

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2015

<i>Date of Reserving the Judgment</i>	<i>Date of Pronouncing the Judgment</i>
02.07.2015	28.07.2015

Coram

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE Mrs.JUSTICE **S.VIMALA**

Review Application No.126 of 2010, W.A.Nos.3248 & 3278 of 2004,
W.P.Nos.30609 & 30610 of 2003, W.P.No.15886 of 2004, W.P.No.27698
to 27700 of 2010, W.P.No.27823 of 2010, W.P.No.16142 of 2004,
W.P.No.18617 of 2010 and W.P.No.18618 of 2010, W.P.No.19849 &
19850 of 2004, W.P.No.27730 of 2010, W.P.No.8556 of 2011 and
Connected M.Ps.,

P.S.Jegannathan, M.E.,
Assistant Executive Engineer,
(Agricultural Engineering),
Office of Asst., Executive Engineer,
Soil Conservation Scheme,
Erode.

... Petitioner

Vs.

1.State of Tamilnadu, Rep., by its
Secretary to Government,
Agricultural Department,
Fort St., George,
Chennai – 600 009.

2.The Chief Engineer,
Agricultural Engineering,
Chennai – 600 035.

... Respondents

Petition filed Under Order 47, Rule 1 & 2 r/w Section 114 CPC to review the order dated 12.07.2010, passed by this Court in W.A.No.237 of 2010.

Mr.Vijayanarayan Senior Counsel for M/s.APR Associates for Petitioner in R.A.No.126 of 2010 in W.A.No.237 of 2010, W.P.No.27698 to W.P.No.27700 of 2010, W.P.No.27823 of 2010, W.P.No.18617, 18618, & W.P.No.27730 of 2010

Mr.R.Singaravelan for Petitioner in W.P.No.15886 of 2004 and
W.P.No.16142 of 2004

M/s.S.T.P.Kuil Mozhi for Mr.Veerakathiravan for R1 in W.A.Nos.3248 & 3278 of 2004 R1 in W.P.No.19849 & 19850 of 2004 and Petitioner in W.P.No.8556 of 2011

Mr.A.L.Somayajee, A.G., assisted by Mr.S.T.S.Murthy G.P for Respondents 1 & 2 in R.A.No.126 of 2010 in W.A.No.237 of 2010 Respondents 2&3 in W.A.Nos.3248 & 3278 of 2004 and Petitioner in W.P.Nos.30609 & 30610 of 2003, Respondents 1 & 2 in W.P.No.15886 of 2004 and W.P.No.27698 to 27700 of 2010 and W.P.No.27823 of 2010, W.P.No.16142 of 2004 W.P.Nos.18617, 18618 & 27730 of 2010, W.P.No.8556/2011 Respondents 2 & 3 in W.P.No.19849, 19850 of 2004.

Mr.C.Selvaraju Senior counsel for Mr.I.C.Vasudevan for R6 in W.P.No.27698 to 27700 & 27730 of 2010 and Respondents 3 to 5 in W.P.No.8556 of 2011

Mr.K.Venkata Ramani Senior Counsel for Mr.M.Muthappan for respondents 3 to 5 in W.P.No.27698 to 27700 & 27730 of 2010

Mr.N.Krishnakumar for Appellant in W.A.No.3248 of 2004 & W.A.No.3278 of 2004 and Petitioner in W.P.No.19849 of 2004 and 19850 of 2004 and respondents 3 & 4 in W.P.No.16142 of 2004

Mr.N.Subramaniyan for R5 in W.A.No.3248 of 2014

Mr.M.Ravi for R4 in W.P.No.3248 of 2004

Mr.V.Bharathidasan for R1 in W.P.Nos.30609 & 30610 of 2003

Mr.R.Nellaiyappan for R7 in W.P.No.27699, 27700 & 27730 of 2010

Mrs.Malavizhi Udayakumar for R5 & R6 in W.P.No.16142 of 2004

Ms.C.N.G.Niraimathi for R4 in W.P.No.19849 & 19850 of 2004 and for R3 in W.P.No.13609 & 13610 of 2003

COMMON JUDGMENT

T.S.SIVAGNANAM, J

The issue involved in these batch of cases, is with regard to the *inter se* seniority in the category of Assistant Engineers (Agricultural Engineering) Department. The Review Applicant and other petitioners claim refixation of their seniority in the said category by taking into account their temporary service.

2. The legal battle which commenced in 1998, though culminated in 2010, after the First Bench of this Court dismissed the

Writ Appeal in W.A.No.237 of 2010, once again the matter is sought to be reopened by way of this Review Application along with which other Writ Petitions have also been tagged along with and heard together. The net result of this prolonged litigation is a stalemate in the Department as there are 38 vacancies in the post of Assistant Engineer/Junior Engineer, 66 vacancies in the category of Assistant Executive Engineer (Agricultural Engineering), 17 vacancies in the category of Executive Engineer (Agricultural Engineering), 7 vacancies in the category of Superintending Engineer (Agricultural Engineering) and 2 vacancies in the category of Chief Engineer (Agricultural Engineering).

3. We have elaborately heard the submissions of the learned Senior Counsel appearing for the Review Applicant, the other learned counsels appearing for the petitioners, who plead a similar case as that of the Review Applicant and the private respondents and the learned Senior counsels and the learned counsels for the counter petitioners, the learned Advocate General appearing for the State and the learned Standing counsel appearing for the Tamil Nadu Public Service Commission (TNPSC).

4. Though the petitioners/counter petitioners as well as the State have filed Writ Petitions/Writ Appeals, if a decision is taken in the Review Application, the same would cover the entire batch of cases. This position is agreed to by all the learned counsels appearing for the parties. Therefore, we proceed to take up for consideration the Review Application at the first instance and proceed to discuss all the contentions, which were advanced by the learned counsels appearing for the parties.

