



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 4886-4888 OF 2023

**ASSOCIATION OF ENGINEERS
AND OTHERS ETC.**

...APPELLANT(S)

VERSUS

**THE STATE OF TAMIL NADU
AND OTHERS ETC.**

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4372 OF 2023

CIVIL APPEAL NOS. 4891-4892 OF 2023

CIVIL APPEAL NOS. 4889-4890 OF 2023

CIVIL APPEAL NOS. 5747-5750 OF 2023

J U D G M E N T

B.R. GAVAI, J.

**Civil Appeal Nos. 4886 to 4889, 4892 and 5748 to 5750 of
2023**

1. The present set of appeals challenge the judgment dated 3rd August 2022, passed by the Division Bench of the High Court of Judicature at Madras ('Madras High Court' for short), whereby the writ appeals being W.A. Nos. 82 and 95 of 2015 and 5251 of 2022 filed by the respondents herein were

allowed and the order dated 23rd December 2014 passed by the learned Single Judge of the Madras High Court in Writ Petition No. 11148 of 2017 was quashed and set aside.

2. The facts giving rise to present appeals are as under:

2.1 The employees are governed by Tamil Nadu State and Subordinate Service Rules and also Special Rules to govern different services in the State. The engineering staff comes under the Tamil Nadu Engineering Service and Tamil Nadu Engineering Subordinate Service.

2.2 On 2nd January 1990, Public Works Department, Government of Tamil Nadu (hereinafter referred to as 'PWD') issued an order being G.O. Ms. No. 1 (hereinafter referred to as 'G.O. No. 1) accepting the recommendations of Chief Engineer, PWD (General) and the Tamil Nadu Public Service Commission (hereinafter referred to as 'TNPSC') and directed that from the date of this order, Junior Draughting Officers, Draughting Officers, Overseers and Technical Assistants, who have completed 5 years of service and acquired B.E./A.M.I.E. qualification, will be entitled to be appointed as Assistant Engineers on transfer of service.

2.3 On 22nd January 1991, Government Order being G.O. Ms. No. 88 of 1991 (hereinafter referred to as “G.O. No. 88”) came to be issued wherein it was clarified that TNPSC need not be consulted for appointment of Junior Draughting Officers, Draughting Officers, Overseers and Technical Assistants, who have completed 5 years of service and acquired B.E./A.M.I.E. qualification, as Assistant Engineers.

2.4 Writ Petition No. 3309 of 1991 came to be filed before the Madras High Court by Engineering Graduates challenging G.O. No.1 on the ground that part-time B.E. Degrees were inferior to regular B.E. Degrees. The same were dismissed vide order dated 8th March 1991.

2.5 On 31st May 1994, an advertisement being No. 9/94 was issued by the TNPSC for direct recruitment of Assistant Engineers. This advertisement was challenged by several Junior Draughting Officers, Draughting Officers and Technical Assistants before the Tamil Nadu Administrative Tribunal, Chennai (hereinafter referred to as the ‘Tribunal) on the ground that their appointment should also be considered in the advertised posts in terms of abovementioned G.O. Nos. 1 and 88.

2.6 The Tribunal, vide order dated 17th April 1997, allowed the applications filed by Junior Draughting Officers and Draughting Officers, however, dismissed the applications filed by Technical Assistants. The Tribunal observed that the Technical Assistants are not part of feeder category from which recruitment by transfer can be made for the post of Assistant Engineers.

2.7 Thereafter, Association of Engineers, one of the appellants herein filed Writ Petition No. 7523 of 1997 before the Madras High Court challenging the above finding of the Tribunal qua the Junior Draughting Officers and Draughting Officers. The Technical Assistants never challenged the dismissal of their applications by the Tribunal. The High Court, vide order dated 6th November 2006, dismissed the said writ petition. In the year 2009, the said order of the High Court was challenged before this Court in Civil Appeal No. 995 of 2009. This Court, vide order dated 14th September 2017, dismissed the said appeal.

2.8 From 1999 till 2002, a total number of 491 vacancies in the post of Assistant Engineers were notified to be filled up. Out of the same, 369 vacancies were to be filled up by direct

recruitment and the remaining 122 vacancies were to be filled up by recruitment by transfer. Out of the said 122 vacancies referable to the feeder categories for appointment by recruitment by transfer, 29 vacancies alone had been filled up so far.

