

M.P.No.3 of 2015
in W.P.No.28260 of 2015

Reserved on: 08.09.2015

Delivered on: 11.09.2015

M.SATHYANARAYANAN, J.

The petitioner Association would state that it is espousing the cause of engineering works in Highways Department and to ensure that proper service conditions are implemented in the Department and to question the actions which are illegal and unconstitutional. It is also duly recognized as one of the Service Associations in the State, vide G.O.Ms.No.1814, Public (Services) Department dated 21.5.1956. The petitioner would further state that for implementation of certain works such as Road Upgradation, Road Maintenance etc., through World Bank Funding, initially the Government had formed the Tamil Nadu Road Sector Project-I [in short "TNRSP-I"] and the said project was in force between 1995 and 2013 and was headed by the Project Director and several engineers in various cadres were appointed in the said project. The petitioner would contend that the post of Chief Engineer in the said Project No.I was made by the Chief Engineers appointed by promotion from the Highways Department and no outsourcing was resorted to at any point of time and that the third respondent, while he

was in the cadre of Chief Engineer, had worked in the said project for a short period of six months and thereafter transferred and posted as Chief Engineer (Highways), NABARD and Rural Roads, Chennai and retired from service, on attaining the age of superannuation, on 31.03.2013.

2. It is also stated by the petitioner that vide G.O.Ms.No.48, Highways and Minor Ports Department dated 28.3.2013, formation of TNRSP Project-II for implementing works such as Road Upgradation, Road Maintenance etc., through World Bank Funding, was approved and in terms of G.O.Ms.No.205 of the same Department dated 26.12.2013, additional posts for the TNRSP Project-II which includes a post of Chief Engineer for implementation, with effect from 1.4.2014, was accorded and in terms of G.O.Ms.No.4 of the very same Department dated 13.1.2014, the date of implementation of Chief Engineer's post was advanced to 15.01.2014 from 01.04.2014. The qualification prescribed for the post of Chief Engineer is a Bachelor in Engineering (Civil) and there are very many number of Superintending Engineers in service in the Government of Tamil Nadu, who are having qualification and experience for being considered for appointment to the said post.

3. The grievance expressed by the petitioner is that in spite of sanctioning the post on 26.12.2013, no steps have been taken by the Government to fill up the post from among the qualified hands which were available in service. The Empowered Committee of the said project, in its meeting held on 18.08.2014, took a decision to authorize the Project Director to appoint the third respondent, a retired Chief Engineer (Highways), as Chief Engineer for TNRSP Project-II, since he worked in TNRSP Project-I for a period of six months and also indicated that if any further extension is required later, keeping in view the fresh panel, that may be dealt on a specific circulation note and he shall draw salary equal to last drawn pay minus pension. Accordingly, G.O.Ms.No.112 dated 03.09.2014 came to be passed by the first respondent and the services of the third respondent was once again extended for a period of six months with effect from 03.03.2015, in terms of G.O.(D).No.48 of the first respondent dated 02.03.2015.

4. Agenda was placed before the Empowered Committee meeting, to extend the services of the third respondent for another period of six months from 02.09.2015 and in the light of the said

positive proposal, the petitioner had filed W.P.No.27448/2015, prayed for a Writ of Mandamus forbearing the respondents 1 and 2 from in anyway continuing the services of the third respondent, as Chief Engineer from 02.09.2015, with a further direction to fill up the said post from among the qualified Superintending Engineers in the Highways Department. The said writ petition was listed for admission on 02.09.2015 and notice was accepted on behalf of the respondents 1 and 2 and posted on 03.09.2015 and on that day, the learned Advocate General has produced G.O.(Ms.)No.185, Highways and Minor Ports (HK1) Department dated 26.8.2015, in and by which the first respondent has authorized the second respondent to extend the services of the third respondent herein as Chief Engineer, TNSRP Project-II for another six months with effect from 03.09.2015 and challenging the legality of the said order, the present writ petition is filed.

5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that in terms of G.O.Ms.No.170, Personnel and Administrative Reforms (S) Department dated 18.12.2009, the Government permitted the appointing authorities

concerned to appoint retired Government servant/personnel retired from Quasi Government Organisations, temporarily on contract basis under Rule 11 of General rules for Tamil Nadu State and Sub-ordinate Services, against sanctioned posts, in the Government Departments subject to the condition that there shall be emergent need for such appointment and there should be reason to believe that work will get affected due to dearth of employees in the departments and such appointments should not be made on routine basis and guidelines have also been prescribed for making such appointments and contrary to the said Government Order, the third respondent had put in just six months of service in TNSRP Project-I, as per initial appointment and thereafter, his services were extended by three months and in terms of the impugned Government Order by another three months and the same is unsustainable in law.

6. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the letter of the first respondent dated 12.06.2014 in Letter No.478/HK1/2014-1 and would submit that it has been stated in the said letter that if any suitable person is available from the regular panel for the post of Chief Engineer for TNSRP-II PIU, the services of the incumbent appointed through

outsourcing may be terminated and Mr.D.Sampath, Superintending Engineer, TNSRP-II, PIU, Chennai was put in-charge of the post of Chief Engineer till the post is filled up, vide memo of the second respondent dated 13.06.2014. Attention of this Court was also invited to the letter of the Project Director dated 17.06.2014, addressed to the first respondent, wherein it has been stated among other things that since the post of Chief Engineer for TNRSP Project-II is vacant from 15.01.2014 and further that the first respondent, in his letter dated 12.06.2014, has directed the second respondent to fill up the newly created post of Chief Engineer through outsourcing for the time being and the same can be reviewed later, depending on the availability of suitable persons and steps may be taken fill up all approved posts on time for the reason that detailed project report preparation for some of the roads is in very advanced stage and for effective monitoring, such a course should be adopted and prays for orders from the first respondent for revalidation of G.O.Ms.No.11 of the first respondent dated 09.01.2007 and inclusion of the posts of Superintending Engineer and Chief Engineer, which is vacant for more than three months in G.O.Ms.No.11 dated 09.01.2007. It is also the submission of the learned Senior Counsel appearing for the petitioner that vide G.O.(D).No.149 of the first respondent dated 19.11.2014,

temporary panel of Superintending Engineers fit for promotion to the post of Chief Engineers for the year 2014-2015 was also prepared, however no progress took place and taking advantage of the fact that no further progress took place, the first respondent is going on extending the services of the third respondent, which on the face of it, is unsustainable in law.

7. The learned Senior Counsel appearing for the petitioner also submitted that admittedly the third respondent was in-charge of the Chief Engineer, TNRSP Project-I only for a period of six months and thereafter, he was transferred and posted as Chief Engineer, Highways, NABARD and Rural Roads, Chennai and he retired from service on attaining the age of superannuation on 31.3.2013 and there is absolutely no transparency in the selection process and the work experience of the third respondent as Chief Engineer for TNRSP Project-I, at any stretch of imagination, cannot be considered as expertise to act as the Chief Engineer for TNRSP Project-II through outsourcing and for the reasons best known to them, temporary panel drawn for promotion to the post of Chief Engineer, has not been operated upon and it would indicate that for obvious and extraneous reasons only, the services of the third respondent are extended from

time to time and prays for interim orders.

8. *Per contra*, Mr.A.L.Somayaji, learned Advocate General would submit that for proper and effective implementation of TNRSP Project-II, a conscious decision was taken to appoint the third respondent on *ad hoc* basis and for effective monitoring and implementation, his services are continuously required and therefore, extension is being given by taking into consideration the various materials and that too after thorough and proper application of mind. It is the further submission of the learned Advocate General that preparation of temporary panel could not confer any right in favour of the persons found in the said panel and in any event, no individual in the said panel has approached this Court and therefore, the petitioner Association has no *locus standi* to entertain this writ petition and prays for dismissal of this writ petition.

9. This Court has carefully considered the rival submissions and also perused the materials place before it.

10. G.O.(Ms).No.205 of the first respondent dated 26.12.2013 creates additional staff for TNRSP Project-II, PIU and also formation of

field units and approval was accorded for the additional staff for TNRSP Project-II, PIU, Chennai. Accordingly, the post of Chief Engineer was created and the effective date of implementation was given as 01.04.2014. A meeting of the Empowered Committee, consisting of the Hon'ble Minister for Highways and Minor Ports Department, Chief Secretary to Government, Principal Secretary to Government, Finance Department, Principal Secretary to Government, Highways and Minor Ports Department and Project Director, TNRSP-II, was also convened and a decision has been taken to appoint the Chief Engineer through outsourcing and the second respondent was authorized to interview and appoint the Chief Engineer for TNRSP Project-II, based on the resumes received and create administrative sanction to act as the Chief Engineer for six months from the date of appointment and draw salary equal to last drawn salary minus pension and in the interregnum, Mr.D.Sampath, Superintending Engineer, TNRSP-II was posted as in-charge of Chief Engineer TNRSP Project-II till the post is filled up. The second respondent has also brought to the knowledge of the first respondent dated 17.06.2014 about the fact of vacancy in the post of Chief Engineer, TNRSP Project-II from 15.01.2014 onwards and observed among other things that it is essential that all approved posts should be filled up on time and sent a proposal for revalidation of

G.O.Ms.No.11 of the first respondent dated 09.01.2007 and also for inclusion of the posts of Superintending Engineer and Chief Engineer, which is vacant for more than three months.