5. The Review Application has been filed by Mr.P.S.Jaganathan, who was working as an Assistant Engineer in the office of the Assistant Executive Engineer (Agricultural Department), Soil Conservation Scheme. The applicant seeks for review of the order passed by the First Bench in W.A.No.237 of 2010, dated 12.07.2010, in and by which the appeal filed by the Review Applicant against the order in W.P.No.14086 of 2006, dated 07.10.2009, was dismissed. The Review Applicant filed O.A.No.6928 of 1998, before the Tamil Nadu Administrative Tribunal (Tribunal) to set aside the order dated 01.07.1998, passed by the Chief Engineer (Agricultural Engineering), by which the Review Applicant's claim for refixation of seniority in the cadre of Assistant Engineer (Agricultural Engineering) including the

period of temporary service, was rejected. After abolition of the Tribunal, the said Original Application stood transferred to this Court and re-numbered as W.P.No.14086 of 2006 and the learned Single Judge dismissed the Writ Petition by order dated 07.10.2009, which was confirmed by the First Bench in W.A.No.237 of 2010, dated 12.07.2010. The Review Applicant was initially appointed as Assistant Engineer in the department of Agricultural Engineering on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules (General Rules) and he joined duty on 16.11.1979. The applicant claimed that though his appointment was stated to be temporary, it having been made in a substantive vacancy and he having uninterruptedly served in the post, after having been regularised in the said post, the seniority should date back to the date of the first appointment on temporary basis.

6. It is not in dispute that between 1972 and 1982, the TNPSC did not conduct any direct recruitment to the post of Assistant Engineers (Agricultural Engineering) and the appointment of the Review Applicant and similarly placed persons on temporary basis was during the said period. The Government of Tamil Nadu vide G.O.M.S.No.424, dated 15.03.1978, under which the Government considered the question of regularisation of the services of 80

temporary Agricultural Engineering Supervisors/Junior Engineers in the Agricultural Department and decided that all of them who possess the educational qualification prescribed under the Rules and have put in a service of not less than 4 years and who are on duty on the date of the TNPSC advertises for the post of Agricultural Engineering supervisor may be permitted to appear for a special competitive examination to be held by the commission exclusively for the said persons. It was further ordered that the services of all those who come out successful in the special competitive examination will be regularised from the date of selection or from any subsequent date as may be fixed by Director of Agricultural, however they shall not be eligible for retrospective regularisation. In the said order it was further mentioned that there would be no further special recruitment and those, who do not come out successful in the said special recruitment, were liable to be discharged from service forthwith. Subsequently by another Government Order in G.O.Ms.No.1230, dated 28.06.1983, the Government took note of the report of the Chief Engineer (Agricultural Engineering), dated 24.04.1982, stating that only 94 Assistant Engineers/Junior Engineers were eligible for their selection and the remaining about 150 persons though they have put in 1 to 6 years of service were not eligible as on 11.10.1979, the date

of notification of TNPSC. Therefore, the Chief Engineer suggested that all temporary Assistant Engineers/Junior Engineers, who were in service as on 31.12.1981, may be permitted to appear for another special selection by TNPSC so that their temporary services could be regularised early. The Government examined the suggestion of the Chief Engineer (Agricultural Engineering) and directed special selection by direct recruitment held by the TNPSC so that the temporary services in the post of Junior Engineers in the Tamil Nadu Agricultural Subordinate Services and Assistant Engineers in the Tamil Nadu Agricultural Engineering services may be regularised. Such of those Junior Engineers/Assistant Engineers holding the post on 31.12.1981, and possessing the educational qualification prescribed under the Rules were permitted to appear in the selection making it clear they shall not be eligible for retrospective regularisation.

7. The Tamil Nadu Public Service Commission by memorandum dated 03.09.1984, called for applications for such selection to be made based on scheduled on Oral Test 14.09.1984. Thereafter a select list was published on 02.11.1984. Subsequently, the Chief Engineer (Agricultural Engineering), by proceedings dated 07.09.1985, issued orders regularising the services of temporary Assistant Engineers, who were selected by TNPSC from the date of their

temporary appointment under Rule 23(a)(1) of the General Rules. In the said order, it was specifically stated that any claim for revision of seniority as fixed by the TNPSC would not be entertained. Subsequently, on 06.06.1995 the seniority list of Assistant Engineers as on 01.01.1986, was published and liberty was granted to make representation, if there was any grievance in the said seniority list. One Mr.P.S.Jaganathan filed Original Application in O.A.No.3175 of 1997, stating that his representation requesting for revision of seniority based on the date of initial temporary appointment was kept pending and sought for appropriate directions. The Tamil Nadu Administrative Tribunal by order dated 09.05.1997, directed the Government to consider the representation pursuant to which the same was rejected. The said Mr.Jaganathan challenged the order of rejection by filing O.A.No.6928 of 1998, before the Tribunal. After the abolition of the Tribunal, the said Original Application was transferred to this Court and renumbered as W.P.No.14086 of 2006. The said Writ Petition was dismissed by order dated 07.10.2009, against which the petitioner Mr.Jaganathan preferred Writ Appeal in W.A.No.237 of 2010, which was dismissed by the First Bench by judgment dated 12.07.2010. The appellant therein has now preferred a Review Application in R.A.No.126 of 2010, which is the lead case in this batch.

8. Parallely one Mr.R.Raja filed two Original Applications before the Tribunal in O.A.No.6495 of 1997 and 3822 of 2000, wherein he sought for a direction to promote him as Assistant Executive Engineer by filing the seniority list, dated 19.07.1983, on the basis of the date of regularisation and to quash the order passed by the Government, dated 02.07.1999 and place him in the appropriate place in the seniority list. The Tribunal by common order dated 27.03.2002, allowed the Original Applications and held that the applicant therein (R.Raja), was entitled to have his seniority fixed w.e.f., 26.11.1979, and his name should be added in the panel dated 31.03.1997, as well as in the panel dated 02.07.1999 and to be promoted as Assistant Executive Engineer as per the seniority list dated 19.07.1983. The Government being aggrieved by such order has filed W.P.Nos.30609 and 30610 of 2003, which is also tagged along with the present batch of cases.