2.9 The State Government, due to dearth of eligible candidates to fill the remaining 93 vacancies by transfer, issued directions dated 24th February 2006 directing appointment of persons in the category of Technical Assistant, who possessed B.E./A.M.I.E. qualification in Civil Engineering and have rendered 5 years of service on temporary basis.

2.10 Vide Proceedings No. S2(2)/29148/2004-24 dated 27th February 2006, 21 Technical Assistants were appointed as Assistant Engineers on temporary basis.

2.11 The Association of Engineers, one of the appellants herein, filed writ petition being WP No. 11148 of 2007 before the Madras High Court challenging the abovementioned appointment order dated 27th February 2006 on the ground that the same was violative of the order dated 17th April 1997 passed by the Tribunal in O.A. No. 3348 of 1994 and also the order dated 6th November 2006 passed by the Madras High

Court in WP No. 7523 of 1997. Further, the appointments are against the statutory rules prescribed.

2.12 Vide order dated 23rd December 2014, the learned Single Judge of the High Court allowed the said writ petition being WP No. 11148 of 2007 and restrained the official respondents from appointing Technical Assistants as Assistant Engineers by recruitment by transfer unless and until the statutory rules were amended making Technical Assistants as feeder category. The services of respondents herein were to be continued for a period of 3 months and in case the rules are amended by inclusion of Technical Assistants as feeder category within three months, they would not suffer reversion. However, if the rules are not amended, then they will be reverted to their original post.

2.13 In 2016, the unemployed engineering graduates had filed a writ petition being WP No. 36614 of 2016 before the Madras High Court challenging the validity of G.O. No. 1. The matter is still pending adjudication.

2.14 Being aggrieved by the order of the learned Single Judge dated 23rd December 2014, writ appeals being W.A. Nos. 82 and 95 of 2015 were filed before the learned Division Bench

of the Madras High Court by the respondents herein. The learned Division Bench of the Madras High Court, vide impugned judgment dated 3rd August 2022, quashed and set aside the order of the learned Single Judge and allowed the writ appeals filed by the respondents herein.

2.15 Aggrieved thereby, the present set of appeals came to be filed.

3. We have heard Smt. Madhavi Divan, learned Senior Counsel, Shri N. Subramaniyan and Shri Pranav Sachdeva, learned counsel appearing on behalf of the appellants. We have also heard Shri V. Prakash and Shri Senthil Jagadeesan, learned Senior Counsel, and Shri P. Rajendran, learned counsel appearing on behalf of the respondents. We have also heard Shri Sanjay Hegde, learned Senior Counsel appearing on behalf of the State of Tamil Nadu.

4. Smt. Madhavi Divan, learned Senior Counsel appearing on behalf of the appellants submitted that in the absence of amendment to the Rules, Technical Assistants cannot be permitted to be in the feeder cadre for promotion to the post of Assistant Engineers. She submitted that, in spite of several chances, the State has failed to carry out amendment

to the Rules and in the absence of Rules, they are not entitled to be promoted to the post of Assistant Engineers. Smt. Divan, relying on Section 10 of the Tamil Nadu Engineering Services submitted that the entry into the Assistant Engineers' Cadre, is either by direct recruitment or recruitment by transfer from Junior Engineers, Overseers, Special Grade Draughting Officers or Civil Draughtsmen of Tamil Nadu Engineering Subordinate Service. It is submitted that the appointment to the post of Technical Assistants has been provided under G.O. MS. No. 1972 dated 18th November 1985. The said G.O. provided that the general and special rules applicable to the holders of the permanent posts in the Tamil Nadu Engineering Subordinate Service shall apply to the holders of the temporary posts of Technical Assistants Civil, Electrical and Mechanical. However, that was subject to the modifications specified therein. The appointing authority to the said posts was the Superintending Engineer of PWD.

5. Smt. Divan submitted that by G.O. MS. No. 1356 dated 2nd August 1980, the State provided for appointment to the post of Junior Engineers (now Assistant Engineers) from the cadre of Draughtsman Grade III, Overseers and Technical Assistants,

who, on acquiring degree qualification in Engineering have rendered 5 years of service as Draughtsmen, Overseers, Technical Assistants.

