

Madras High Court

P.M.Mari vs The State Of Tamil Nadu on 29 January, 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and

The Hon'ble Mr. Justice S.MANIKUMAR

Writ Petition Nos.19401 to 19410/04, 20676
to 20681/04, 22268 to 22277/04, 31510 &
31561/04, 26807/05 and 33503 of 2006
and

WPMP Nos.23349/04, 40562 to 40571/04, 24891
to 24896/04, 38244/04, 2135 & 29253/05,
11920 to 11924/06 and WVMP No.2114 of 2005

W.P. No.19401 of 2004:-

P.M.Mari

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by the Secretary,
Rural Development Department,
Fort St. George, Chennai-9.

2. Director of Rural Development
Panagal Buildings, IV Floor,
Saidapet, Chennai-15.

3. S.Aruchamy, Assistant Engineer (RD),
Udumalpet Panchayat Union,
Coimbatore District.

4. The Managing Director,
T.N. Water Supply and Drainage Board,
Kamarajar Salai,
Chennai 600 005. (R-3 and R-4 impleaded

as per orders of the Court)

... Respondents

WP.19401/04:- Petition under Article 226 of the Constitution of India for the issuance of a writ of mandamus as stated therein.

For petitioners in WP Nos.19402, 19406, 19407 : Mr.Sanjay Mohan, for and 19408 of 2004 Mr.K.Rajkumar For Petitioners in WP Nos.19410, 20678, 22268 : Ms.R.Vaigai, and 22273 of 2004 for Mr.G.Rajesh.

For Petitioner in WP No.33503 of 2006 : Mr.AL.Somayaji, Senior Counsel for Mr.K.Rajkumar For Petitioner in WP Nos.19404, 19405, 19409 : Mr.AL.Somayaji, Senior and 19401/2004 Counsel for Mr.S.Govindaprasad For Petitioner in WP Nos.22269, 22272, 22274 : Mr.V.K.Muthusamy, Senior and 22276 of 2004 Counsel for Mr.R.Muthukrishnan For Petitioner in WP Nos.20676 to 20681/04 : Mr.R.Syed Mustafa For Petitioner in WP No.31510 of 2004 : Mr.C.Selvaraju, Senior Counsel for Mr.Srinath Sridevan For Petitioner in WP Nos.19403, 22270, 22271, : Mrs.Hema Sampath 22275, 22277 & 31561/04 For R-3 in WPs.19401 to 19410/04, 20676 to 20681/04: Mr.R.Thiyagarajan, 26807/05 and for petitioner Senior Counsel. in WVMP 2114 of 2005 For TWAD Board : Mr.Sudharshana Sundhar For State (in all matters): Mr.R.Viduthalai, Advocate General, assisted by Mr.P.Subrmanian, Govt. Advocate COMMON JUDGMENT (Judgment of the Court, delivered by P.SATHASIVAM, J.) Petitioners, working in the Rural Development Department on deputation from Tamil Nadu Water Supply and Drainage Board (in short TWAD Board), pray to issue a writ of mandamus, directing the respondents - Secretary, Rural Development Department (in short R.D. Department), and the Director, Rural Development, Chennai, to absorb them as Assistant Engineers, R.D. Department, from the date of their appointment pursuant to the directions in G.O.Ms. No.102, dated 25.5.1998, issued by the Government of Tamil Nadu.

II. Some of the petitioners seek to quash the letter of the TWAD Board, dated 27.12.2004, and pray for a consequential direction to give effect to the order of absorption issued by the Director of R.D. made in his proceedings dated 17.03.1999. They also pray to hold that his order dated 02.07.1999, cancelling absorption of A.Es. of TWAD Board in R.D. Department, is void.

III. In one Writ Petition, viz., W.P. No.35303 of 2006, the petitioner has prayed for a writ of declaration, declaring,

(a) para 2 of Notification IV of G.O. Ms. No.15, R.D. (E1) Department, dated 25.01.2000, giving retrospective effect to the Ad hoc Rules from 26.09.1997, as void,

(b) non-inclusion of deputationists from TWAD Board as one of the methods of appointment for recruitment to the post of Assistant Engineer in Rule-3 of the ad hoc Rules in G.O.Ms. No.15 as void.

Apart from the above relief, the petitioner also seeks for a consequential direction to include the deputationists from TWAD Board as one of the methods of appointment in Rule 3 and absorb him as Assistant Engineer in the R.D. Department with all consequential benefits.

IV. In W.P. No.31510 of 2004, The Tamil Nadu Rural Development Engineers' Association through its General Secretary P.Ravikumar, prays for the issuance of a writ of mandamus, directing the Secretary to Government, R.D. Department, and Director of R.D., Chennai-15, to repatriate the Assistant Engineers/Assistant Executive Engineers of the present Highways Department/Agricultural Engineering Department and Dharmapuri District Development Corporation, possessing a Bachelor's Degree or its equivalent in Mechanical and Agricultural Engineering, and all Junior Engineers, Assistant Engineers/Assistant Executive Engineers of various other Technical Departments, who are on deputation/on contract basis and serving in the R.D. Department beyond five years, to their respective parent Departments forthwith and maintain the cadre strength between Assistant Engineers/Junior Engineers of the R.D. Department as stipulated in the Rules in force.

2. Since the reliefs sought for in all these Writ Petitions are interconnected and the W.Ps. having been filed by two sets of individuals; viz., deputationists from other departments to R.D. Department on the one hand, seeking absorption and promotion in the present Department; and the insiders/in-service personnel of the R.D. Department on the other hand, claiming repatriation of the deputationists to their respective parent Departments; they are being disposed of by the following common judgment.

3. As the Writ Petitions filed by the deputationists contain common pleas, we cull out the facts from some of the Writ Petitions:-

A. For convenience, at first, we shall refer the case of P.M.Mari, petitioner in W.P. No.19401 of 2004.

He is an Engineer with B.E. in Civil Engineering. He joined the TWAD Board on 10.06.1985 as Assistant Engineer. In 1997, he was sent on deputation to the R.D. Department when 'Engineering Wing' was started there. This was under G.O. Ms. No.263, dated 27.12.1996, issued by the Government - first respondent. Additional technical posts sanctioned under the said Government Order were directed to be filled up on deputation/by transfer of service basis for a period of three years as temporary measure. At present, he is working as Assistant Engineer in the R.D. Department. The Director of R.D., Chennai-15, following the notification dated 21.01.1997, requested the Collectors to issue orders to individuals who had been selected from the willing candidates from the Highways, Rural Works Department and TWAD Board. Persons, who went on deputation, were found eligible and suitable based on their qualifications. Along with the petitioner, a number of persons from the TWAD Board also came to the R.D. Department on deputation. In G.O. Ms. No.102, R.D. Department, dated 25.05.1998, the Government directed the Director to report about permanently absorbing Assistant Engineers from other Technical Departments by giving them weightage for the service put in by them in their respective parent departments. Based on such direction, ad hoc rules were framed by the Government for the persons holding temporary posts. These rules were based on the earlier Government Orders in G.O. Ms. Nos.263 and

102. The Rule relating to the appointment contemplated the following,

(a) by direct recruitment;

(b) recruitment by transfer from overseer in the RD Department;

(c) the ratio for appointment to the post by direct recruitment and recruitment by transfer shall be 1:1.

According to the petitioner, he comes within the category of direct recruitment which contemplated only a degree in Civil Engineering among other things. G.O.Ms. No.15, dated 25.01.2000, shall be deemed to have come into effect from 25.05.1998. Even on 17.3.1999, the Director had passed an order for permanent absorption of 125 Assistant Engineers working on deputation from various other departments into the RD Department. But, on 2.7.1999, this order was cancelled by him as the Managing Director of the TWAD Board had refused to accept the proposal for absorption of persons deputed from the Board by his letter dated 15.4.1999. After sometime, the Director was informed by the Managing Director, TWAD Board, on 22.07.1999, that the Board was willing for the permanent absorption of the Assistant Engineers on deputation by the R.D. Department. Willingness was conveyed to the first respondent/Government also. In spite of those proceedings, there was a lot of confusion in the office of the Director, R.D., whereupon, the Director issued proceedings dated 10.03.2004 to the District Collectors asking them to give particulars about the Assistant Engineers who have been recruited by the TNPSC to enable him to promote them as Assistant Executive Engineers. The petitioners and other similarly placed persons gave representations to the respondents, requesting them to include their names in the panel for promotion. So far, they have not received any reply. They apprehend that promotion would be made without including their names. Hence, they filed several writ petitions, seeking for a direction to the respondents to absorb them as Assistant Engineers in the R.D. Department from the date of their appointment pursuant to the direction in G.O. No.102 dated 25.05.1998 issued by the first respondent.

B. P.M.Mari and others joined together and filed W.P. No.26807 of 2005 making similar contentions to those raised in W.P. No.19401 of 2004.

C. In W.P. No.33503 of 2006, filed by T.Venkatesh, an Assistant Engineer directly recruited in TWAD Board, now in the R.D. Department, it is stated that the Government of Tamil Nadu, with a view to have a separate Engineering Wing in the R.D. Department created certain posts. One such post is Assistant Engineer or Additional Union Engineer. To meet the immediate requirement and development of the Engineering Wing, the Government directed to draw Assistant Engineers by way of deputation from various Technical Departments including TWAD Board as the same has been considered as one of the Technical Departments. Accordingly, options were called for by the Director of Rural Development through the respective Collectors who in turn obtained the same from the Superintending Engineers of the TWAD Board. The petitioner expressed his willingness to go on deputation. Since January 1997, he has been working continuously till this date. The Government took a policy decision to absorb the deputationists and issued G.O.Ms. No.102, R.D. (EIV) Department, dated 25.05.1998, wherein, it directed the Director of R.D. to explore the possibility of absorbing all the deputationists in the R.D. Department. Though the said order was implemented initially, the same was cancelled on 02.07.1999 on the ground of not giving consent by

the TWAD Board. However, the said deficiency was made good by the succeeding Managing Director of the TWAD Board by sending two letters on 22.07.1999 and 12.10.1999, giving willingness for permanent absorption of their staff in the R.D. Department. On the basis of those letters, the petitioner was allowed to continue beyond the period of deputation. The petitioner and others were hoping that they would be permanently absorbed and given all service benefits, but, nothing has been done.