9. At the relevant point of time another Original Application in O.A.No.3823 of 1990, was pending before the Tribunal filed by Mr.Albert and eight others. Among nine applicants therein one of the applicant is Mr.P.S.Jaganathan, who was also the applicant in O.A.No.6928 of 1998, which was transferred and renumbered as

W.P.No.14086 of 2006, which was dismissed on 07.10.2009 and confirmed by the Division Bench by order dated 12.07.2010 against which Review Application in R.A.No.126 of 2010, has been filed. In O.A.No.3823 of 1990 prayer was to set aside the order passed by the Chief Engineer, Tamil Nadu Agricultural Engineering Service, dated 05.07.1990 and to direct the respondents therein to prepare and publish the seniority list of Assistant Engineers in the Tamil Nadu Agricultural Engineering service taking into account their entire period of service from the date of regularisation. The Tribunal by order dated 28.08.2002, held that the seniority has to be reckoned with the ranking given by the TNPSC and therefore, held that the applicants cannot ask for higher ranking merely on the ground that they were working temporarily prior to selection by TNPSC and their seniority has to be considered only in accordance with the ranking assigned by the Service Commission and accordingly, the Original Application was dismissed. Challenging the said order, the applicants have filed W.P.No.16142 of 2004, which is also tagged along with the present batch of cases.

10. Yet another application filed by Mr.R.Rangarajan which was initially filed before this Court as W.P.No.7720 of 1999, stood

transferred to the Tribunal and re-numbered as T.A.No.140 of 1999, wherein a similar relief was sought for as that of Mr.Albert and 8 others, was dismissed by the Tribunal by order dated 08.03.2004. Challenging the said order, the said applicant Mr.R.Rangarajan filed W.P.No.44332 of 2006, which was dismissed as withdrawn by order dated 20.08.2009. Whiles, Mr.R.Raja, the applicant in O.A.No.6495 of 1997 and O.A.No.3822 of 2000, which was allowed by order dated 27.03.2002, filed W.P.No.17996 of 2004, to implement the order passed by the Tribunal dated 27.03.2002 which was disposed of by order dated 29.06.2004, by directing the respondents therein to implement the order in accordance with the terms contained in the order of the Tribunal on or before 30.08.2004. Challenging the said direction, W.A.Nos.3248 & 3278 of 2004 has been filed and tagged along with this batch. During 2010, the petitioner R.Rangarajan, who had earlier withdrawn his Writ Petition in W.P.No.44332 of 2006, filed a Miscellaneous Petition in CMP.No.2 of 2010, to restore the Writ Petition, such prayer was rejected by order dated 11.06.2010. Thus, so far as the case of the Rangarajan is concerned his plea stood negatived. Thereafter, the said Rangarajan filed two Writ Petitions before the Madurai Bench in W.P.(MD).No.8877 of 2010 and W.P.(MD).No.12515 of 2011, wherein he sought for almost an identical

relief as in the earlier case to promote him by taking into account the date of the original appointment and to quash G.O.Ms.No.318, dated 30.09.2011. The said Writ Petitions were dismissed by order dated 03.08.2012. Thereafter, six other persons, Mr.S.B.Mathivanan and five others filed W.P.No.28700 to 28705 of 2012 for Writ of Mandamus to direct the Chief Engineer (Agricultural Engineering) to forward the finalised panel for the year 2011- 12 for promotion to the post of Assistant Executive Engineer (Agricultural Engineering) by including them in the approved panel by taking note of their representation dated 16.08.2012. This Court while disposing of the Writ Petition by order dated 18.10.2012, did not grant the relief sought for, but directed the Chief Engineer to consider the representation and forward the same, if there is no other legal impediment. One of the petitioner therein Mr.S.B.Mathivanan filed Contempt Petition in Cont.P.No.1264 of 2013, alleging disobedience of the order dated 18.10.2012, but undertook to withdraw the Contempt Petition, since W.A.No.1722 of 2013, has been filed against the order in the Writ Petition, dated 18.10.2012 and accordingly, the Contempt Petition was closed by order dated 09.12.2013.

11. As noticed above, the issue as to whether the seniority has to be refixed in the post of Assistant Engineer (Agricultural

Engineering) with effect from the date of initial appointment was held against the petitioners in W.P.No.14086 of 2006, dated 07.10.2009. While dismissing the Writ Petition, it was pointed out that once the seniority is assigned by the TNPSC, no further request for any alteration could be entertained in terms of the order dated 07.09.1985 and in paragraph 3 of the said order, it has been stated that in terms of Rule 23(a)(ii) of the General Rules, they will be entitled for arrears of pay fixation.

12. It was further pointed out that the petitioners having accepted such an appointment, it is not open to seek for a revision of seniority. By placing reliance on the decision of the Hon'ble Supreme Court in the case of ***M.P.Palanisamy and Ors., vs. A.Krishnan and Ors.,*** reported in ***(2009) 6 SCC 428***, wherein it was held that temporary appointments under Rule 10(a)(i)(1) of the General Rules, are appointments made otherwise than in accordance with the procedure prescribed under the Rules and after being temporarily appointed, when they were later selected along with others for direct recruitment by the Public Service Commission, they are not entitled to account their temporary service for seniority. It was further observed that services rendered in temporary post is available either for earning

increments or for commencement of probation, which is clear from Rule 23(a) of the General Rules.

