S.K. Goel and others*, (2007) 14 SCC 641 in the following words:

28..... Since the matter of seniority has been well settled and this Court in a plethora of cases has held that the seniority/promotion granted on

the strength of DPC selection should not be unsettled after a lapse of time.

33. The reliance placed by Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for some of the temporary appointees on the judgment of the

Supreme Court in *Rudra Kumar Sain and Others Vs. Union of India and Others*, to insist that fortuitous or ad hoc appointment cannot be for a

longer period, since stop-gap arrangement cannot be perpetual, is no doubt an established concept, but in the said judgment, the Supreme Court

has held that the issue is to be decided on the factual circumstances. Further, the facts in that case were relating to the appointment of Additional

District Judges in the Delhi Judicial Service against temporary posts created by the Delhi Administration and those persons have been working for

long years and it was in that context while deciding about the seniority, the Supreme Court has held as follows:

16. The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in

the Rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The

meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is

"accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to be "fortuitous". In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stopgap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

...

19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and

appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

But the facts of the present case are totally different, as the appointment was not for temporarily created post. Moreover, the conduct of the temporary appointees in approaching the Court after fairly long period of nine years is certainly not the issue before the Supreme Court in the above said case.

34. The further reliance placed by him on a Division Bench judgment of this Court in *Indian Council of Medical Research and Others Vs. K.*

Rajalakshmi and Another, relates to regularization of services of a person working in the project on continuation of the project and that is not applicable to the facts of the present case.

35. It is relevant as correctly submitted by Mr. K. Venkataramani, learned Senior Counsel appearing for the candidates appointed through

TNPSC that Rule 35(f) of the Rules, which is as follows:

Rule 35(f). Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority

within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date

of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall

not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

makes it very clear that in respect of revision of seniority if there is any dispute, the same has to be raised within three years from the date of

appointment in the said service or class and it makes it also clear that any application made after three years shall be summarily rejected, except in

cases where it resulted from mistake of facts.

36. By applying the said Rule to the facts of the present case, when the Government Order was passed in the year 1995, the writ petitioners have

chosen to come to the Court in the year 2004 and, therefore, the grievance of the original writ petitioners cannot be looked into even as per the

statutory provisions.

37. The reliance placed on G.O.Ms. No. 444, Agricultural (AE.II) Department, dated 13.6.1990 by Mr.AR.L.Sundaresan, learned Senior

Counsel to show that in Agricultural Engineering Department regularization has been effected in respect of the Engineers appointed is under totally

different circumstances, wherein the Government has regularized their services on the ground that the TNPSC has not conducted any recruitment

process after 1982 in respect of the Assistant Engineers (Agricultural Engineering) and it was in those circumstances, by relaxation of various

requirements, the Government has regularized the services. In the said order, the Government has also stated that the seniority must be assigned

below the candidates last selected/approved by the TNPSC for the post of Assistant Engineer (Agricultural Engineering). This order does not help

the candidates who are temporarily appointed since on the facts of the present case all the 37 candidates have been regularized with effect from the

date of their original appointment.

38. Even the other Government order in G.O.Ms. No. 265, Highways (HK2) Department, dated 24.9.2004 relating to the appointment to the

post of Assistant Engineers relied upon by the learned Senior Counsel clearly shows that the temporary appointees numbering 67 are to be

regularized from the date of their original appointment, but in respect of the seniority they should be placed below the persons appointed through

the TNPSC. Therefore, the same can be of no help to the writ petitioners.

39. In these circumstances, the contentions raised by the learned Senior Counsel appearing for the temporary appointees as if the impugned order

dated 27.4.2009 made in W.P. No. 21786 of 2004 has not decided any issue and has only left it open to the Government to decide on merits

again is not acceptable. For the aforesaid reasons, W.A. No. 1704 of 2010 is allowed and the order dated 27.4.2009 in W.P. No. 21786 of

2004 of the learned Single Judge stands set aside. By virtue of the allowing of W.A. No. 1704 of 2010, there is no question of the Government

reconsidering the claims of the temporary appointees and in view of the same, the question of ignoring the concurrence of the TNPSC or any

authority, as directed in the order dated 4.2.2011 in W.P.Nos.21127 and 23167 of 2010 does not arise and W.A.Nos.304 and 305 of 2011 are

closed. No costs. Consequently, all connected miscellaneous petitions stand closed.