The Government framed ad hoc Rules for the post of Assistant Engineers in the R.D. Department vide G.O. Ms. No.15, Rural Development (E1) Department, dated 25.01.2000. The Rules had come into effect from 26.09.1997. Paragraph No.3 of the Rules deals with the method of appointment and it provides that the post of Assistant Engineer can be filled by (a) Direct Recruitment; (b) Recruitment by transfer; and (c) Ratio of 1:1 provided for Direct Recruitment and recruitment by transfer. However, the Rules do not take in the deputationists under its method of appointment and thereby the right of the petitioner to continue in the Department is curtailed. Further, non-inclusion of deputationists in the method of appointment though they have been working for the development of the Engineering Wing in the R.D. Department violates Article 14 of the Constitution.

The petitioner entered the R.D. Department long before the issue of ad hoc rules, that being so, the retrospective effect of the rules from 26.09.1997 affects his right very much, because, even before passing of orders, an absorption order has been issued, subject to framing of rules. Such being the case, the authorities ought to have made a provision to include the deputationists as one of the methods of appointment so as to give effect to the orders already passed in favour of the petitioner and others. Hence, the ad hoc rules are ultra vires the Constitution of India.

3(a). Now, we shall briefly narrate the case of the petitioner-association (in-service personnel of the R.D. Department) in W.P. No.31510 of 2004.

According to the General Secretary of the petitioner-Association, R.D. Department has been executing several State / Centrally sponsored Anti-Poverty Programmes besides executing development works out of the funds of Panchayat and Panchayat Unions by employing technical personnel of the erstwhile Highways & Rural Works Departments on service lend basis upto 1996. Consequent to the Constitutional 73rd Amendment, introducing new Tamil Nadu Panchayats Act, 1994, and of the fact that several new schemes to be implemented, it became inevitable on the part of the Government to create a separate Engineering Wing for the R.D. Department. By G.O.Ms. No.263, RD Department, dated 27.12.1996, the Government decided to set up a separate Engineering Wing for the R.D. Department. By virtue of the said Government Order, new posts were created in the R.D. Department. However, no Service Rules were framed and notified for appointment to those posts at the relevant time (during 1996). Hence, the posts were initially filled up by drawing personnel from other technical departments of Government of Tamil Nadu like TWAD Board, Agricultural Engineering Department, P.W.D, etc. including Highways Department 'on Deputation Basis' as a temporary measure. According to the petitioner, the above arrangement was very unsatisfactory since the deputationists had no commitment or motivation for executing the various time-bound schemes of the R.D. Department. The Association of Tamil Nadu Highways Engineers' opposed the creation of a separate 'Engineering Wing' under the R.D. Department,

claiming that all the posts created by virtue of G.O. Ms. No.263 be earmarked only for Engineers of the erstwhile Highways and Rural Works Department.

Certain personnel on deputation basis at various points of time since 1996 opted for repatriation to their parent Departments as various lending Departments could not sponsor the required number of eligible Engineers willing to serve in the R.D. Department. The Government decided to fill up 200 posts of AE (RD) by Direct Recruitment through TNPSC by notification dated 26.09.1997. The Government also framed necessary Service Rules in G.O. Ms. No.15 dated 25.01.2000. The constitutional validity of both G.O. Ms. Nos.102 and 15 were challenged before the Tamil Nadu State Administrative Tribunal by a group of individuals and by the Association of Tamil Nadu Engineering Graduates, however, both the Government Orders were upheld by the Administrative Tribunal. The personnel working in the R.D. Department were not given proper promotions. On the other hand, the deputationists / 'on contract basis personnel' are occupying various posts of AE/AEEs without any specific and valid order against the Rules in Force.

There are nearly 20 AEs/AEEs, who have been deputed from Highways Department, Agricultural Engineering Department and Dharmapuri District Development Corporation, belonging to Government of Tamil Nadu, with Bachelors Degree qualification (B.E./B.Tech) entrusted with the execution of various Panchayat Union Works in the R.D. Department. They are not fully competent enough to execute / supervise the works as per specifications and exercise quality control over the works. Moreover, the qualification possessed by them is against the provisions contained in the Service Rules framed by the Government of Tamil Nadu under Article 309 of the Constitution of India, hence, their continued presence in the R.D. Department is illegal and against the interests of the R.D. Department and general public. The petitioner-association made several representations to various authorities in the Government of Tamil Nadu and to the Secretary, Tamil Nadu Public Service Commission, complaining about the illegality being committed. Similar persons, unqualified and not fit enough to continue, are also continuing from TWAD Board and Tamil Nadu State Construction Corporation and they are to be repatriated to their respective parent Departments. There are 295 Engineers (AEs/JEs) from various other Engineering Departments of Government of Tamil Nadu, working in the R.D. Department 'on deputation' / 'on contract' basis as on 18.08.2004, which is about 35-40% of the total sanctioned posts of AEs/JEs in the R.D. Department. Such a large number of 'deputationists' / 'on contract personnel' are blocking the promotional avenues of the in-service personnel in the R.D. Department. The continued presence of nearly a large number of Engineers 'on deputation' / 'on contract basis' beyond legally permissible period is leading to the creation of vested interests being developed by such 'deputationists' / 'on contract personnel', thereby jeopardise the very purpose of the creation of a separate Engineering Wing in the R.D. Department for executing the Panchayat Union time-bound schemes sponsored by Central / State Governments and also completely block the promotional opportunities available to the in-service Engineers of the R.D. Department including the members of the petitioner- association.

4. Though the State Government / first respondent (R.D. Department) has not filed counter affidavit in all the Writ Petitions, they highlighted their stand by filing counter affidavit in W.P. No.33503 of 2006. They explained the reason for formation of 'Engineering Wing' exclusively for the R.D. Department by referring to G.O. Ms. No.263 R.D. Department dated 27.12.1996. Based on the same,

several Engineering personnel were drawn temporarily on deputation basis from other departments like Highways Department, Agricultural Engineering department, TWAD Board etc. However, this arrangement led to lot of operation problems, therefore, G.O. Ms. No.102, R.D. (E1) Department, dated 25.05.1998, was issued, whereby; clear instructions were issued to the Chief Engineer (Highways) to stop posting his personnel to the newly sanctioned posts. With regard to the claim of the petitioner in W.P. No.33503 of 2006 that he was recruited by the TWAD Board, it is pointed out that TWAD Board is not a Government Department but it is an independent body created under the Tamil Nadu Water Supply and Drainage Board Act, 1970. The petitioner is not a Government Servant. If he wants to join in a Government Department, he should either be recruited afresh through the Tamil Nadu Public Service Commission (TNPSC) or through Employment exchange as specified in the Tamil Nadu State and Subordinate Service Rules. There is no other way of entering into the Government Service except through the said two ways specified. The petitioner is employed on contract basis in accordance with Rule 11 of the State and Subordinate Service Rules.

In G.O. Ms. No.102, R.D. (E1) Department, dated 25.05.1998, there was a direction to absorb Highways Department personnel only and not TWAD Board personnel. Even otherwise, the said Government Order directed the Director, R.D., to explore the possibility or absorbing the deputationists from the borrowing department, hence, the question of absorbing the deputationists from other departments is only a possibility and not finality. The Director of R.D. absorbed Assistant Engineers of other Departments provisionally by his proceedings dated 17.3.1999 without waiting for the Government's clearance. The absorption of personnel belonging to Highways Department and TWAD Board was objected to by the respective Heads of Departments. The Director of R.D., realising the infirmities in the absorption order, cancelled the same by proceedings dated 02.07.1999. The petitioner was taken to the R.D. Department only on contract basis and he has absolutely no right to challenge the statutory rule which has been framed exclusively for the engineers of the R.D. Department. The petitioner has not been appointed from a Government Service; hence, his appointment is made on 'contract basis'. The question of absorbing the deputationists is only a possibility and not finality. Even otherwise, the instructions issued in the Government Order are only for the personnel working in Government Departments and not for those in statutory Boards or Corporations. Further, the Government had not decided to absorb all the deputationists and had directed the Director of R.D. only to explore the possibility of absorption. In the meanwhile, as ad hoc rules were framed, the orders issued on 25.05.1998 had become null and void and ceased to have any effect. Since the order of the Director, R.D., suffers from two infirmities, the Director himself withdrew the same within a period of four months. The Government have issued ad hoc rules for R.D. Engineering Service in G.O. Ms. No.15, R.D. Department, dated 25.1.2000. According to the Service Rules, there are only two ways for entering into the service, viz., (a) Direct Recruitment through TNPSC and (2) recruitment by transfer from the category of Overseer in the R.D. Department. There is no provision for absorbing employees of other organisations. Service Rules have overriding effects on G.O. Ms. No.102, R.D. Department, dated 25.5.1998, which is only an executive order. The petitioner is not a Government Employee under the provisions contained in Fundamental Rules. He was employed on contract basis in accordance with Rule 11 of the State and Subordinate Service Rules and can be terminated by the Government when the need for his services ceases. If the plea of the petitioner is conceded to, it would amount to inflicting gross injustice to the unemployed engineering graduates and who are

waiting for employment through the TNPSC.