13. That apart, reference was made to the decision of the Hon'ble Supreme Court in the case of ***K.Madalaimuthu vs. State of Tamil Nadu*** reported in ***(2006) 6 SCC 558***, wherein the Hon'ble Supreme Court again reiterated that the principles of fixation of seniority in the case of persons who are temporarily appointed under Rule 10(a)(i)(1) of the General Rules. Thus, in the light of the binding precedent laid down by the Hon'ble Supreme Court, this Court held that there is no error in the order dated 01.04.1998. The petitioners in the said Writ Petition preferred an appeal before the Division Bench in W.A.No.237 of 2010. The Division Bench dismissed the Writ Appeal by judgment dated 12.07.2010. Thus, the issues stood finally concluded on and after 12.07.2010 and consequently, the Writ Petitions filed by the petitioners seeking refixation of seniority taking into consideration the date of initial engagement on temporary basis have to be necessarily dismissed. Consequently the Writ Petitions filed by the Government against the orders in O.A.No.6495 of 1997 and O.A.No.3822 of 2000 in W.P.Nos.30609 & 30610 of 2010 and W.A.No.1725 of 2013, have to be allowed. Further consequence

would be Writ Petition in W.P.No.16142 of 2004 filed against O.A.No.3828 of 1990 and W.P.No.44332 of 2006 filed against T.A.No.140 of 1999, have also to be dismissed. The issue which stood concluded by the decision of the Division Bench in W.A.No.237 of 2010, is sought to be reopened by filing Review Application No.126 of 2010. Therefore, this Court heard the learned Senior counsel appearing for the Review Applicant and the learned counsels who are appearing in the Writ Petitions challenging orders of Tribunal which dismissed their applications and the counter petitioners, who seek to sustain the order passed by the Division Bench in W.A.No.237 of 2010 and the learned Advocate General appearing for the State as well as the learned Standing counsel appearing for the TNPSC.

14. The learned counsels appearing for the parties made elaborate submissions referring to the factual averments set out above and the learned Standing counsel appearing for TNPSC placed the original files justifying their stand that there was a proper selection process conducted by the TNPSC and the rank assigned to the candidates is in order.

15. The issues which falls for consideration in these batch of cases could be summarised as follows:-

- (i) Whether the date of initial appointment on temporary basis should be reckoned for the purpose of fixing *inter se* seniority?
- (ii) Whether the TNPSC conducted any selection process and selected candidates assessing their merit?
- (iii) Assuming the TNPSC conducted a selection, whether such selection by an alleged oral test alone is valid?
- (iv) Whether the merit list published by TNPSC in its bulletin is solely based on the communal roster and whether the same is valid?
- (viii) Whether rank assigned by TNPSC is without following any rule of law or any settled legal principle?

16. The above are broadly the issues, which have to be considered in these batch of cases and as all are interconnected, we propose to deal with all the above issues collectively.

17. We may at this stage take note of the background under which the Agricultural Engineering Department was established. The said department was part of the department of Agricultural and was bifurcated with effect from 01.02.1981. Special Rules were framed called the Special Rules for the Tamil Nadu Agricultural Engineering

Service vide G.O.Ms.No.1987, dated 28.08.1981, w.e.f., 01.02.1981. Under the Special Rules, the post of Assistant Engineer (Agricultural Engineering) is one of the feeder categories to the post of Assistant Executive Engineer (Agricultural Engineering). The qualification prescribed for recruitment of the said post is a B.E.,(Agriculture) or B.Tech (Agricultural Engineering), B.E., (Mech) or B.E., (Civil). The Rule further provides that the candidates possessing the qualification with B.Tech Agricultural Engineering, B.E., (Mech) or B.E., (Civil) shall be considered only if no candidate with B.E.,(Agriculture) is available. The method of appointment to the post of Assistant Executive Engineer which is a class IV post is either by direct recruitment; by promotion from among the holders of the post in class V and III by recruitment by transfer among the holders of the post of Junior Engineer (Agricultural Engineering) in the Tamil Nadu Agricultural Subordinate Service. The first notification by TNPSC for open selection for direct recruitment to the post of Assistant Engineer (Agricultural Engineering) was issued on 27.08.1982. It is stated that 179 candidates consisting of fresh recruits as well as the temporary employees already working in the Department were recruited and the Chief Engineer by proceedings dated 07.09.1985, intimated the selected candidates that though their temporary service was

regularised from the date of initial appointment, it was for the purpose of Rule 23(a)(ii) of the General Rules and the seniority fixed as per the ranking assigned by the TNPSC cannot be altered and no claim for correction of seniority would be entertained.

18. It has to be pointed out that there has been no challenge to the proceedings dated 07.09.1985. Thus for all purposes the said order continuous to hold the field and this alone is sufficient to non-suit the Review Petitioners/Petitioners in their claim for refixation of seniority. However, a plea is raised stating that they need to challenge the proceedings dated 07.09.1985, did not arise at the relevant point of time and to support such contention, the reply filed by the Government in O.A.No.2256 of 1991, was referred to. Reference was made to paragraph 9 of the reply affidavit stating that the list communicated vide letter dated 12.04.1990, was found to be incorrect and therefore, the same was cancelled vide proceedings dated 05.07.1990, and it is only thereafter, the cause of action to challenge the ranking assigned by TNPSC arose. This contention is wholly untenable for the simple reason that the proceedings issued by the Chief Engineer, dated 07.09.1985, stood unaltered yet a letter dated 12.04.1990, was issued erroneously and this erroneous list

which was cancelled on 05.07.1990, and it does not mean that a fresh list has to be drawn up, when the list published on 07.09.1985, stood unaltered. Therefore, this is one more ground to non-suit the petitioners as there was no challenge to the proceedings dated 07.09.1985, at any point of time and the first attempt to alter the *inter se* seniority is when an Original Application was filed before the Tribunal in O.A.No.6495 of 1997.

19. It has to be pointed out in the said Original Application, none of the candidates, who are likely to be aggrieved, were made parties and TNPSC was also not a party respondent. In the said Original Application, the prayer sought for was to direct the applicants to be promoted as Assistant Executive Engineer by reckoning the date of regularisation. The other Original Application in O.A.No.3822 of 2000, which was tagged along with other Original Applications was challenging the proceedings of the Government, dated 02.07.1999. In the absence of persons who are likely to be aggrieved being made a party respondents in the Original Application, any order obtained by those applicants would not be binding on the persons who were not parties to the Original Applications. The Tribunal allowed the Original Application by order dated 27.03.2002, challenging which, the Government has preferred W.P.Nos.30609 & 30610 of 2008.