11. The services of the third respondent were outsourced and initially he came to be appointed for a period of six months, vide G.O.(D).No.112 dated 03.09.2014 and an order of appointment was also issued by the second respondent dated 04.09.2014. Thereafter, temporary panel of Superintending Engineers fit for promotion to the post of Chief Engineer for the year 2014-2015 in Category I of Tamil Nadu Highways Services was approved by the Government, vide G.O.(D).No.149 dated 19.11.2014 and it has been indicated that inclusion of the names of officers shall not confer any right whatsoever and the approval of the temporary panel is subject to the implementation of the orders of the Courts and revision of seniority in the category of Additional Divisional Engineers, if any, based on the outcome of legal proceedings. The petitioner Association has submitted a representation dated 13.02.2015 to the respondent pointing out among other things that in order to achieve 'Vision 2023' through Public Private partnership, a dedicated and full fledged Chief Engineer is required and the said post should have responsibility,

accountability etc., and in order to complete the project successfully, a dynamic agile, knowledgeable Engineer is to be appointed as Chief Engineer and also drawn the attention to the guidelines of the Principal Secretary to Government, Finance Department, vide letter No.5091/Fin(BPE)/2015 dated 29.01.2015, wherein it has been stated not to engage retired persons on re-employment basis to carry out the routine function in a regular fashion and therefore, made a request that the post of the Chief Engineer TNRSR may be appointed from the approved panel of the Chief Engineers only and not by extending the services of the third respondent. The first respondent, on receipt of the said representation, has requested the second respondent, vide Letter No.1889/HK1/2015-1 dated 27.02.2015, to offer specific remarks on the above said subject to Government and even without waiting for few days, has passed G.O.(D).No.48 dated 02.03.2015 extending the period of service of the third respondent for six months from 03.03.2015 and subsequently, passed the impugned Government Order in G.O.(D).No.185 dated 26.08.2015 once again extending the services of the third respondent for another six months with effect from 03.09.2015.

12. It is not in serious dispute that the second respondent has

worked as the Chief Engineer for a period of six months in TNRSP Project-I and after completion of the tenure, was transferred and posted as Chief Engineer (Highways), NABARD and Rural Roads, Chennai and retired, on attaining the age of superannuation, on 31.03.2013. Originally G.O.Ms.No.11, Highways (HF2) Department dated 09.01.2007 was passed by the first respondent, authorizing the second respondent to fill up any of the sanctioned posts of Divisional Engineer/Deputy Project Director/Assistant Divisional Engineer/Assistant Project Directors by engaging persons retired from the Highways Department at equal or higher rank on contract basis purely on temporary and to terminate them within 7 days of notice, in case where the post has not been filled up for more than 3 months subject to the remuneration not exceeding the pay last drawn after deducting pension. Subsequently, it has sanctioned for the appointment through outsourcing, vide G.O.Ms.No.176, Highways and Minor Ports (HN2) Department dated 01.11.2012 and G.O.(Ms).No.205 of the same department dated 26.12.2013 was passed according approval for creation of additional staffs for TNRSP Project-II, PIU, Chennai and consequently additional posts of Chief Engineers etc., came into being with effect from the date of implementation viz., 01.04.2014.

13. The Personnel and Administrative Reforms (S) Department in G.O.Ms.No.170 dated 18.12.2009 had issued general guidelines for filling up the vacancies by appointing retired Government Servants/retired employees of Quasi Government organizations temporarily on contract basis in the Government departments which are facing dearth of hands at various levels and it is relevant to extract para 2 of the said Government Order:

"2. The Government, after detailed examination, direct that the appointing authorities concerned may appoint retired Government Servants/personnel retired from Quasi Government Organisations, temporarily on contract basis under rule 11 of General rules for Tamil Nadu State and Sub-ordinate Services, against sanctioned posts in the Government Departments subject to the condition that there should be emergent need for such appointment and there should be reason to believe that work will get affected due to dearth of employees in the departments. **Such appointments should not be made on routine basis.** The Government also prescribe the following guidelines for such appointments:-

- I. Person to be appointed on contract basis should have retired from the Government Departments/Quasi Government Organisations.
- II. Contract appointments can be made at all levels. Retired persons from higher position can be appointed to a lower position. However, retired employees from a lower position cannot be appointed to a higher position.