The ad hoc Rules issued for the post of Assistant Engineer are not arbitrary and violative of Article 14 and 16 of the Constitution of India as contended. The petitioner does not belong to R.D. Engineering Service; hence, he has no locus standi to challenge the service rules as contained in G.O. Ms. No.15, R.D. Department, dated 25.01.2000. The petitioner appointed on contract basis from TWAD Board has therefore no legal right to get absorbed in the borrowing Department.

5. The Managing Director, TWAD Board, has filed counter affidavit in W.P. No.26807 of 2005, wherein, it is stated that, as requested by the Director of R.D. Department, certain Engineers of TWAD Board were deputed to R.D. Department as per terms and conditions for appointment of personnel from the Public Sector Undertakings/Boards in Government Services. While the Assistant Engineers of TWAD Board were working in the District Rural Development Agency on deputation basis, the Director of R.D. issued orders in his proceedings dated 17.3.1999 among other things, absorbing 57 Assistant Engineers belonging to TWAD Board in the R.D. Department, based on their exercise of option subject to certain conditions, pending framing of ad hoc rules for Tamil Nadu Rural Development Engineering Services. However, the Managing Director, TWAD Board, in his letter, dated 15.04.1999, informed to the R.D. Department that the said exercise of option is not acceptable to the TWAD Board. Since the services of Assistant Engineers are essentially required for the current year work of the TWAD Board, the Managing Director, TWAD Board, requested the Director, R.D. Department, to revert back all the Assistant Engineers to the TWAD Board immediately. In those circumstances, orders issued for permanent absorption of the 57 Assistant Engineers belonging to TWAD Board were cancelled by the Director of R.D. Subsequently, the Managing Director, in his letter dated 22.07.1999, informed the Director of the R.D. Department that TWAD Board is willing for the permanent absorption of its Assistant Engineers. Based on the same, the Director, R.D., in his Circular dated 16.11.1999 ordered that the A.Es. of the TWAD Board may be retained in the R.D. Department till a final decision is taken by the Government. Again, when the consent of the TWAD Board was sought for, considering the financial position, a letter was sent to the Director, R.D., in Managing Director's proceedings dated 27.12.2004, informing that the Board is not in a position to accept any permanent absorption of Board's AEs/AEEs in the R.D. Department. The TWAD Board denied the allegation that the continuance of petitioners in the R.D. Department gives them a right to the post of Additional Union Engineers. The Assistant Engineers deputed from TWAD Board have been working in the R.D. Department beyond the period of deputation for three years and their continuance in the said Department is subject to the decision to be taken by the Director of R.D. / Government. Though originally the M.D. consented for absorption, subsequently, taking note of various aspects including dearth of hands in the TWAD Board, he conveyed his decision not to accept any permanent absorption of A.Es. in the R.D. Department.

6. Some of the petitioners filed a Rejoinder, reiterating their earlier stand. All of them denied the allegation of the R.D. Department and the TWAD Board that their employment was on contract basis. According to them, when the Government decided to absorb Union Overseers who came on deputation from Highways and they were given promotion as Assistant Engineers for 209 Blocks, it is arbitrary and discriminatory to deny the same benefit to the personnel from TWAD Board and the

same would be violative of Articles 14 and 16 of the Constitution of India.

7. Persons, working in the R.D. Department, who are shown as respondents, filed a reply affidavit, wherein, it is stated that TWAD Board is an undertaking of the Government of Tamil Nadu and the mode of appointment relating to it is outside the purview of the TNPSC. The Government, in their letter dated 01.07.1997, and subsequent letter, dated 15.2.2003, have clarified that the TWAD Board Assistant Engineers are appointed on contract basis and are not entitled for deputation pay and allowance. When TWAD Board, which is the lending department, had not accepted for absorption, and the borrowing R.D. Department had also not agreed for absorption of AEs of TWAD Board, the petitioners have no legal right to claim permanent absorption in the R.D. Department. If the request of the writ petitioners viz., deputationists from TWAD Board, is considered, persons working in the R.D. Department and their promotional opportunities would be vitally affected. When the service rules framed under Article 309 of the Constitution of India do not permit absorption from other Departments or Boards, the writ petitions filed by the deputationists are not maintainable. The Tamil Nadu Administrative Tribunal, in various orders, directed the Department to promote the Assistant Engineers recruited for the R.D. Department and to stop deputation from other Departments contrary to statutory rules. The said decision has become final and the same was not challenged by anyone. Further, TWAD Board Engineers have not passed the Departmental Tests for promotion as Assistant Executive Engineers and they are still on contract basis in the R.D. Department. In the statutory Rule, viz., G.O. Ms. No.15, dated 25.01.2000, as there is no provision for these deputationists or persons appointed on contract basis to be absorbed as Assistant Executive Engineers in the R.D. Department, they cannot claim promotion as Assistant Executive Engineers. In any event, the Director of R.D. has no jurisdiction to absorb an Assistant Engineer from TWAD Board. For permanent absorption, the Government alone is the competent authority that too after consent of the M.D., TWAD Board. As per the law laid down by the Supreme Court, petitioners/deputationists have no vested right of absorption in the R.D. Department. There is no provision under the ad hoc Rules for appointment by transfer of service from the TWAD Board or for absorbing A.Es. from other Departments.

8. With the above pleadings, we heard Mr.Sanjay Mohan, Ms.R.Vaigai, learned counsels; Mr.AL.Somayaji, Mr.V.K.Muthusamy, learned Senior Counsels; Mr.Syed Mustafa, learned counsel; appearing for writ petitioners; Mr.C.Selvaraju, Mrs.Hema Sampath, learned Senior Counsels; Mr.R.Thiyagarajan, learned Senior Counsel; for the respondents; Mr.Sudharshana Sundhar, learned counsel appearing for the TWAD Board; and Mr.R.Viduthalai, learned Advocate General for the State.

9. Now, let us decide the cases on hand with reference to four major issues, raised by the respective sides, viz.,

(a) claim of the deputationists regarding their position in the R.D. Department and substance in their plea for issuing mandamus as prayed for by them;

(b) Validity or otherwise of the impugned Rules;

(c) discrimination alleged; and

(d) retrospective operation of the Rules.

Depending upon our decision on the above issues, we will determine the claim of the petitioner/Association in W.P. No.31510 of 2004.

10. Relating to the first issue, main contentions projected on behalf of the petitioners/deputationists are as follows:-

(a) In view of the decision embodied in the proceedings dated 17.03.1999 and the willingness expressed by the TWAD Board by letters dated 22.07.1999 and 12.10.1999, it is obligatory on the part of the respondents to treat the deputationists as employees of the R.D. Department.

(b) TWAD Board, having made a decision in terms of Regulation 13 of the TWAD Board Rules to the effect that the petitioners may henceforth become employees of the R.D. Department, can no longer go behind such decision.

(c) Equally, the R.D. Department, having acted upon the decision of the TWAD Board, can not take a stand that absorption cannot be done. All that remain is only the follow up action by the R.D. Department to absorb the petitioners.

(d) The doctrine of legitimate expectation would come into operation by the conduct of the TWAD Board and the R.D. Department in regard to the absorption of the Petitioners into the services of the R.D. Department.

(e) The reason given for non-absorption based upon non- availability of Rules would not be available to the respondents since Service Rules were framed much after the Executive decision taken to absorb them.

(f) It would not lie in the respondents to now claim that there is dearth of hands in the TWAD Board in the light of TWAD Board's letter dated 30.11.2004 to the effect that absorption may be done.

(g) The TWAD Board and the R.D. Department are now estopped from pleading that absorption cannot be made.

(h) The plea that absorption can be done only when Rules are framed would not arise since prior to the framing of the Rules Executive decision has the force of law.

11. Contentions by the respondents:-

(i) As per the Board's proceedings, for continuing deputation beyond 3 years, the matter should be placed before the Board for concurrence.

(ii) Further proceedings show that the deputation pay would be paid for a maximum period of 3 years and the period of deputation would also be for a maximum period of 3 years. It was already made clear that the deputationists can be recalled by the lending authority at any time at its discretion. All the petitioners are aware that the deputation period can only be for a maximum period of three years and unless and until the M.D. gives concurrence, absorption cannot be claimed by the TWAD Board Engineers.

(iii) As per G.O. Ms. No.263, R.D. Department, dated 27.12.1996, the policy of the Government was only to take Engineers on deputation from various Departments, and the letter addressed to the TWAD Board makes it clear that only Engineers were recruited 'on deputation basis' for the newly formed Department.

(iv) Even in G.O. Ms. No.102, R.D. Department, dated 25.05.1998, the Government directed the Director to explore the possibility and report to it regarding permanent absorption and had not delegated its powers to permanently absorb Assistant Engineers by the Director of R.D..

(v) As per proceedings dated 17.3.1999, the Director of R.D. had passed an order absorbing 57 TWAD Board Engineers subject to the condition of pending framing of ad hoc rules / Service Rules of Tamil Nadu Rural Development, therefore, it was a conditional absorption and the Director had no jurisdiction to pass the order dated 17.03.1999 without the concurrence of the Managing Director, TWAD Board.

(vi) Considering dearth of hands, a decision was taken by the lending authority/TWAD Board, expressing its unwillingness for absorption of its engineers in the R.D. Department, hence, there cannot be a mandamus compelling the Government to permanently absorb the TWAD Board Engineers in the R.D. Department against the said policy decision.

(vii) Inasmuch as the Engineers in the TWAD Board were not recruited through the TNPSC, they cannot claim absorption in the R.D. Department since A.Es. in the R.D. Department come within the purview of TNPSC.

(viii) When the statutory rule does not provide for absorption as one of the methods of appointment, the TWAD Board Engineers have no right to claim absorption; therefore, all the Writ Petitions filed by the TWAD Board Engineers are liable to be dismissed.