20. The Tribunal while allowing the Original Applications by order dated 27.03.2002, opined that there is no evidence to show that the petitioners' service was regularised only after he was selected in the Service Commission Test during 1982-1984 and on the other hand there is ample evidence to show that how his service was regularised and has been given Selection Grade from 26.11.1989 after having admitted the regularisation w.e.f., 26.11.1979. Therefore, it was held that it is not open to the respondents to give a go-by to the same. Further, the Tribunal observed that even according to the respondents, the Service Commission's seniority has not been followed with reference to the Junior Engineers (Agricultural Engineering) who acquired part time B.E., degree. Consequently, the Tribunal held that the petitioners were entitled to have their re-fixation of seniority w.e.f., 26.11.1979 and for consequential relief of inclusion in the panel, dated 31.03.1997. Thus what weighed with the Tribunal was that there was no evidence to show that the petitioner was regularised only after he was selected in the Service Commission Test during 1982-84. The learned counsel for the petitioners seek to contend that there was no test at all and the Service Commission has acted at its own whims and fancies.

21. The other contention being that even assuming a selection was conducted, oral test could not have been a sole basis for assessing merit. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Praveen Singh vs. State of Punjab & Ors.***, reported in **(2000) 8 SCC 633**, and ***P. Mohanan Pillai vs. State of Kerala***, **(2007) 9 SCC 497**, and the decision of the Division Bench of this Court in the case of ***V.Arumugam vs. R.Kalaiarasan*** reported in **2010-8-MLJ-142**. Further reliance was placed on the decision in the case of ***Inder Parkash Gupta vs. State of J&K***, reported in **(2004) 6 SCC 786**, to state that the mark allotted for viva-voce test may be within a reasonable limit and viva-voce test cannot be a sole basis for assessment of merit.

22. From the above submissions, two points emerge for consideration namely whether there was a selection by the TNPSC for assessing the comparative merit of the candidates and if such selection was conducted whether viva-voce test could have been the sole basis for assessing merit. In order to satisfy ourselves we directed the learned counsel for the TNPSC to produce the entire original files relating to the selection and accordingly, the same were

placed before us. On a careful scrutiny of the files, we find that the TNPSC constituted a three member committee, who interviewed all the candidates and marks have been assigned to each of the candidates/petitioners and counter petitioners.

23. The learned counsel appearing for the Petitioners in W.P.No.15886 of 2004, now seeks to contend that there is no breakup details of the manner of assessment of each candidate and how the marks were awarded and merely because marks have been assigned and the file produced is on old paper cannot itself justify the conduct of the TNPSC.

24. We may point out at this juncture such plea was never raised at any earlier point of time and in fact before the Tribunal there was no such plea and the entire case of the petitioners was on the basis that their services having been regularised from the date of initial appointment on temporary basis, the said date should be reckoned for all purposes including seniority. In the absence of such plea having not been raised at any earlier point of time, we cannot countenance the submission of the learned counsel appearing for the petitioners for disbelieving the stand taken by the TNPSC supported by

records. We find from the records that the viva-voce was conducted on several dates and three committees were constituted consisting of experts, Senior officials of the Department and all candidates including the petitioners participated in the same without any demur. Therefore, the plea raised by the learned counsel for the petitioner deserves to be outrightly rejected. On perusal of the files, we are fully satisfied that there was a process of assessment and the candidates including the petitioners participated in the assessment process and it will be too late for them now say, there was no assessment at all, more particularly, when the assessment was done by the experts for 16 days. Furthermore, the petitioners never questioned the selection process at any earlier point of time and this plea is sought to be canvassed for the first time before this Court in a Writ Petition, which obviously they could not have canvassed, but for the Review Application in R.A.No.126 of 2010.

25. Copy of the notification issued by the TNPSC, inviting applications for appointment of 136 Assistant Engineer (Agricultural Engineering) posts, shows that the method of assessment was by oral interview. It is seen that though the notification was issued for 136 vacancies recruitment was conducted for 227 vacancies and selection

was finalised for 179 vacancies and out of the 179 candidates who have been selected, only 26 candidates are before this Court. In the background of these facts, it has to be seen as to whether the method of assessment of merit by conducting an oral test was sufficient, when there was no specific action in the notification stating that the method of assessment will be by written examination and oral interview. To find an answer to this issue useful reference may be made to the decision of the Hon'ble Supreme Court in the case of **Kiran Gupta vs. State of U.P.**, reported in **CDJ 2000 SC 463**. One of the issues, which fell for consideration in the said case, is as to whether the selection could have been solely based on the oral interview. The Hon'ble Supreme Court after taking into consideration several decisions including the decision in the case of **Ashok Kumar Jadav and Ors., vs. State of Haryana and Ors.**, reported in **(1985) 4 SCC 417**, held that where overall interview alone has been the criteria for selection/appointment/ promotion to any post in senior positions, the question of higher percentage of marks for interview does not arise and rejected the contention that selection on the basis of viva-voce alone was arbitrary. Hence, the decisions, relied on by the petitioners, are clearly distinguishable on facts as in the case on hand the notified method of assessment of merit was by oral interview.

Therefore, we are not inclined to accept the submission of the petitioners that method of assessment for *inter se* merit based on oral interview was arbitrary. Thus, we hold that the TNPSC conducted a selection process and such selection process was by oral interview as notified by the TNPSC, accepted by all 227 candidates including the petitioners, who participated in the selection without demur and the method of assessment as done by TNPSC cannot be faulted.

26. Having held so, the only issue that remains to be considered is whether the regularisation of services of the petitioners from the date of initial appointment would by itself confer a right upon them to seek for fixing their seniority considering such date.