6. Smt. Divan submitted that the appointment of Technical Assistants as Assistant Engineers is totally illegal, violative of Right to Equality under Article 14 of the Constitution of India and also violative of Article 335 of the Constitution of India which mandates efficiency in public administration. It is further submitted that the entry of Assistant Engineers is through competitive examination on the basis of merit whereas the entry of Technical Assistants is through a backdoor entry i.e. appointment by the Superintending Engineer. It is therefore submitted that, permitting the Technical Assistants to march ahead of the Assistant Engineers would, apart from being anti-meritian, would also promote the persons who have entered through backdoor.

7. Smt. Divan further submitted that the temporary appointments of Technical Assistants have neither been regularized nor has their probation commenced. It is therefore submitted that without regularization and declaration of

probation in the category of Assistant Engineers as mandated by Rule 7 of Special Rules to Tamil Nadu Engineering Service, they cannot be made as Assistant Engineers.

8. Reliance is placed on the judgment of this Court in the case of ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Others***¹ in support of the proposition that unless the appointment is in accordance with the rules, the same is not valid. Reliance is also placed on the judgment of this Court in the case of ***A.K. Bhatnagar and Others v. Union of India and Others***² contending that this Court has categorically rejected the argument to consider the appointment of ad-hoc appointees without regularization.

9. Shri N. Subramaniyan, learned counsel appearing on behalf of the appellants supplemented the arguments advanced by Smt. Divan. He submitted that sub-rule (1) of Rule 2 of Tamil Nadu State and Subordinate Services Rules postulates that a person is said to be 'appointed to a service' when in accordance with the said Rules or in accordance with the Rules

¹ (1990) 2 SCC 715 : 1990 INSC 169

² (1991) 1 SCC 544 : 1990 INSC 344

applicable at the time, he discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof. It is submitted that the Technical Assistants neither commenced their duties on the posts borne on the cadre of such service nor commenced their probation. He further submitted that, in accordance with Rule 4 of the said Rules, all appointments to a service whether by direct recruitment or by recruitment by transfer or by promotion, can be made by the appointing authority from a list of approved candidates. It is submitted that, since the Technical Assistants are not approved candidates, they cannot be appointed to the post of Assistant Engineers. He further submitted that the temporary appointments in accordance with Rule 10 of the said Rules could be made only for a temporary period only when there is likelihood of delay in making the appointments in accordance with the said Rules. He further submitted that, in accordance with Rule 36A of the said Rules, the appointments by recruitment by transfer can be made only on the ground of merit and ability, seniority being considered only where merit and ability are approximately equal. He submitted that,

amendment to Rule 4A specifically prohibits promotion or appointment on the basis of executive orders seeking to modify the Rules. He therefore submitted that, on several grounds, the appointments of Technical Assistants are liable to be set aside.

10. It is further submitted that the appointments so made are contrary to the judgment of this Court in the case of **B. Thirumal v. Ananda Sivakumar and Others**³.

11. Per contra, Shri V. Prakash, learned Senior Counsel appearing on behalf of the respondents submitted that a perusal of G.O. Ms. No. 3037 dated 22nd December 1986 issued by the PWD would reveal that the pay-scales of Overseers and Technical Assistants are the same. It is submitted that the said G.O. Ms. No. 3037 specifically provides that 75% of the vacancies in the post of Junior Engineer (formerly Supervisor) shall be filled up by Engineering degree holders while remaining 25% vacancies shall be filled up by the candidates possessing Engineering Diploma or equivalent certificates. It further provides for promotion from Overseers, Head Draughtsman and Civil Draughtsman (Grad I, II and III). It is

³ (2014) 16 SCC 593 : 2013 INSC 787

submitted that, though the pay-scales of the Overseers are same as that of Technical Assistants and that of Draughtsman Grade III, inadvertently, the cadre of Technical Assistants was not mentioned therein. It is submitted that, in order to rectify this omission, the G.O. No. 1 came to be issued. It provided that, Junior Draughting Officers, Draughting Officers, Overseers and Technical Assistants in PWD, who have put in five years service would be eligible to be appointed as Assistant Engineers on transfer of service on acquiring B.E./A.M.I.E. qualification. Shri Prakash submitted that challenge to the said G.O. No. 1 was negated by the Madras High Court vide order dated 8th March 1991 in Writ Petition No. 3309 of 1991 in the case of ***R. Murali and Others v. The State of Tamil Nadu and Another***⁴. The High Court held that the executive instructions can be issued to fill up the gap till rules are framed under Article 309 of the Constitution of India.