12. Perused all the relevant materials and carefully considered the rival contentions.

13. At the foremost, let us consider the proceedings of the TWAD Board, various orders passed by the Government in respects of absorption, cancellation, etc. B.P. Ms. No.71, dated 19.03.1990, speaks about TWAD Board's guidelines regarding absorption and powers of the Managing Director. As per Clause-10, the M.D. is empowered to sanction deputation of officers to other organisations upto the level of Executive Engineers for a period of three years. For continuance of deputation beyond three years, the matter should be placed before the Board. The M.D. is also delegated with powers to give concurrence for the absorption of TWAD Board employees upto the level of E.Es. in

other organisations.

B.P. No.342, dated 06.11.1996, speaks about the terms and conditions governing deputation of TWAD Board's employees. Clause-10 of the Board's proceedings speaks about the 'period of Deputation', as per which, the period of deputation will, unless otherwise specifically stated, be three years. It further states that the deputationists may, however, be recalled by the lending authority at any time at its discretion subject to certain conditions, viz., the deputation will commence on the date on which the deputationists hands over charge of his post in Board service or under the previous Foreign Employer, as the case may be, and on the date he assumes charge of a post in TWAD Board.

The order passed by the Government in G.O. Ms. No.263, R.D. Department, dated 27.12.1996, is very relevant. It is seen that, in the letters dated 31.07.1996 and 12.09.1996, the Director of R.D. pointed out that technical supervision of works related to R.D. Department is inadequate as currently there is only one post of Union Engineer in the Panchayat Union and that the works taken up per Panchayat Union exceed Rs.1.5 crores and this requires close technical monitoring supervision and control to ensure timely execution of works as well as implementation quality. In those circumstances, for strengthening the technical wing in the R.D. Department, the Director approved for a full fledged office of a Divisional Engineer / Executive Engineer in each District, a sub division headed by Assistant Divisional Engineer / Assistant Executive Engineer in each division and at least two Union Engineers for each block. The proposals of the Director were considered by the Staff Committee presided over by the Chief Secretary and the Staff Committee recommended the creation of several posts. The Government, after consideration, ordered the creation of the following posts for a period three years or till the need therefor ceases whichever is earlier:-

" (a) At the Panchayat Union level, 384 posts of additional Union Engineer in the rank of Assistant Engineer at the rate of one additional Union Engineer per Panchayat Union.

(b) At the Divisional level, 15 sub-divisions at the rate of one sub- division to each of the development division which do not have technical staff at present (viz Cuddalore, Krishnagiri, Lalgudi, Palani, Dharmapuri, Perambalur, Maduranthakam, Tiruttani, Uthamapalayam, Tiruchengode, Tiruvarur, Kulithalai, Paramakudi, Thenkasi & Udayarpalayam). "

Clause-5 of the said Order makes it clear that the additional technical posts sanctioned would be filled up on deputation / by transfer of service basis for a period of three years on temporary basis. It further says that the staff for those posts would be drawn from various Departments, viz., Highways and Rural Works, Public Works Department, Agricultural Engineering, TWAD Board and other allied Technical Departments. The Government Order also makes it clear that since the existing staff particularly technical personnel in the R.D. Department are insufficient and inadequate, considering the need for execution of various centrally sponsored schemes, it was decided to have a separate wing, for which, several technical personnel are needed. It further shows that in order to cope up with the work and urgency, the Government authorised the R.D. Department to borrow suitable

personnel from various departments including TWAD Board for a period of three years on temporary basis. In other words, the deputation is for a period three years and the same is on temporary basis.

The next Government Order very much relied on by the petitioners is G.O. Ms. No.102, R.D. Department, dated 25.05.1998. It is stated therein that, considering various aspects, 209 posts in the category of Block Engineers/Assistant Engineers would be earmarked to be filled up by promotion from the feeder categories of Overseers and Junior Draughtsmen. It is further stated that this route would be open to them only after they exercise their option and are permanently absorbed in the R.D. Department. The said Government Order further shows that this number of 209 would be out of the 384 posts of Block Engineers suggested in item -1 to be earmarked for Engineers from Highways Department. In those circumstances, the Government directed the Director, R.D., to explore the possibility and report to the Government of permanently absorbing A.Es. from other Technical Departments, giving them 1:1 weightage for the service already put in by them in their respective Departments. Thus, the above G.O. makes it clear that the Director was asked to find out possibilities of permanently absorbing the AEs from other technical departments and also to submit his report regarding the feasibility / acceptability. In other words, the Government has not absorbed all those engineers from the technical departments including the personnel from TWAD Board in the R.D. Department.

No doubt, in the proceedings, dated 17.3.1999, deputationists including the personnel from the TWAD Board, working in the posts of Additional Union Engineer / Assistant Engineers (RD) in R.D. Department, who opted for permanent absorption in the R.D. Department were ordered to be absorbed permanently subject to the condition of pending framing of ad hoc / service rules or Tamil Nadu Rural Development Engineering Service / Tamil Nadu Rural Development Engineering Subordinate Service by Government in R.D. Department. However, on receipt of the above communication, TWAD Board conveyed their inability to accept and, in their letter dated 15.04.1999, the Managing Director informed the Director of R.D. Department, stating that the proposal for the permanent absorption of A.Es deputed from TWAD Board to R.D. Department based on their option is not acceptable to the TWAD Board. In the same communication, the M.D. reiterated that the services of the A.Es. are essentially required for the current year works in the TWAD Board and requested that the A.Es be reverted to TWAD Board immediately. Based on the above communication of the TWAD Board, the Director, R.D. Department, in his proceedings dated 02.07.1999, after examining the issue of absorbing Engineers from other Departments working on deputation in the R.D. Department in detail and finding that the Block Engineers / Junior Engineers / Assistant Engineers from Highways and Rural Works Department come under the purview of TNPSC; cancelled the permanent absorption of all 204 Block Engineers / Junior Engineers / Assistant Engineers and 129 Assistant Engineers belonging to other Technical Departments.

On 25.01.2000, the Government, in G.O. Ms. No.15, R.D. Department, framed ad hoc rules for the posts of Executive Engineer, Assistant Executive Engineer and Assistant Engineer, (vide Notification-IV) under Article 309 of the Constitution of India. The said Rules came into effect from 26.09.1997. We are concerned about Rule-3, which speaks about 'Appointment', " 3. APPOINTMENT (1) Appointment to the post shall be made by

- (a) direct recruitment
- (b) recruitment by transfer from Overseer in the Rural Development Department
- (c) The ratio for appointment to the post by direct recruitment - and recruitment by transfer shall be 1:1"

Admittedly, there is no provision for taking deputationists for filling up the posts in the R.D. Department. Since the said aspect is under challenge by way of W.P. No.33503 of 2006, we will consider it at a later point of time.

13-A. Inasmuch as the deputationists stoutly deny their status of service with the R.D. Department 'on contract basis', it is necessary to refer to the proceedings of the Director of R.D., dated 28.12.2001, which refers to G.O. Ms. No.263, R.D. Department, dated 27.12.1996, and Annexure-II appended thereto, containing terms of deputation by the Director of R.D., " Annexure-II Terms and conditions for appointment of personnel from the State Public Sector Undertakings/Boards in Government Services on contract basis under General Rule 11 of the Tamil Nadu State and Subordinate Service (Vide Govt. Lr.

No.1569/BPE/92-1 Finance (BPE) Dept., dt. 15.2.93 and Govt.Lr.No.2749/BPE/96-1 Finance (BPE) Dept., dt.9.12.96)

- i) The contract appointment will be for a period of 3 years from the date of relief from the Corporation/Board.
- ii) While on Contract appointment, he will draw pay and allowances as applicable to the post held by him in his parent Organisation, viz., Corporation/Board.
- iii) The Government shall recover every month the Employees Contributory Provident Fund subscription from the pay of the employees on Contract appointment at the rate specified by his parent organisation and remit it to that foreign body. It is only that lending organisation, which has to make an equal amount of employer's contribution and no contribution in this regard will be made by the Government. "In respect of employees of statutory Boards, where a pension scheme is available, the pension contribution shall be met by the statutory Boards themselves in the event of appointing such employees in Government Service on contract basis under General Rule 11 of the Tamil Nadu State and Subordinate Service" (amended vide Govt. Letter No.2749/BPE/96-1, Finance (BPE) Dept., dated 09.12.1996.
- iv) The Government shall pay direct to the employee concerned an amount as one time compensatory allowance equivalent to the bonus admissible at the rates as per the payment of Bonus Act as and when paid by the parent Organisation to its employees provided that at the time of payment of bonus, the employee continued to serve in Government on contract basis. The expenditure on this will be on service share basis for the accounting year between the Government and the foreign body concerned. In such cases, during the contract period, the employee will not be

eligible for any other exgratia payment, if any, allowed to the Government employees like pongal gift.

v) Government also will not pay any contribution towards gratuity. The gratuity contribution shall be borne only by the lending Corporation/Board concerned for the period of contract service.

vi) The employee on contract basis shall be deemed to be a member of the parent organisation for the purpose of the disciplinary rules, under the Service Rules of the parent organisation concerned.

Notwithstanding the fact that his services are placed at the disposal of the Government, if he commits any act of omission or commission which make him liable to the penalty specified in the said rules, the parent organisation under whom he is serving at the time of omission or commission of such act shall be competent to initiate the disciplinary proceedings against him and to impose on him such penalties specified in the relevant rules and the Government under whom he is serving at the time of institution of such proceedings shall render all reasonable facilities to the parent organisation for the institution and conduct of such proceedings.