27. As noticed above, in the proceedings of the Chief Engineer dated 07.09.1985, there is specific reference to Rule 23(a)(ii) of the Tamil Nadu State and Subordinate Service Rules (General Rules). The Government as well as the Counter petitioners, by referring to this rule, would contend that the retrospective regularisation of the services of the petitioner/temporary employees was only for this purpose with a view to accord financial benefits and nothing more. This submission is sought to be supported by referring to the specific

direction given in the order dated 07.09.1985 stating that any claim for amendment of seniority will not be entertained.

28. The endeavour of the review applicant and the petitioners is that Rule 23 cannot be read in the manner as projected by the State, but the same has to be construed by taking into consideration the relevant materials such as retrospective regularisation from the date of initial appointment on temporary basis and commencement of the date of probation from the said date and clause (ii) of Rule 23(a) would have no application to the facts of the case. As already pointed out, there has been no challenge to the proceedings of the Chief Engineer dated 07.08.1995 at any earlier point of time and therefore, any challenge to the said proceedings in these writ petitions/review application cannot be entertained.

29. Furthermore, the order dated 07.09.1985 specifically refers to Rule 23(a)(ii) and therefore, any other interpretation given to the said proceedings cannot be countenanced, more particularly, when there is no challenge to the proceedings dated 07.09.1985. The said rule has been referred to in the proceedings dated 07.09.1985 with regard to the date on which the probation will commence. In fact, we

are persuaded to observe that retrospective regularisation according monetary benefits and declaring the date of commencement of probation from the date of initial appointment on temporary basis shows that the Government has given a fair treatment to the candidates while reckoning the period of temporary service.

30. While we are in this issue, it is worthwhile to point out that in terms of Rule 35(a), the seniority of a person in a service, unless reduced in rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission. By applying this rule, the only consequence that could follow is to hold that the rank assigned by the Tamil Nadu Public Service Commission shall be material for all purposes. We are fortified in taking this stand by decision of the Hon'ble Supreme Court in the case of ***K.Madalaimuthu and Another Vs. State of Tamil Nadu and others*** reported in **(2006) 6 Supreme Court Cases 558**, wherein the Hon'ble Supreme Court, after taking into consideration several decisions including the decision in the case of ***State of Tamil Nadu Vs. E.Paripoornam*** reported in **1992 Supp (1) SCC 420**, held that it stands to reason that a person who is appointed temporarily to discharge the functions in a particular

post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularised and therefore follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre.

31. The next issue to be considered is whether the applications for revision of seniority was made within the time prescribed under the statutory rule? Rule 35(f) of the General Rules states that application for revision of seniority shall be submitted to the appointing authority within a period of three years from the date of appointment to such service or within a period of three years from the date of fixing the seniority. The rule further states that any application received after the said period of three years shall be summarily rejected. The rule carves out an exception stating that this time limit will not be made applicable to cases of rectifying orders resulting from mistake of facts.

32. It has to be seen as to whether the challenge to the seniority list as published by the Tamil Nadu Public Service Commission was within the time stipulated. Admittedly, there was no objection raised after the ranking list was notified by the Tamil Nadu Public Service Commission in their official bulletin. Even after the proceedings dated

07.09.1985, when the Chief Engineer notified the *inter se* seniority position as per ranking assigned by TNPSC, there was no attempt to challenge the same or object to the same within a period of three years. In fact, there was no challenge to the embargo placed in the proceedings dated 07.09.1985 stating that revision of seniority as fixed by the Tamil Nadu Public Service Commission cannot be altered.

33. For the first time, one petitioner (Mr.R.Raja) had filed two original applications before the Tribunal first of which was in 1997 and the second in 2000. In both these original applications, Mr.R.Raja did not challenge the proceedings dated 07.09.1985. Furthermore, in the said original application, persons over and above whom Mr.R.Raja wanted his seniority to be re-fixed were not made parties. The original applications were disposed of in 2002. In the preceding paragraphs, we have rejected the case of the petitioners that the cause of action to question the *inter se* seniority arose only much later. We reiterate the stand taken earlier on this issue. Thus, the representation now sought to be made by the petitioners for re-fixing the *inter se* seniority is clearly barred in terms of Rule 35(f). The case of the petitioners does not fall within the exception carved out in the rule as it is not a case of rectifying an order resulting from a mistake

of fact. Having done so, the petitioners are estopped from now raising a plea that their seniority should be fixed from the date of regularisation. Admittedly, the temporary appointment was not in accordance with the Rules and what is important is the date of actual appointment in accordance with the procedure and in accordance with the Rules.

34. The learned senior counsel for the counter petitioners and the learned counsel referred to the decision of the Hon'ble Division Bench of this Court in ***S.P.Pethel Raj and Ors. Vs.V.E.Vairappan and Ors.*** reported in ***(2012) 7 Mad LJ 513***. The dispute in the said case was between the persons appointed as Assistant Engineers in the Highways and Rural Works Department on temporary basis and those appointed in the said category through examination conducted by TNPSC. While considering the effect of regularisation and Rule 23(a), the Division Bench took note of the decision of the Hon'ble Supreme Court in ***M.P.Palanisamy Vs. A.Krishnan*** reported in ***(2009) 6 SCC 428*** wherein it was pointed that under Rule 23(a)(i), the persons, who were in service, could not be rendered junior by the regularisation of the ad hoc candidates at a later stage and therefore, the relevant Government Order was interpreted in the light of Rule 23(a)(i), which

is a general rule and applicable to all appointments. The relevant portion of the decision reads as follows:

29. When a similar question arose before the Supreme Court in [M.P. Palanisamy v. A. Krishnan](#), (2009) 6 SCC 428, in respect of appointment of teachers in Matriculation Schools in the State of Tamil Nadu vide G.O.Ms.No.1813, dated 12.12.1988, by which the teachers temporarily appointed as per Rule 10(a)(i) were regularized from the date of their original appointment, however directing them to be placed in the seniority below the last candidate selected by the TNPSC, while confirming the said government order, the Apex Court has, in fact, referred to Rule 23(a)(i) of the Tamil Nadu State and Subordinate Service Rules, 1955, which is as follows:

23. (a)(i) Date of commencement of probation of persons first appointed temporarily. If a person appointed temporarily either under sub-rule (a) or sub-rule (b) of the Rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10(a) or 10(d) is subsequently

recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:

Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of commencement of probation of the juniormost person already in service:

Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority, as the case may be. and took particular reference to the first proviso stated above, and rejected the contention of the temporary appointees to have their seniority placed above the persons appointed through TNPSC and has held as follows:

"42. We are not impressed by this, as we have already pointed out that under Rule 23(a)(i) of the Tamil Nadu State and Subordinate Services Rules, the persons who were in service, could not be rendered junior by the regularisation of the ad hoc candidates at a later stage. This G.O.Ms.No. 1813, therefore, has to be interpreted in

the light of Rule 23(a)(i), which was a general rule and applicable to all the appointments. After all, when a clear reference was made to Rule 10(a)(i)(1), which was from the General Rules, there was no reason to make any exception and not to read Rule 23(a)(i) of the General Rules. For this reason, the argument must fail."

35. Further, the Hon'ble Division Bench referred to a long line of decisions including the decision of the Hon'ble Supreme Court in the case of ***K.Madalaimuthu V. State of Tamil Nadu*** reported in ***(2006) 6 SCC 558***, for the principle that seniority once settled, cannot be directed to be unsettled after a long lapse of time. Further, in the said decision, there was reference to Rule 35(f) of the rules and it was held that a belated challenge to the seniority is not maintainable. When it was pointed out to the learned counsel for the petitioner that the order passed by the Tribunal in O.A.Nos.6495 of 1997 and 3822 of 2000, dated 27.03.2002 does not bind the private respondents/counter petitioners as none of them were made parties and that Tamil Nadu Public Service Commission was not a respondent and that there was no challenge to the proceedings dated 07.09.1985 by placing reliance on the decision of the Hon'ble Supreme Court in ***B.S. Mathur v. Union of India***, reported in ***(2008) 10 SCC 271*** and the decision in the case of ***Pawan Pratap Singh v. Reevan Singh***,

reported in **(2011) 3 SCC 267**, it is submitted that it will be inequitable to throw out the case of the petitioners on the ground that the aggrieved parties were not impleaded. On facts, we are not persuaded to accept the submissions of the learned counsel for the petitioner on more than one ground. Firstly, as pointed out earlier there is no challenge to the proceedings dated 07.09.1985 at any point of time till date. Secondly, there is an embargo under Rule 35(f) to challenge a seniority list after a period of three years and the petitioner's case does not fall within the exception carved out under the said rule. Therefore, any relief obtained by the petitioners from the Tribunal without impleading the proper and necessary parties and without impleading the Tamil Nadu Public Service Commission and without questioning the proceedings dated 07.09.1985 does not confer any benefit on the petitioners and such orders are of little avail.

36. The Hon'ble Supreme Court in the case of **P.Sudhakar Rao vs. U.Govinda Rao** reported in **(2007) 12 SCC 148**, held that mere existence of vacancies is not enough to enable an employee to claim seniority and the date of actual appointment in accordance with the required procedure becomes important in such a case. Further, it was pointed out that the effective date of selection has to be understood in

the context of the Service Rules under which appointment is made and *inter se* seniority in a particular service has to be determined as per service Rules. Therefore, the initial appointment on temporary basis under Rule 10(a)(i) of the General Rules, not being in accordance with the Special Rules cannot confer any right on the petitioners to claim benefit of seniority from the date of engagement on temporary basis. In the light of the above discussion, the only conclusion that could be arrived at is by holding that the Review Applicant/Petitioners cannot claim for refixation of their seniority based on the date of initial appointment on temporary basis. In the preceding paragraphs we have upheld the manner of assessment of *inter se* merit by oral interview on assessment of the facts of the case and applying the decisions of the Hon'ble Supreme Court in the case of **Kiran Gupta vs. State of U.P.**, (supra). Consequently, the contention that there was no selection at all, stands rejected.

37. An endeavour was made by the learned counsel appearing for the petitioners that even assuming a selection was conducted by the TNPSC, while publishing the merit list/ranking list, the names of the candidates have been arranged by adopting the communal roaster and even this aspect of the matter is not tenable in view of the glaring

discrepancies. In this regard, the learned counsel referred to a reply affidavit filed by the petitioners to the affidavit filed by the TNPSC in W.P.Nos.19849 & 19850 of 2004. It is submitted that the candidates belonging to Backward Community in serial Nos.5,7 and 9, joined temporary services on 05.06.1980, 31.12.1980 and 03.07.1981 respectively, whereas the Backward Community candidates who have joined service on 01.03.1979, 26.11.1979 & 17.11.1975, have been kept in serial Nos.11, 75 & 90 respectively, which shows that the Backward Community candidates have been assigned ranking without following any Rule of law and principle. It is further contended that a candidate in the open category, who joined temporary service on 15.03.1976 and 08.12.1977, have been placed in serial Nos.91 & 93 respectively whereas the candidates under the open category who have joined services on 06.07.1981, 04.03.1981 and 09.08.1982 have been placed in serial Nos.4, 6 & 10. Further, it is submitted that the Schedule Caste vacancy appears to have been misused and even under the said category there is gross discrepancies. It is submitted that these glaring discrepancies are only illustrative and there are several other infirmities which goes to show that the TNPSC has arranged the candidates and assigned ranking as per their whims and fancy without following any principle of law.