12. Shri Prakash further submitted that, out of 36 Technical Assistants promoted as Assistant Engineers in the years 2006 and 2008, only a few would be remaining in service as most of them have been retired or would be retiring in near

⁴ Order dated 8th March 1991 in Writ Petition No. 3309 of 1991

future. He therefore submitted that this is a fit case wherein this Court should not exercise its jurisdiction under Article 136 of the Constitution of India.

13. Shri Senthil Jagadeesan, learned Senior Counsel appearing on behalf of the respondents, relying on the judgment of this Court in the case of ***Sant Ram Sharma v. State of Rajasthan and Others***⁵, submitted that where the rules are silent, the said gap can be filled up by the executive instructions. He further relies on the order of the Division Bench of the Madras High Court dated 6th November 2006 in Writ Petition No. 7523 of 1997 in the case of ***Association of Engineers' v. The Tamil Nadu Administrative Tribunal and Others***⁶.

14. We find that, on account of various facts as emerging from the record, it will not be necessary for us to go into the wider issues as canvassed by the parties.

15. G.O. No. 1 which includes Technical Assistants for being appointed as the Assistant Engineers on transfer of service on acquiring B.E./A.M.I.E. qualification, came to be

⁵ 1967 SCC OnLine SC 16 : 1967 INSC 167

⁶ Order dated 6th November 2006 in Writ Petition No. 7523 of 1997

challenged by Engineering Graduates who had obtained the degree by joining regular courses, before the High Court of Judicature at Madras. The same was negated by the Madras High Court by order dated 8th March 1991. It is further pertinent to note that the Association of Engineers, who is one of the lead appellants herein, had filed a petition challenging the order dated 17th April 1997 passed by the Tribunal in O.A. No. 3348 of 1994.

16. The said O.A No. 3348 of 1994 was filed challenging the Advertisement No.9/94 issued by the TNPSC for the post of Assistant Engineer and for consequentially considering the claim of Junior Draughting Officers, Draughting Officers and Technical Assistants for appointment as Assistant Engineers on the basis of G.O. Ms. Nos. 1 of 1990 and 88 of 1991. The Tribunal, vide order dated 17th April 1997, allowed the applications filed by the Junior Draughting Officers and Draughting Officers, however, dismissed the applications filed by Technical Assistants. The Tribunal observed that the Technical Assistants are not part of feeder category from which recruitment by transfer can be made for the post of Assistant Engineers. The order of the learned Tribunal was challenged

by the appellants herein by filing a writ petition being Writ Petition No. 7523 of 1997 titled ***Association of Engineers' v. The Tamil Nadu Administrative Tribunal and Others*** (supra) before the Madras High Court. The Division Bench of the said High Court rejected the claim of the appellants herein and upheld the order of the Tribunal. It will be relevant to refer to para (13) of the said order, which reads thus:

“13. It is also brought to our notice that the Special Rules were amended by G.O.Ms.No.1745 dated 10.10.1972, which were subsequently modified by G.O.Ms.No.1356 dated 02.08.1980 and on the basis of representation, the Government reconsidered those executive orders and issued G.O.Ms.No.1 PWD dated 02.01.1990, **stating that with effect from the date of the said order, Junior Drafting Officer, Drafting Officer, Overseers and Technical Assistants, who have put in five years of service will be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.E.E. degree qualification. We are satisfied that Rule 5 of the Special Rules in no way affects the implementation of the decision of the Tribunal in view of Rule 2(a)(5) of the Special Rules. As observed earlier, it is our duty to mention that in order to implement the orders passed in G.O.Ms.No.1 PWD dated 02.01.1990, the Government have conducted meeting with various Engineering Associations, including the petitioner Association on 10.12.1996 and 03.06.1997 and took a decision to maintain 3:1 ratio between the direct recruitment and recruitment by transfer. As rightly pointed out, members of the petitioner Association are being considered for the number of vacancies apportioned as per the ratio out of total estimated vacancies. We**