Vii) The Government shall give leave salary contribution at the termination of the contract period for the actual leave earned during the contract service, after deducting the actual Earned Leave availed during the contract service period. If the Earned Leave applied for in a year while on contract service for exceeds the leave that would accrue for the tenure period mentioned in the contract appointment, then for such excess days of Earned Leave, the foreign body shall bear the liability by reimbursing the amount to Government, first bearing entire leave salary for the Earned Leave period by the Government.

Viii) The employees shall be allowed to surrender Earned Leave for a maximum of 15 days for each year of contract service, subject to the condition that he has that many days of leave earned after deducting the Earned Leave availed during the contract service.

ix) Regarding reimbursement of medical expenditure, it may be left to the option of the employee on contract service to get his medical expenditure reimbursed either from Government or from the Corporation, subject to the stipulation that the option once exercised will be final for the entire contract service.

Sd/-

For Director of Rural Development."

The above terms and conditions are rather self-speaking about the status of the petitioners that their services with the R.D. Department are only on 'contract basis'.

14. According to Mr.Sanjay Mohan, Ms.Vaigai, learned counsels; and Mr.V.K.Muthusamy, learned Senior Counsel, in view of the fact that the petitioners came to R.D. Department on deputation from TWAD Board and that their request for regularisation in the R.D. Department was accepted and

proper orders were passed by the Director, R.D. Department, with the consent of the TWAD Board, the respondents are not justified in reversing their said decision. According to them, on the principle of 'Legitimate Expectation', the respondents ought to have let them to continue in the R.D. Department along with other Engineers. They also contended that the respondents are estopped from repatriating all these petitioners to their parent Department, viz., TWAD Board, as they are entitled to permanent absorption in the R.D. Department. Inasmuch as we have already referred to the factual details in the earlier paragraphs, let us consider the issue involved with reference to various decisions of this Court and the Supreme Court.

14(1). Learned Counsels for the petitioners/deputationists relied on a decision of the Apex Court reported in AIR 2003 SC page 1713 (Chanchal Goyal Vs. State of Rajasthan) in support of their argument on the principle 'legitimate expectation'. It is relevant to extract paragraph Nos.16 to 18 in this regard, " 16. The basic principles in this branch relating to 'legitimate expectation' were enunciated by Lord Diplock in Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1985 AC 374 (408-409) (Commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment: or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership, the interest in regard to which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class or persons.

17. The principle of a substantive legitimate expectation, that is, expectation of favourable decision of one kind or another, has been accepted as part of the English Law in several cases. (De smith, Administrative Law, 5th Ed.) (Para 13.030). (See also Wade, Administrative Laws, 7th Ed.) (pp.418-419). According to Wade, the doctrine of substantive legitimate expectation has been "rejected" by the High Court of Australia in Attorney General for N.S.W. v. Quin (1990) 93 ALL E.R. 1 (But see Teon's case referred to later) and that the principle was also rejected in Canada in Reference Re Canada Assistance Plan (1991) 83 DLR (4th 297, but favoured in Ireland: Canon v.

Minster for the Marine 1991 (1) I.R. 82.

The European Court goes further and permits the Court to apply proportionately and go into the balancing of legitimate expectation and the Public Interest.

18. Even so, it has been held under English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation."

We find that what was observed in the above decision was, for legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communication to him, the same rational grounds for withdrawing on which he has been given an opportunity to comment or he has been given an assurance that they will not be withdrawing without giving him first an opportunity.

Coming to the case on hand, insofar as the TWAD Board Engineers/deputationists are concerned, they cannot claim legitimate expectation or applicability of the above Supreme Court decision for the reason that their appointment order itself was either 'on contract basis' or 'deputation' for a specified period and they were well informed that their absorption was subject to framing of ad hoc rules. When they have no legal right to claim absorption, the principle of legitimate expectation cannot be invoked by them; therefore, the above case law is not applicable to the facts and circumstances of the cases on hand.

14(2). Reliance is made on the decision reported in AIR 1998 SC 2779 (National Buildings Construction Corporation vs. S.Raghunathan and others), wherein, it was held that the doctrine of 'legitimate expectation' has been developed both in the context of reasonableness and in the context of natural justice.

In the above decision, Their Lordships of the Supreme Court have specifically pointed out that the question whether the expectation and the claim are reasonable or legitimate is a question of fact in each case. Not stopping therewith, it was also observed that such question has to be determined not according to the claimants' perception but in larger public interest. Further, the point for consideration therein was as to whether the deputationists were entitled to foreign allowance on the original basic salary or on the salary as revised on account of the recommendations of the IV Pay Commission. On consideration, the Apex Court dismissed the plea relating to foreign allowance.

In the case on hand, the deputationists, who were informed that they were taken on deputation basis or contract basis, were fully aware that their rights are only with the TWAD Board and not in the R.D. Department and they were informed as early as on 02.07.1999 that they cannot be absorbed in the R.D. Department. Having not challenged the said order for more than 6 years, the TWAD Board Engineers now cannot be permitted to raise a plea of legitimate expectation on the ground that the deputation allowance was stopped to them. At best, they can only claim deputation allowance for all

these years and no other right over the R.D. Department. Hence, the decision relied on is not helpful to the petitioners.

14(3). In *Union of India vs. Hindustan Development Corporation* (AIR 1994 SC page 988), Their Lordships of the Supreme Court, quoted a passage explaining the scope of 'legitimate expectation' from Halsbury's Laws of England, which reads thus:-

" 81. Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way but an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice."

After discussing the fact regarding expectation, it was observed, " A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense. "

" It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. The court should restrain themselves and restrict such claims duly to the legal limitations. "

Coming to the cases on hand, inasmuch as the TWAD Board Engineers do not have legal right to claim absorption and when the Government and the Managing Director of TWAD Board have taken a decision not to entertain absorption, legitimate expectation cannot be invoked to the facts of the present case. To invoke the principle of legitimate expectation, there should be a legal right. Thus, the decision relied on cannot be applied to the cases on hand.

14(4). The following conclusion in *Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Limited* (AIR 1999 SC 3443) was pressed into service, " 17. In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No.1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary, but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual. ..."

On going through the above referred decision, we find that it has been clearly held therein that an employee, who is on deputation, has no right to be absorbed in the service where he is working on

deputation, however, in some cases, it may depend upon the statutory rules to the contrary. If rules provide for absorption of an employee on deputation then such an employee has a right to be considered for absorption in accordance with those Rules. It was further held that whether the deputationists should be absorbed in service or not is the policy matter, but, once the policy is accepted and rules are framed for such absorption, there must be justifiable reasons for rejecting an application. As far as the present cases are concerned, the Service Rules of R.D. Department do not provide for absorption of employees, who are on deputation and, in fact, under the method of appointment, there are only two modes, ie., one by direct recruitment and the other by transfer of service of certain specific categories. Therefore, this decision also is not applicable to the cases on hand.

14(5). Reliance was also placed on the decision reported in AIR 2003 SC 43 (P.Tulsi Das vs. Govt. of A.P.), wherein, it was observed that, in the absence of Rules under Article 309 of the Constitution in respect of a particular area, aspect or subject, it was permissible for the State to make provisions in exercise of its executive powers under Article 162 which is co-extensive with its legislative powers laying conditions of service and rights accrued to or acquired by a citizen would be as much rights acquired under law and protected to that extent. The facts involved in the above case law were regarding the validity of Andhra Pradesh Educational Service Untrained Teachers (Regulation of Services and Fixation of Pay) Act, 1991, and the Supreme Court had upheld the right of those who were appointed as SGBT teachers to be entitled to the pay scales of School Assistants for the period prior to the said Act. The said decision is in no way applicable to the facts of TWAD Board Engineers since the impugned rules have retrospective effect and there is no right accrued on the deputationists to claim absorption.

14(6). Next decision, that was pressed into service on the concept of deputation, is the one reported in AIR 1999 SC 1948 = 1999 (4) SCC 659 (Umapati Choudhary vs. State of Bihar). Before commenting upon the applicability of this decision to the cases before us, it is relevant to refer to the contents at para No.9 of the decision, " 9. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationists) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand, all the three conditions were fulfilled."

In the above case law referred, the University, which was the parent department or lending department, the Bihar Sanskrit Education Board, ie., the borrowing authority and Umapati Choudhary, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing Department. Therefore, this decision is in no way supporting the case of the petitioners as in their cases, neither the lending authority nor the borrowing authority has given any consent/willingness for permanent absorption of the deputationists.

14(7). In the decision reported in AIR 1979 SC 621 (Motilal Padampat Sugar Mill vs. State of Uttar Pradesh), the Doctrine of Promissory Estoppel has been discussed and it was held that the true principle of Promissory Estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

In the present cases, the TWAD Board Engineers were never given any promise that they would be absorbed after 3 years of the deputation nor had they acted upon any such promise. In fact, even on 17.3.1999, they were issued with an absorption order by the Director of R.D. subject to framing of the ad hoc rules and this order too was cancelled within 4 months. Hence, the principle of promissory estoppel cannot be applied to. Neither the Government nor the M.D., TWAD Board, had given any assurance that the petitioners would be absorbed in the R.D. Department. The TWAD Board Engineers have not suffered any service rights in their parent Department due to any such promise made and, therefore, the principle laid down in the above decision is not applicable to the facts of the present cases.

14(8). Coming to the decision relied on by the petitioners reported in 1999 (8) SCC 99 (Nagpur Improvement Trust vs. Yadao Rao Jagannath Kumbare and others), it is seen that the point considered therein was, in the absence of any statutory rule governing service conditions of the employees, executive instructions or decisions taken administratively would operate in the field and appointments / promotions can be made in accordance with such executive instructions.