38. It has to be seen as to whether the TNPSC has an explanation for the above submission made by the petitioners. The stand taken by the TNPSC is that the petitioners have compared the seniority assigned to Mr.M.Senthil, Mr.P.N.Loganathan & Mr.K.B.Ramakrishnan with that of Mr.T.Chellamuthu, Mr.R.Raja & Mr.R.Kannan. It is submitted that R.Kannan was temporarily appointed on 17.11.1975 and did not complete four years of service as on 11.10.1979, hence ineligible to apply under the notification. However, he applied for direct recruitment in the subsequent notification dated 27.08.1982. The said Mr.R.Kannan is a B.E., Mechanical Engineering graduate and there were 72 candidates with B.E., Agricultural Engineering and 3 candidates with B.Sc., (Agri) qualification, in terms of the Special Rules they get preference and consequently, Mr.R.Kannan was assigned seniority at 90. Sofar as Mr.T.Chellamuthu and Mr.R.Raja, it is admitted that they are B.E., Agricultural Engineering graduates and they were assigned 11th and 76th position based on the ranking secured by them in the selection process. It is submitted that though Mr.T.Chellamuthu was arranged as 15th rank holder, he was assigned in serial No.11, since six candidates, above him, were B.E., Mechanical Engineering graduates and Mr.T.Chellamuthu having possessed the preferential qualification

as per the Special Rules was placed higher in the seniority list. It is further stated that the same also applies to Mr.R.Raja.

39. In the preceding paragraphs, we have recorded a finding that the oral test was the method of assessment as per the notification and the oral test conducted for about 16 days by constituting panel consisting of experts. This is evident from pages 69, 75 and 79 of the records placed before this Court. That apart we have also perused the marks assigned to the candidates, the ranking list, selection as per the rules and the roaster which are in pages 799, 997 to 1059, 1061 to 1077, 1121 and 1151 respectively.

40. In the light of the above factual position, we are of the firm view that the merit list published by the TNPSC has a valid basis and it is not as per the whims and fancy of TNPSC as sought to be projected by the petitioners.

41. This leaves us with the last question as to whether a review application is maintainable? The grounds raised in the review application are broadly two folds that the review applicant had filed a miscellaneous petition for raising additional grounds, which could not

be brought before the Division Bench and therefore, the review application has to be entertained. The second ground being that the case of the review applicant is entirely different from the case involved in the decision of the Hon'ble Supreme Court in ***M.P.Palanisamy and Ors., vs. A.Krishnan and Ors.,*** (supra) and ***State of Tamil Nadu Vs. E.Paripoornam,*** (supra), when the learned single Judge dismissed the writ petition in W.P.No.14086 of 2007 vide order dated 07.10.2009. So far as the additional grounds raised by the petitioner/applicant is concerned, they have been elaborately adverted to in this batch of cases and the contentions have been rejected. The other contention is that the decisions relied on by the learned single Judge has no reliance to the facts of the case. It has to be pointed out that the decisions of the Hon'ble Supreme Court were referred to, to bring out the principles for fixation of seniority in cases where the persons are temporarily appointed under Rule 10(a)(i) of the General Rules. Therefore, to state the legal position, these decisions have been referred to and the same cannot be a reason to review the judgment passed by the Division Bench. The Hon'ble Supreme Court in ***Kamlesh Verma Vs. Mayawati and Others*** reported in ***(2013) 8 SCC 320*** summarised the principles relating to review jurisdiction and held that a review will be maintainable when

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- ii) Mistake or error apparent on the fact of the record; and
- iii) Any other sufficient reason.

42. In the preceding paragraphs, we have elaborately set out the factual and legal position. The applicant has miserably failed to point out any mistake or error apparent on the face of the record. That apart, there is nothing on record to show that these issues were not within the knowledge of the applicant/petitioner and could not be produced earlier despite due diligence. It is seen that applicant P.S.Jegannathan had filed O.A.No.6928 of 1998, which was transferred to this Court and re-numbered as W.P.No.14086 of 2006, which was dismissed by this Court by order dated 07.10.2009 and confirmed in W.A.No.237 of 2010, which is the subject matter of Review Application No.126 of 2010. The said P.S.Jegannathan along with 8 others had filed another Original Application in O.A.No.3823 of 1990. The said Original Application was dismissed by the Tribunal by order dated 28.08.2002. As against which W.P.No.16142 of 2004 has been filed. Therefore, when the Review Applicant was all along

fighting the litigation both individually and collectively, it is hard to believe that he was not in the know of things. Thus, we reject the review application on merits as well as on the ground that none of the parameters required to be satisfied to exercise review jurisdiction has been made out by the petitioner.

43. For all the above reasons, we find no good grounds to either review the order in W.A.No.237 of 2010 or to accept the case of the petitioners that their *inter se* seniority should be reckoned by taking into consideration their initial appointment as on temporary basis.

44. In the result:-

(i) Review Application No.126 of 2010 is dismissed.

(ii) W.A.No.3248 & 3278 of 2004 are allowed and the order passed in W.P.No.17996 of 2004 is set aside.

(iii) W.P.Nos.19849 & 19850 of 2004 and W.P.Nos.30609 and 30610 of 2003, are allowed and the common order passed by the Tribunal in O.A.Nos.6495 of 1997 and 3822 of 2000, is set aside and that the rest of the Writ Petitions are dismissed.

(v) Consequently, the interim orders of status quo is vacated and connected miscellaneous petitions are closed. No costs.

(T.S.S.,J.) (S.V.,J.)
28.07.2015

pbn
Index :Yes
Internet:Yes

**T.S.SIVAGNANAM,J.
and
S.VIMALA,J.**

pbn

To

- 1.State of Tamilnadu, Rep., by its
Secretary to Government,
Agricultural Department,
Fort St., George,
Chennai – 600 009.
- 2.The Chief Engineer,
Agricultural Engineering,
Chennai – 600 035.

Review Application No.126 of 2010, W.A.Nos.3248 & 3278 of 2004,
W.P.Nos.30609 & 30610 of 2003, W.P.No.15886 of 2004, W.P.No.27698
to 27700 of 2010, W.P.No.27823 of 2010, W.P.No.16142 of 2004,
W.P.No.18617 of 2010 and W.P.No.18618 of 2010, W.P.No.19849 &
19850 of 2004, W.P.No.27730 of 2010, W.P.No.8556 of 2011 and
Connected M.Ps.,

28.07.2015