have already referred to the order of this Court dated 08.03.1991 in W.P.No.3309 of 1991, upholding the G.O.Ms.No.1 PWD dated 02.01.1990. It is also not in dispute that executive instructions can be issued to fill up the gap till necessary Rules are framed under Article 309 of the Constitution. All these and other materials have been correctly considered by the Tribunal; and we are in agreement with the conclusion arrived at by it.”

17. It can thus clearly be seen that the Division Bench of the Madras High Court held that G.O. No. 1 provided that from the date of the said order, Junior Drafting Officer, Drafting Officer, Overseers and Technical Assistants, who have put in five years of service will be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.I.E. degree qualification.

18. It is sought to be urged that, before the Tribunal, the Technical Assistants had failed and that they had not challenged the said order of the Tribunal.

19. However, we find that the Division Bench of the Madras High Court clearly referred to G.O. No. 1 and approved it. It is further to be noted that the appeal challenging the aforesaid order of the Madras High Court dated 6th November 2006 has also been dismissed by this Court vide order dated 14th

September 2017 in the case of ***Association of Engineers v. Government of Tamil Nadu and Others***⁷.

20. Insofar as the issue in the case of ***B. Thirumal*** (supra) is concerned, the same would not be applicable to the facts of the present case. In the said case, the appellant was working as a Junior Engineer (Electrical). He was appointed to the said post by direct recruitment. Aggrieved by the prevalent practice of Assistant Engineers (Electrical) being empanelled for promotion to the post of Assistant Executive Engineer (Electrical) only against 25% quota apportioned for members of the Subordinate Engineering Service, he had filed a representation. The said representation came to be rejected. It was sought to be contended in the said case that an Assistant Engineer promoted from Junior Engineer cadre and having obtained a degree in engineering was also entitled to compete with the Assistant Engineers directly recruited for 75% of the quota earmarked for the direct recruits. The Court found that the degree holder Junior Engineers continue to be members of the Subordinate Engineering Service even after they are redesignated as Assistant Engineers upon getting a degree

⁷ **2017 INSC 906**

qualification. Upon their getting degree qualification, they could be considered only against the 25% quota apportioned for the Subordinate Service and not against 75% apportioned for the State Service members directly recruited to that service or appointed by transfer in terms of the Rules.

21. Such is not the situation here. The Technical Assistants are not claiming against the 75% posts available for direct recruits. Their claim is only towards 25% posts which are required to be filled in from Junior Draughting Officers, Overseers and Technical Assistants who have put five years service and have acquired B.E./A.M.I.E. qualification. It is thus clear that the Technical Assistants are, in no way, encroaching upon the quota apportioned for directly recruited Assistant Engineers. Even if their contention is accepted that once they are brought in the cadre of Assistant Engineers, they would lose their birthmark, in view of the judgment of this Court in the case of **B. Thirumal** (supra), for the higher post, and there will be no competition amongst direct recruits and promotees. Whereas the direct recruits would be entitled to get promotional posts from 75% quota apportioned for them, the Technical Assistants along with other placed amongst them

would be entitled to promotional posts only from 25% posts apportioned for them.

22. It is further to be noted that the contention of the appellants that, the services of the Technical Assistants are not regularized, is also contrary to record. It will be relevant to refer to Clause 4 of G.O. Ms. No. 155 dated 13th August 2015, issued by the Government of Tamil Nadu, which reads thus:

“**4.** In accordance with the powers delegated under the general rule 48 of the Tamil Nadu State and Subordinate Services Rules Volume II, the Governor of Tamil Nadu orders relaxing the rule 2(a) and rule (5) of the Tamil Nadu Engineering Service (Category-1, Public Works) the so as to regularize the 72 Assistant Engineers (Civil) as per the Annexure of this order who were appointed retrospectively from the category of Junior Engineers and promoted from the category of Technical Assistants who acquired B.E., Civil Degree before promotion as Junior Engineers so as to enable them for regularization of the services in the category of Assistant Engineers (Civil). Further, the Government also order exempting them from the purview of the G.O.(Ms).No. 1, Public Works Department dated 02.01.1990 for regularization of the personnel stated in the Annexure to this order.”

