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C.A.No. 5907-5908 OF 1999

ITEM No.111

Court No. 1

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 5907-5908 of 1999

Tamil Nadu Housing Board

...Appellant(s)

vs.

N. Balasubramaniam & Ors.

...Respondent(s)

(with office report)

Date: 15/04/2004 This/These matter(s) was/were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. L Nageswara Rao, ASG
Mr. R Ayyam Perumal, Adv.
Mr. S Vallinayagam, Adv.
Mr. Jayanth Muth Raj, Adv.

For Respondent (s)Mr. V Ramasubramaniam, Adv.
Mr. V Balachandran, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order. There shall be no order as to costs.

(D.P. WALIA) (JANKI BHATIA)
COURT MASTER COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5907-5908 OF 1999

Tamil Nadu Housing Board.. Appellant

vs.

N. Balasubramaniun & Ors... Respondents

O R D E R

The Tamil Nadu Housing Board (for short "the Board") is established and constituted under an Act known as Madras State Housing Board Act, 1961 (hereinafter referred to as "the Act"). For carrying out the purposes of the Act, the Board employs a number of employees. Under Sections 17 and 19 of the Act, the Board has framed regulations known as Madras State Housing Board Service Regulations, 1969 (hereinafter referred to as "the Regulations"). Under the Regulations, the posts of Assistant Executive Engineer are to be filled up from two sources - 75 per cent of posts are to be filled up through direct recruitment amongst those who hold Engineering Degree and 25 per cent of the posts are to be filled up from amongst the Junior Engineers and Diploma- holders and Chief Head Draftsman/Head Draftsman and Senior Drafts Officer. Under the Regulations, a Junior Engineer is eligible for promotion to the post of Assistant Executive Engineer only on completion of 10 years of service as a Junior Engineer, whereas in the case of Chief Head Draftsman/Head Draftsman the eligibility criteria is of having put in not less than 15 years as a Draftsman.

The Board on the basis of the aforesaid Regulations prepared a panel from amongst the persons eligible from feeder categories for promotion to the posts of Assistant Executive Engineer. In the said panel, the names of respondents herein were not included on account of the fact that they have not put in 15 years of service as Draftsman. Aggrieved, the respondents challenged the panel so prepared by the Board by means of a petition under Article 226 of the Constitution. The High Court dismissed the writ petition. On a writ appeal being filed by the respondents, the High Court was of the view that since no quota was provided for the purpose of promotion to the posts of Assistant Executive Engineer the Executive Order dated 13.10.1984 would apply. In that view of the matter, the writ appeal was allowed, the panel prepared by the Board was set aside and the Board was directed to create supernumerary posts for the purpose of promotion of the respondents to the post of Assistant Executive Engineer. It is in this way, the appellant-Board is in appeal before us.

We have heard the learned Additional Solicitor General appearing for the appellant-Board and Shri V. Ramasubramaniam, learned counsel appearing for the respondents.

It is not disputed that the Government on 13.10.1984 by an Executive Order had provided that where no quota is fixed in a feeder category the promotion shall be made on the basis of pay-scale received by the employees. Applicability of the said rule was sought to be linked with Regulation 28 of the Regulations in terms whereof the provisions of the Madras State and Subordinate Services Rules would be attracted whenever no provision is made thereunder. The Division Bench of the High Court has noticed the executive instructions issued by the Government of Tamil Nadu which read thus:

"The Government after careful consideration and in consultation with the Tamil Nadu Public Service commission order as follows :-

(i) If the scales of pay of the feeder categories are similar, for purposes of promotion a percentage for each feeder category may be prescribed, taking into consideration the cadre strength of each of the feeder categories. A cycle for promotion may also be prescribed.

(ii) If the scales of pay of the feeder categories are different, then persons holding posts carrying a higher scale of pay in the feeder category should be considered first and that, if no qualified and suitable persons are available in that post, the cases of persons holding posts carrying the next higher scale of pay in the feeder category should be considered. Orders amending the General Rules for the Tamil Nadu State and Subordinate Services will be issued separately."

It is one thing to say that there exists no provision in the Regulations which would attract the rules specified in Regulation 28(a) or the instructions and rulings thereunder, but it is another thing to say that the instructions if implemented cannot be given effect to having regard to the consequences provided for in the extant Regulations, still the same would be applicable. We have noticed hereinbefore that for Junior Engineers and Draftsmen eligibility criteria have been laid down. It is not in dispute that the said eligibility criteria are mandatory in nature and the validity thereof had not been questioned. If a Draftsman is to be promoted to the post of Assistant Executive Engineer, he must complete 15 years of service in the said capacity, whereas the Junior Engineer may have to complete only 10 years in the said post. Once the eligibility criteria are considered to be a pre-requisite for giving effect to the stat

utory Regulations, the purported executive instructions would not be applicable. Once it is held that relying on the basis of the executive instructions in terms of Regulation 28(a), the Draftsmen who have been getting higher salary are given preference over the diploma-holder Junior Engineers, the eligibility criteria contained in the statutory Regulations would become otiose; the logical corollary thereof would be that the executive instructions would prevail over the statutory Regulations. Such a consequence would lead to an absurdity and in that view of the matter it must be held that the executive instructions cannot be given effect to. For the aforesaid reason, we are of the view that the High Court fell in error in allowing the appeal of the respondents. We, therefore, set aside the judgments and orders under challenge. The appeals are allowed. There shall be no order as to costs.

.....CJI(V.N.KHARE)

.....J
(S.B. SINHA)

.....J
(S.H. KAPADIA)
New Delhi;
April 15, 2004.