The above said decision is also not applicable to the cases on hand for the simple reason that the Service Rules have been framed in G.O. Ms. No.15, R.D. Department, dated 25.01.2000, with effect from 1997 and as per the Service Rules, deputationists cannot claim absorption. Executive instructions issued in G.O.102, R.D. Department dated 25.5.1998, have become null and void after framing of the ad hoc rules.

14(9). Insofar as the decision in Ramasanjeevayya vs. State of Mysore (1969 (2) LLJ 169) is concerned, it was a case, where the petitioner therein relinquished his promotion in the Secretariat and opted to remain in the department of Civil Supplies foregoing his promotion. The Division Bench held that the petitioner was permanently transferred to Civil Supplies Department and therefore, the Government could not repatriate him.

The facts of the above case are completely different from that of the cases on hand as the deputationists here had not relinquished any promotion in their parent department. But, in fact, they were juniors in TWAD Board, who were promoted and posted in the R.D. Department. Now, the seniors to them in TWAD Board have given willingness to be posted in the R.D. Department to gain the same promotion. Due to these administrative difficulties, the M.D., TWAD Board, had

expressed that none of the TWAD Board Engineers be absorbed in the R.D. Department. Hence, this decision also cannot be applied to the case of the petitioners.

15. In addition to the above case laws, Mr.V.K.Muthusamy, learned Senior Counsel, very much relied on a Division Bench decision of the Calcutta High Court reported in 1985 (1) SLR 257 (West Bengal Industrial Development Corporation vs. West Bengal Industrial Development Corporation Employees Union), wherein the Bench had dealt with a case where one Anil Chandra Chattopadhyay was posted as Special Officer, Petro Chemical Projects, on deputation from Home (P&AR) Department, Government of West Bengal. He was further posted as Chief Administrative Officer in addition to his duties as Special Officer, Petro Chemicals.

We find that, in the above referred case, the borrowing department, the lending Department, the deputationists and the Chief Minister of the State had all given consent for absorption of the said Anil Chandra. Coming to the present cases, neither the M.D., TWAD Board, agreed for absorption as on 27.12.2004 nor the Government / R.D. Department agreed therefor and the service rules also do not permit absorption of TWAD Board Engineers in the R.D. Department. In such circumstances, the case law cited is not useful to the petitioners.

For the same reasons, another Division Bench decision, viz., 1995 (5) SLR 426 (Director of Administrative Training v. S.C. Misra), relied on by Mr.V.K.Muthusamy, learned Senior Counsel, cannot be made applicable to the cases on hand.

16. Now, we shall consider various decisions and submissions made by Mr.C.Selvaraju and Mr.R.Thiyagrajan, learned Senior Counsels and Mr.R.Viduthalai, learned Advocate General.

16-A. In the decision reported in 2001 (10) SCC 520 (Union of India vs. S.N.Panikar), the facts show that the appellant was the Union of India and the appeal was filed as against the order of the Central Administrative Tribunal dated 24.04.1992 passed in O.A. No.1001 of 1991. By the impugned order, the Tribunal directed the Union Government to absorb the respondent in the post of Deputy Director (Development) with effect from the date when the last period of his deputation formally ended, ie., with effect from 01.01.1990. It is further seen that the post of Deputy Director could be filled up only by direct recruitment under the relevant Recruitment Rules framed under the Proviso to Article 309 of the Constitution of India. Rule-6 confers powers of relaxation on the Central Government and such relaxation has to be given for reasons recorded in writing and in consultation with the Union Public Service Commission. The respondent, who was serving in the Department, was sent on deputation after due consultation with UPSC. But, after the period of deputation was over, when the Department requested UPSC for further continuance of the respondent on deputation, UPSC refused the request of the Union Government and informed the Union Government that UPSC has not agreed to the extension of period of deputation in the post of Deputy Director. The respondent thereafter approached the Tribunal which came to the conclusion that the deputation itself having been made by the Union Government in consultation with the UPSC in relaxation of the provisions of the Recruitment Rules providing for direct recruitment, the applicant must be held to have a right to hold the post according to the terms and conditions of appointment and he was not an ad hoc appointee and the respondents were not right in terming his appointment

as ad hoc. Disagreeing with the said conclusion, the Hon'ble Supreme Court has observed as follows:-

" This conclusion of the Tribunal is contrary to the service jurisprudence and to the relevant rules under which the respondent was sent on deputation to the post of Deputy Director (Development). The further conclusion of the Tribunal that regardless of whether the formal order states it or not the decision to fill up the post by transfer on deputation should be deemed to be a decision taken in relaxation of the Recruitment Rules as provided in Rule 6, is also erroneous. The power of relaxation was exercised by the Union Government in consultation with UPSC for a limited purpose, namely, to fill up the post by taking somebody on deputation which otherwise required to be filled up only by direct recruitment. In that view of the matter, a deputationists cannot claim either a right to the post in question nor can he claim absorption on permanent basis to the post in question."

In the above decision, the Supreme Court had categorically held that when the statutory rule does not provide absorption as one of the methods of appointment, there can be no right for the deputationists to claim for absorption in the said post. The facts of the TWAD Board Engineers are identical and, therefore, as per the principle laid down in the Supreme Court decision, all the writ petitions filed to claim absorption as a right are liable to be dismissed.

16-B. In U.P. Land Dev. Corpn. v. Amar Singh (2003 (5) SCC 388, the Hon'ble Supreme Court has held that when the work of the scheme had come to an end, the respondents were not entitled to claim regularisation of their services.

16-C. Heavy reliance was placed on the Division Bench decision of this Court in Writ Appeal No.2682 of 2003 etc., dated 23.12.2003. The writ petitioners/appellants approached this Court to issue a writ of mandamus, directing the respondents to consider and absorb them in the Oil and Natural Gas Corporation Limited. They were sent on deputation with respondents-3 to 5. As per G.O. Ms. No.741, dated 24.06.1978, the deputation would be for a period of three years and in special circumstances, it would be for four years. The question before the learned single Judge as well as the Division Bench was as to whether the appellants can claim as a matter of right to be in foreign department and to be absorbed or are they be repatriated to their parent department. After considering the rival submissions and the decisions of the Apex Court, the Division Bench was of the view that respondents-1 and 2 made it clear that the appellants belonged to their service and they were sent only on deputation to respondents-3 to 5 and the said position is also not disputed. The Bench further observed that when the parent Department, viz., respondents-1 and 2, wanted to recall or repatriate them, the same cannot be questioned or stalled by the appellants. It further observed that repatriation of its employees by the parent department is a rule and allowing them to continue in the foreign department is only an exception. After finding that the appellants cannot challenge the action of respondents-1 and 2 in repatriating the appellants, the Division Bench dismissed the appeal. We are in agreement with the view expressed by the Division Bench.

16-D. In *State of Punjab v. Jagdip Singh* (AIR 1964 SC 521), Their Lordships have observed that, where a Government Servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, one will not in law be deemed to have been validly appointed to the post or given the particular status; that, no doubt, the Government has used the expression 'deconfirming' in its notification which may be susceptible of the meaning that it purported to undo an act which was therefore valid; that the expression, however, must be interpreted in the light of actual facts which led up to the notification; that those facts clearly show that the so-called confirmation by the Financial commissioner of Pepsu was no confirmation at all and was thus invalid; and that in view of this, the notification of October 31, 1957, could be interpreted to mean that the Government did not accept the validity of the confirmation of the respondents and other persons who were confirmed as Tahsildars by the Financial commissioner, Pepsu. Applying the principle laid down in the above decision, it is clear that no right or claim can be made by the deputationists based on the order dated 17.3.1999 which was passed without jurisdiction.

16-E. In the decision reported in 1976 (4) SCC 543 (*G.Muniyappa Naidu v. State of Karnataka*), after finding that the Cadre and Recruitment Regulations recognised only two modes of recruitment to the post of Senior Health Inspectors, viz., promotion from the cadre of Junior Health Inspectors and deputation from the State Directorate of Health Services and one half of the cadre was to be drawn from each of these two sources, it was observed that no other mode of recruitment could be resorted to by the Corporation under the Cadre and Recruitment Regulations. It was concluded that it is difficult to see how in the face of the said provision, which has admittedly statutory effect, the posts of Senior Health Inspectors could be filled in by absorption of deputationist Senior Health Inspectors from the Karnataka State Civil Service.

Following the principles laid down in the above decision, the claim for absorption has to be rejected inasmuch as the ad hoc rules do not permit the deputationists to be absorbed,.

16-F. In *Ratilal B.Soni v. State of Gujarat* (1990 (Supp) SCC 243), the Supreme Court has held that the appellants being on deputation, they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. After holding so and finding no infirmity in the Judgment of the High Court, the Apex Court dismissed the appeal.

In the above decision, the Supreme Court upheld the decision of the Gujarat High Court which had held that the deputationists had no legal right to be absorbed in State Service unless the option is accepted by the Government. The principles laid down in the above decision are squarely applicable to the facts of the present cases since the option of the TWAD Board Engineers was neither accepted by the M.D., TWAD Board, nor by the Secretary to Government, R.D. Department. Hence, as per the above Supreme Court decision, the TWAD Board Engineers have no right to claim absorption in the R.D. Department.