23. It is thus clear that the contention of the appellants that the services of the Technical Assistants have not been regularized is contrary to record. In any case, the State Government, in its affidavit dated 10th March 2023, has

categorically reaffirmed this position.

24. It is further relevant to note the relevant extract from the Proceedings No. S2(2)/2918/2004-24 dated 27th February 2006 conducted before the Engineer-in-Chief, W.R.D and Chief Engineer (General), PWD, which reads thus:

“During the year from 1999-2000 to 2001-2002 the number of 369 vacancies have been apportioned to the post of Assistant Engineer to be filled up by direct recruitment and the number of 122 vacancies have been apportioned to the post Asst. Engineer to be filled up by recruitment by transfer.

Out of 122 vacancies apportioned to the post of Assistant Engineer to be filled up by recruitment by transfer, only 29 vacancies have been filled up so far, from the Junior Draughting Officers, Draughting Officers and Overseers. The remaining number of 93 vacancies are still vacant due to dearth of eligible candidates.

Under these circumstances and also pursuant to the directions of the Government, PWD issued in the letter fourth cited the personnels in the category of Technical Assistant, who possessed B.E/A.M.I.E qualification in civil Engineering and rendered 5 years of service, furnished to this proceedings are appointed as Asst. Engineer(civil) in the time scale of pay of Rs.65-00-200-11, 100 on temporary basis under rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service, subject to the outcome of W.P.No.7523/97 pending in the High Court of Madras in this matter.”

25. It can thus clearly be seen that the State Government was required to take a decision to appoint Technical Assistants

as Assistant Engineers on temporary basis as it was found that out of 122 vacancies apportioned to the post of Assistant Engineer to be filled up by recruitment by transfer, only 29 vacancies had been filled so far. It appears that the attempt of the appellant association is to grab all the posts available even those apportioned for the candidates promoted from subordinate services. In our view, the said attitude is totally unequitable.

26. In any case, any interference at this stage is likely to undo the settled position which has been prevalent almost for a period of last 18 years. As already held hereinabove, the continuation of the appellants as Assistant Engineers would not amount to encroaching upon the 75% posts apportioned for the members of the appellants' association. We may gainfully refer to the following observations of this Court in the case of *Narpat Singh and Others v. Jaipur Development Authority and Another*⁸:

“**10.**The exercise of jurisdiction conferred by Article 136 of the Constitution on this Court is discretionary. It does not confer a right to appeal on a party to litigation; it only confers a discretionary power of widest amplitude on this Court to be exercised for satisfying the demands of justice. On

⁸ (2002) 4 SCC 666 : 2002 INSC 222

one hand, it is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations or situations occasioning gross failure of justice; on the other hand, it is an overriding power whereunder the Court may generously step in to impart justice and remedy injustice. The facts and circumstances of this case as have already been set out do not inspire the conscience of this Court to act in the aid of the appellants.”

27. Following the aforesaid, we find that equity demands no interference to be warranted in the impugned judgment in the facts and circumstances of the case.

28. In the result, the appeals are dismissed.

29. Pending application(s), if any, shall stand disposed of.

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30. Learned counsel for the parties agree that the writ petitions being WP No. 3617 of 2017 and 35161 of 2019 filed before the Madras High Court were decided by it without even adverting to the facts and the rival submissions and they therefore made a request for remanding the matter to the High Court for consideration afresh.

31. In the result, the appeals are allowed. The impugned orders dated 3rd August 2022 in WP No. 3617 of 2017 and dated 17th March 2022 in WP No. 35161 of 2019 are quashed

and set aside and the matters are remanded back to the Madras High Court for consideration afresh in accordance with law.

32. Pending application(s), if any, shall stand disposed of.

No costs.

.....**J.**
[B.R. GAVAI]

.....**J.**
[SANDEEP MEHTA]

NEW DELHI;
APRIL 16, 2024.