- III. The Contract Appointment shall be for one year at the maximum. If, necessary fresh contract appointment order can be issued with a gap of one week's time.
- IV. For Technical posts, the retired person must possess required experience in the relevant fields.
- V. The pay for the re-employed person shall be as per Rule 44 of the Tamil Nadu Pension Rules.
- VI. The retired person for appointment on contract basis should submit physical fitness certificate at the time of appointment to the appointing authority.
- VII. Since the contract appointment is purely temporary, this can be terminated at any time without giving prior notice or assigning any reason therefor.
- VIII. The retired person under contract appointment can avail 15 days casual leave per year only.
- IX. In respect of any matter for which no provision has been made in the agreement, the provision of the General Rules for the Tamil Nadu State and Subordinate Services or any other Rules made under the proviso to Article 309 of the Constitution of India shall apply.
- X. Apart from the above conditions, the appointing authority may prescribe certain conditions, which are relevant to the duties and responsibilities of the post to which the appointments are to be made."

14. The second respondent, in its letter No.159/2014/TNRSP dated 17.06.2014, addressed to the first respondent, has also brought to his attention that the post of Chief Engineer, TNRSP Project-II is

vacant from 15.01.2014 onwards and thereafter, a temporary panel for Superintending Engineers fit for promotion to the post of Chief Engineer for the year 2014-2015 in the Category I of Tamil Nadu Highways Engineering Services was approved by the first respondent in G.O.(D).No.149 of the first respondent dated 19.11.2014. The petitioner association, in its representation dated 13.02.2015, addressed to the respondents 1 and 2, has also brought to their knowledge about the imminent and the real urgency to fill up the said post and also pointed out that the appointment of Chief Engineer through outsourcing will affect the promotional opportunity of all the Engineers in the department and will drastically affect the morale of the Engineers and further pointed out that outsourcing should not be carried out as a matter of routine by inviting their attention to the letter of the Principal Secretary to Government, Finance Department dated 29.01.2015. The Additional Secretary to the Government, on receipt of the said representation, has written a letter No.1889/HK1/2015-1 dated 27.02.2015 to the second respondent to offer specific remarks on the subject to the Government; however proceeded to extend the services of the third respondent for another period of six months with effect from 3.3.2015 , vide G.O.(D).No.48 dated 02.03.2015 and once again extended his services for another

period of six months, vide impugned Government Order in G.O.(D).No.185 of the first respondent dated 26.08.2015.

15. As rightly contended by the learned Senior Counsel appearing for the petitioner, in terms of G.O.Ms.No.170, Personnel and Administrative Reforms (S) Department dated 18.12.2009 as well as the letters of the Principal Secretary to Government, Finance Department dated 29.01.2015, wherein guidelines have been issued not to engage retired persons on re-employment basis to carry out the routine function in a regular fashion, however the first respondent has extended the services of the third respondent repeatedly without adhering to the said Government order as well as the said letter.

16. The third respondent has worked as Chief Engineer of TNRSP Project-I only for a period of six months and thereafter transferred and posted as Chief Engineer (Highways), NABARD and Rural Roads, Chennai and continued in that post till he retired on attaining the age of superannuation on 31.03.2013. It is also not made clear as to why temporary panel of Superintending Engineers fit for promotion to the post of Chief Engineer, approved by the first respondent himself in G.O.(D).No.149 dated 19.11.2014, has not been put into

implementation or given effect to. The reasons assigned on behalf of the respondents for extension of the adhoc services of the third respondent repeatedly, *prima facie*, appear to be unsustainable and improper. The Government/official machinery, to perform its functions and discharging its duties, cannot depend on the alleged expertise of the third respondent indefinitely and they should have taken early steps to fill up the post of Chief Engineer, TNRSP Project-II, which admittedly is lying vacant right from 15.01.2014 and it was also pointed out by the second respondent to the first respondent, vide letter dated 17.06.2014. Though the first respondent is aware of the ground level situation, for the reasons best known, is yet to act or react.

17. This Court has also put a specific question to the learned Advocate General as to how long the TNRSP Project-II will go on and on instructions, a reply was given that it may approximately take 5 years to complete the said project and if it is so, in all probability, the services of the third respondent will be continued to be extended till the completion of the project. As rightly pointed out, the third respondent has worked as Chief Engineer of TNRSP Project-I only for a period of six months and thereafter transferred and posted as Chief

Engineer (Highways), NABARD and Rural Roads, Chennai and continued in that post and retired on attaining the age of superannuation on 31.03.2013.

18. In the light of the above facts and circumstances, coupled with the materials placed before it, this Court is of the view that a *prima facie* case is made out for grant of interim orders. Hence, there shall be an order of ad-interim stay of the impugned Government Order in G.O.(D).No.185, Highways and Minor Ports (HK1) Department 26.08.2015, until further orders.

Call on 05.11.2015. Counter of the respondents by then.

11.09.2015

jvm

M.SATHYANARAYANAN, J.

jvm

Order in
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