16-G. In the decision reported in 1996 (2) SCC 282 (*Balakrishna Pandey vs. State of Bihar and others*), the Apex Court has held as follows:-

" 5. It is settled law that an employee on temporary promotion would continue to hold the lien in his substantive post until it is duly terminated. He cannot hold two substantive posts at the same time. Once it is concluded that the appellant is a deputationists working in the Directorate of SEP, his name was rightly not shown in the seniority list of that Department. Therefore, he continued to hold his lien and seniority as Junior Statistical Supervisor in the parent Department. On reversion, he came back to his post as a Junior Statistical Supervisor and in his own right he was promoted as SSA. Since the fifth respondent happened to be a permanent incumbent in the Directorate of SEP, he was promoted as SSA. When further vacancy in the higher ladder, viz., SRA, had fallen vacant, he was considered and promoted in that vacancy. Under those circumstances, the High Court is well justified in refusing to interfere with the matter and we do not find any justification warranting interference. "

In the above decision, the Supreme Court found that the appellant therein was only a deputationist and cannot claim right to promotion in the Transport Department and can have right only in the parent Department. Even though the appellant continued to be on deputation in view of the interim directions of the Court, the Supreme Court adverted to that he continued to hold lien in his parent Department.

In the present case also, though the TWAD Board Engineers, by an interim order, continued in the R.D. Department since 2004, they continued to hold their lien with their parent department which is TWAD Board, hence, cannot claim absorption as a right.

16-H. Coming to the decision of the Apex Court in State of Punjab and others vs. Inder Singh and Others (1997 (8) SCC page 372), it is relevant to refer to the conclusion with regard to the concept of deputation in para No.18 of the said Judgment, " 18. The concept of 'deputation' is well understood in service law and has a recognised meaning.

'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help.

In simple words 'deputation' means service outside the cadre or outside the parent Department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules."

In the above decision, the Supreme Court had not permitted the claim of absorption where the respondents therein continued in the posts for nearly 20 years and in fact, directed to revert those who have completed 20 years of qualifying service to their parent department. The principle laid down in the above decision is applicable to the facts of the present case. The TWAD Board Engineers were sent on deputation to R.D. Department from 1997 for 3 years and were reverted back in 2004. They were continuing on deputation in view of the interim order of this Court and, as per the above

Supreme Court decision, they cannot claim absorption when the Rules do not permit their absorption in the R.D. Department.

16-I. In the decision reported in 2000 (5) SCC 362 (Kunal Nanda vs. Union of India and another), the following conclusion is relevant, " 6. On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationists for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationists cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

In the above decision, the principle relating to the position of deputationists was settled by the Supreme Court by holding that there is no vested right for a deputationist to claim absorption in the borrowing department. In view of the principle laid down in the above Supreme Court decision, there cannot be a mandamus compelling the Government to absorb the deputationists in the R.D. Department when they have no vested right to claim absorption.

16-J. In the decision reported in 2001 (10) SCC 655 (Mahesh Chand Bhargawa and others vs. Union of India and others), the case before the Supreme Court was, the appellants/deputationists claimed absorption in the Commercial Department while retaining their lien with the Loco Shed and drawing wages therefrom. The Supreme Court held that the appellants did not acquire any right of absorption in the Commercial Department.

The principle laid down in the above Supreme Court decision is applicable to the facts of the present case as the TWAD Board Engineers retained their lien in TWAD Board and are only on deputation terms in the R.D. Department. Hence, the writ petitioners did not acquire any right to be absorbed in the R.D. Department.

16-K. In Mahesh Kumar K.Parmar & Others vs. S.I.G. Of Police and others (2002 (9) SCC 485), the Apex Court has held that no mandamus can be issued to the State Government requiring them to permanently absorb the deputationists. Hence, the position is made very clear by the above decision regarding the plea for issuance of a mandamus in favour of the petitioners.

16-L. In the decision reported in 2006 (4) SCC page 1 (Secretary, State of Karnataka and others vs. Umadevi and others), Constitution Bench of the Supreme Court has held that the High Courts acting under Article 226 should not, ordinarily, issue directions for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme; and that merely because an employee had continued under cover of an order of the court, under "litigious employment", he would not be entitled to any right to be absorbed or made permanent in the service.

As per the Constitution Bench Judgment of the Supreme Court, this Court may not issue a mandamus, directing the Government to absorb the TWAD Board Engineers who were not appointed through the TNPSC for the post of Assistant Engineer. The respondents, who were recruited through the TNPSC as Assistant Engineers, should not be deprived of their promotions and other service rights by entertaining the relief of TWAD Board Engineers, who were not appointed in accordance with the Rules to hold the post of Assistant Engineer in the R.D. Department.

17. Legitimate Expectation is an aspect of promissory estoppel. In the absence of an unequivocal promise by the competent authority, neither the doctrine of promissory estoppel nor legitimate expectation can be invoked. (vide, - 1998 (7) SCC 66 (cited supra); J.P. Bansal vs. State of Rajasthan - 2003 (5) SCC 134 ; Union of India vs. International Trading Co. - 2003 (5) SCC 437 ; 2006 (5) SCC 702 - Kuldeep Singh vs. NCT Delhi).

In Dr. Rajinder Singh v. State of Punjab (2001 (5) SCC 482) and National Fertilisers vs. Somvir Singh (2006 (5) SCC 493), the Apex Court has held that mere proposal of absorption cannot be construed as an order of absorption.

In the decision reported in 2006 (6) SCC 430 (R.S.Garg v. State of U.P.), the Supreme Court has held that members of the statutory corporation and those in government service form different classes of employees. This is primarily because of the mode of selection process adopted in each case. Even if they are brought together to one department temporarily on deputation, they cannot be treated as a homogenous class as they trace their deputation to independent sources. The AEs of TWAD Board are not appointed by TNPSC. The other Departments do not include statutory corporations like the TWAD Board.

18. Learned Advocate General, in support of his contention that, in the absence of specific Rules, deputationists from TWAD Board cannot compel anyone including the Director, R.D. Department / Government to regularise them in the R.D. Department itself, very much relied on the following proposition in the decision reported in 2001 (5) SCC 482 (cited supra), " 7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution. "

In the above decision, the Supreme Court put in clear terms that mere communication of the recommending authority to consider the case of the deputationists for absorption and for passing appropriate orders by competent authority cannot give rise to legitimate expectation and promissory estoppel.

19. The above proposition has been considered and approved in a subsequent decision reported in *Union of India v. V.Ramakrishnan* (2005 (8) SCC 394). The following conclusion of Their Lordships in paragraph No.32 is relevant, " 32. Ordinarily, a deputationists has no legal right to continue in the post. A deputationists indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. ..."

In *G. Nagendra vs. State of Karnataka* (1998 (9) SCC 439), the Supreme Court has held that rules framed under Article 309 of the Constitution can be given retrospective effect.

20. In the light of the Government Orders, Board's Proceedings, terms & conditions of deputation and the legal principles enunciated by the Supreme Court, let us summarise our conclusions with regard to the position of the writ petitioners/TWAD Board Engineers, their right to claim absorption and whether mandamus compelling the Government to absorb the TWAD Board Engineers in the R.D. Department can be issued, First of all, the petitioners/deputationists have no legal right vested in them so as to invoke the principles of 'legitimate expectation', 'promissory estoppel', etc. and claim absorption as a matter of right. Though the petitioners struggle to substantiate their case by stating that initially there was a proposal for their permanent absorption in the R.D. Department, such position would have definitely stood as a strong factor to take a decision in their favour had the impugned Rule fell in such lines and brought them under its scope of appointment. Apparently, there was a stipulation that the absorption would be subject to the framing of ad hoc rules, whereby, it was made clear that their absorption would depend on the provisions inscribed in the Rules to be framed. In other words, the provisional absorption was conditional/contingent and not absolute. Surprisingly, the petitioners did not question their absorption subject to the framing of ad hoc rules. Similarly, when they were informed as early as on 02.07.1999 that they cannot at all be absorbed in the R.D. Department, they did not choose to challenge said order. That being so, at this point of time, when Ad hoc rules have been framed, which do not provide for absorption and make the orders issued on 25.05.1998 as null and void, they cannot at all, in the light of the settled legal position, claim for the relief asked for by them. Further, the petitioners themselves know well that services on contract basis in accordance with Rule-11 of the State and Subordinate Service Rules can be terminated by the Government as and when the need for such services ceases. The petitioners cannot take advantage of the order passed without jurisdiction by the Director, R.D. Department, inasmuch as, admittedly, the Government is the only authority to decide in the matter relating to permanent absorption. It is the well known principle that if an executive instruction is contrary to the statutory/service rules, the rules will prevail and not the executive instructions. Further, TWAD Board is an undertaking of the Government of Tamil Nadu and appointments made by it are outside the purview of TNPSC, whereas, the post of A.E. in the R.D. Department comes within the purview of the TNPSC, that being so, the deputationists, who were not recruited through TNPSC and who rendered services in the R.D. Department 'on contract basis' and retain their lien with TWAD Board, cannot claim for absorption. As adverted to already, the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. Here, the chain of consent is broken and not complete

amongst the TWAD Board, R.D. Department/Government and petitioners, in that, the TWAD Board declined to give consent; R.D. Department withdrew its earlier proposal for absorption; and the ad hoc rules expelled the petitioners from the zone of consideration for absorption/appointment; hence, with the mere aspirations of the deputationists, nothing can be done, for, legitimate expectation can be justified if its edifice is built with the sanction of law.

Another aspect of the matter is, by not getting permanent absorption in the R.D. Department, they cannot complain prejudice because the doors of their parent department are not closed for them in view of the continuance of their lien therewith, with all applicable allowances. Thus, in the absence of any statutory rule, regulation or order, having the force of law, to trace the right and claim of the deputationists for permanent absorption in the R.D. Department, we can not close our eyes to the propounded principles established by the Apex Court, which cover aptly the issue involved, and issue mandamus compelling the Government to absorb the deputationists.

21. Attacking the validity of the impugned Rules framed in G.O. Ms. No.15, R.D. Department, dated 25.01.2000, Mr.A.L.Somayaji, learned Senior Counsel, put forth the following contentions,

(a) The ad hoc rules issued for the post of A.E. excluding the deputationists from TWAD Board as one of the methods of appointment is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

(b) The impugned rules operate viciously against the deputationists who were appointed long before the issue of rules; hence, to the extent of non-inclusion, the Rule is bad in law.

(c) The impugned rules, giving retrospective effect from 26.09.1997, thereby affecting the acquired right to continue in the R.D. Department, are arbitrary and illegal.

(d) denial of absorption in the R.D. Department under the guise of ad hoc Rules affect their legitimate expectation.

(e) A section of employees, viz., Union Overseers from Highways Department were given the relief of absorption in G.O. Ms. No.102 and denial of the same relief to the deputationists from TWAD Board is illegal and offends Articles 14 and 16 of the Constitution of India.

In support of the above contentions, Mr.A.L.Somayaji relied on the following decisions,

(a) 1975 (4) SCC 754 (Superintendent and Remembrancer of Legal Affairs vs. G.K.Navalakha)

(b) 1969 (II) LLJ 169 (cited supra)

(c) 1996 Law Weekly Page 78 (Commissioner of Civil Supplies, Madras, The v. P.Annamalai)

(d) AIR 1987 SC 415 (T.R.Kapur v. State of Haryana) It is not in dispute that the petitioner in W.P. No.33503 of 2006 and others are deputationists from TWAD Board and they are working in the

R.D. Department. It is also true that initially an order of absorption was made by the R.D. Department. Subsequently, in view of the stand taken by the M.D., TWAD Board, the order absorbing them was cancelled. Thereafter, by way of G.O. Ms. No.15, ad hoc rules were framed. In the Rules, the deputationists were not made eligible for appointment in the R.D. Department.

Para No.3 of the Rules deals with the method of appointment and it provides that the post of A.E. can be filled by (a) direct recruitment; (b) recruitment by transfer; and (c) the ratio for appointment to the post by Direct Recruitment and Recruitment by Transfer shall be 1:1. The above provision makes it clear that the Rules do not take in the deputationists under its method of appointment. According to the petitioner, non-inclusion of the deputationists in the method of appointment though they have been working for the development of the Engineering Wing in the R.D. Department violates Article-14 of the Constitution. Service Rules have overriding effect on G.O. Ms. No.102, R.D. Department, dated 25.05.1998, which is only an executive Order. Further, it is brought to our notice that the post of Assistant Engineer with same pay and allowance is readily available to the petitioner and others in the TWAD Board ie., their parent organisation. It is also brought to our notice that the direct recruitment of A.E. in R.D. Department was commenced as early as in September 1997 itself when the petitioner and others were working on contract basis. They do not have any service rights as per Rule 11 of the State and Subordinate Service Rules. Admittedly, the petitioner and others are not Government employees under the provisions contained in Fundamental Rules. It is the specific stand of the Government as well as the TWAD Board that the petitioner and others were employed 'on contract basis' in accordance with the Rule-11 of the State and Subordinate Service Rules and can be terminated by the Government when the need for his services ceases. As observed by the Supreme Court in Kunal Nanda vs. Union of India (AIR 2000 SC 2076), the petitioner and others being deputationists have no legal right to get absorbed in the borrowing Department. Their absorption in the R.D. Department is not possible as per Service Rules. As rightly pointed out, if the plea of the petitioner and others is conceded, it will amount to inflicting gross injustice to the unemployed engineering graduates and who are waiting for recruitment through TNPSC. As stated earlier, the post of Assistant Engineer with the same Pay and Allowances is readily available to the petitioner and others in their parent Organisation.

Though learned Senior Counsel appearing for the petitioner questioned the validity of the ad hoc rules as tainted with arbitrariness and violative of Articles 14 and 16 of the Constitution; in view of the various factual aspects peculiar to the cases on hand, which we have adverted to in the course of the Judgment, and the settled legal position that the Courts should not interfere with the executive/legislative decisions except to examine the action in accordance with law and to determine as to whether the legislature or executive has acted within the power and functions assigned under the constitution; various points raised by him in this regard have to be rejected in toto. To the executive decision for absorption subject to framing of ad hoc rules, the petitioner and others subjected themselves, knowing well that they are bound by the outcome of the said rules; hence, they cannot allege unconstitutionality or arbitrariness when the Rules excluded them from the purview of consideration for appointment. The impugned Rules passed; sifting the non-governmental employees, whose parent department is an autonomous Board, after taking into consideration various aspects including the initial reluctance on the part of the Board in sparing their employees with the R.D. Department on the ground of dearth of hands and apprehension of

setbacks in their activities; cannot at all be said to be offending Articles 14 and 16 of the Constitution. After all, whenever their services are required by the parent Department, they have to leave the borrowing department where they are posted on deputation/contract basis only on public interest. Inasmuch as the Constitution clearly circumscribes the areas of legislative power and judicial power, none can encroach or dominate upon the field occupied by the other. As repeatedly pointed out, this Court has its own self-imposed limits and any deviation would amount to transgressing into the domain of the executive.

22. Insofar as the contention relating to discrimination and different treatment for A.Es. from TWAD Board, it is true that some of the personnel working in the Highways Department as deputationists in the R.D. Department were regularised. It is not in dispute that Highways Department is a wing of the Government and appointments are being made as per their Service Rules by following the procedure. In other words, all appointments are being made by the TNPSC by calling for a list of eligible persons from the Employment Exchange. Admittedly, such procedure is not in vogue in the appointment of AEs in the TWAD Board. In such circumstances, merely because some of the Engineers in the Highways Department were regularised, it cannot be cited as a precedent even in the case of TWAD Board Engineers. In the decision reported in 1990 (2) SCC 707 (Mallikarjuna Rao and others vs. State of Andhra Pradesh and others), the Hon'ble Supreme Court has held as follows:-

" 11. ... It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution.

12.

13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India. "

In the decision reported in 2003 (2) SCC 632 (P.U.Joshi vs. Accountant General), the following conclusions are relevant, " 10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory

tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.

Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. "

The above decisions of the Supreme Court make it clear that the prayer of the TWAD Board Engineers to amend the Rules in such a manner as to include the deputationists as one of the methods of appointment cannot be granted by this Court and no Court can interfere with the exclusive discretionary jurisdiction of the State. Such being the position and in view of the fact that the personnel from the Highways Department stand on a different footing, the TWAD Board Engineers cannot plead discrimination.

23. Though an argument was projected that the Rule cannot be made applicable retrospectively, it is settled law that while framing the Rules, the Government is free to fix the relevant date from which the same shall come into force. Though it was argued that the ad hoc rules take away the vested rights of the Assistant Engineers, inasmuch as there is no specific Rule enabling the R.D. Department to absorb the Assistant Engineers from the TWAD Board, and even in the ad hoc Rules framed, there is no provision for absorption, the contrary argument of the learned counsel appearing for the petitioners is liable to be rejected. Though absorption was made by the R.D. Department within a short period, in view of the stand taken by the Parent Department, viz., TWAD Board, that their services are needed by the TWAD Board, the order absorbing them in the R.D. Department was withdrawn by the Director. As pointed out earlier, inasmuch as the petitioners have no right to ask for absorption and in view of the fact that very same post with same pay and allowances are available in their parent Department viz., TWAD Board, the challenge relating to validity of the Rules for not providing a clause for appointing them in the R.D. Department cannot be countenanced at all. Further, as held by the Supreme Court reported in 1998 (9) SCC 439 (cited supra), it is not correct to say that the rules framed under Article 309 cannot be given retrospective effect. Exclusion of the deputationists in view of their distinct identity from the regular Government servants and retrospective operation of the impugned rules framed under Article 309 of the Constitution cannot be assailed as violative of Articles 14 and 16 of the Constitution. While considering the question as to whether retrospective operation prescribed by the rules amounted to

contravention or infringement of the individuals' rights, the Court has to take into account all the relevant and surrounding circumstances and in that connection, test of the length of time covered by the retrospective operation, by itself, cannot necessarily be a decisive test. To find out whether the impugned rule with retrospective operation is reasonable and not violative of any constitutional provisions, it becomes relevant to enquire as to how the retrospective effect operates. First of all, the impugned Rules take in its sphere the individuals, who are exclusively government servants entered service through the TNPSC and governed by the relevant service rules applicable to the government servants. Secondly, the individuals rendering their services in a foreign department on contract basis cannot compete with the insiders of that Department. Thirdly, the parent Department of the deputationists is an autonomous body and the entry thereto was not through TNPSC. Inasmuch as no vested right of any deputationist is taken away by the retrospective operation of the Rules, the argument relating to alleged adverse impacts shall fall to the ground.

24. In these circumstances, we find no merit in the Writ Petitions filed by the deputationists from TWAD Board and they are liable to be dismissed. We hold that the ad hoc rules framed in G.O. Ms. No.15, R.D. (E1) Department, dated 25.01.2000, with retrospective effect are constitutionally valid and in accordance with the statutory provisions. The Writ Petition challenging the vires of those Rules is also liable to be dismissed.

Insofar as the relief sought for by the Tamil Nadu Rural Development Engineers' Association in W.P. No.31510 of 2004, in view of our discussion particularly in respect of the personnel from Highways Department in Para No.22 and conclusion as seen from various paragraphs relating to the absorption of the deputationists, it is for the R.D. Department to take decision and pass appropriate orders.

25. Net result, W.P. No.31510 of 2004 is disposed of with the above direction and all other Writ Petitions are dismissed. No costs. Connected Miscellaneous Petitions are closed.

To

1. The Secretary, Rural Development Department, Fort St. George, Chennai-9.
2. Director of Rural Development Panagal Buildings, IV Floor, Saidapet, Chennai-15.
3. The Managing Director, T.N. Water Supply and Drainage Board, Kamarajar Salai, Chennai 600 005.