

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2015

CORAM

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

W.P.Nos.37019 of 2006 and 23996 of 2007

WP.No.37019 of 2006

P.Sundar

... Petitioner

vs.

- 1.The Secretary to Government
Agriculture Department
Fort St.George, Chennai-9.
 - 2.The Chief Engineer,
Agricultural Engineering Department,
Nandanam, Chennai.
 - 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
 - 4.Tamil Nadu Agricultural Engineer's Association
Rep by its General Secretary S.Periyasamy
 - 5.K.Radhakrishnan
 - 6.V.Annadurai
 - 7.V.Karunanidhi
 - 8.V.Natesan
 - 9.A.Adaikalasamy
 - 10.B.Abdul Aziz
 - 11.M.Kader Batcha
 - 12.R.Loganathan
- (R4 to R12 impleaded as per order
dated 19.10.06 by KSAJ in M.P.Nos.3 &
5 of 2006 in W.P.37019 of 2006)

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus praying to call for the records in connection with G.O.Ms.No.431 Agriculture (AA-3) Department Dated 22.10.1996 and Lr.No.10512/AA-3/2005-18 dated 18.08.2006 issued by the first respondent and quash the retrospective operation of GO.Ms.No.431 Agriculture (AA-III) Department dated 22.10.1996, letter No.10512/AAS-3/2005-18 dated 18.08.2006 which is inconsistent and violative of the Tamil Nadu State and Subordinate Service rules, 1955 and to consequently, direct the first respondent to refix the seniority of redesignated Assistant Engineers from the date of regularisation and not from the date of redesignation.

WP.No.23996 of 2007

- 1.K.Somasundaram
- 2.D.R.Ganesh Bapu
- 3.L.Muthumal Raj
- 4.R.Sundar

... Petitioners

Vs.

- 1.The Secretary to Government
Agriculture Department
Fort St.George, Chennai-9.
- 2.The Chief Engineer,
Agricultural Engineering Department,
Nandanam, Chennai.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
- 4.A.Adaikalasamy
- 5.R.Loganathan
- 6.K.Ramasamy
- 7.V.Karunanidhi
- 8.S.Periasamy
- 9.M.Khader Batcha
- 10.S.Chandrasekaran
- 11.V.Annadurai
- 12.K.Radhakrishnan
- 13.S.Soundararajan
- 14.A.Abdul Azeez
- 15.V.Natesan

16.U.Pandian
17.S.Rajendran
18.P.Subramani
19.Engineering Graduates (Agricultural Engineering)
Association rep by its General Secretary
487, Anna Salai, Nandanam, Chennai-35.

(R19 impleaded as per order dated 29.01.2010
by TSSJ in MP.No.1 of 2010 in WP.23996 of 2007)

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus praying to call for the records in proceedings Letter No.EEP.1.306/2005 dated 02.05.2007 and the consequent promotion orders issued to respondents 4 to 18 in proceedings letter No.GE2/30372/2007-1; Letter No.GE2/30372/2007-2; and Letter No.GE2/30372/2007-3, dated 01.06.2007 issued by the second respondent and to quash the same and consequently direct the 2nd Respondent to refix the seniority in accordance to the rules and to promote petitioners based on such seniority list.

For Petitioners : Mr.N.Subramaniyam
in WP.No.37019 of 2006
Mr.C.K.Chandrasekhar
in WP.No.23996 of 2007

For Respondents : Mr.R.M.Muthukumar, GA
for R1 and R2 (in both WPs)
Mr.M.Vivekanandan
for R4, 6, 7, 16 and 18
in WP.23996 of 2007
Mr.T.L.Ram Mohan, Sr.Counsel
for M/s.G.Sumitra for R10.
Mr.A.Arulmozhi for R11 in WP.23996/07
R4 in WP.37019 of 2006
Mr.P.Rajendran
for R5, 9, 12, 13, 14 & 16
in WP.23996 of 2007
R5 & R6 in WP.37019 of 2006
Mr.A.V.Arun for R17 in WP.23996 of 2007
Mr.Dr.M.Devendran
for R3 in both WPs
Mr.N.Subramaniyam
for R19 in WP.23996 of 2007
M/s.Ajmal Associates
for R8 in WP.23996 of 2007

COMMON ORDER

WP.No.37019 of 2006 is filed by one individual for issuing a writ of certiorarified mandamus to quash the retrospective operation of GO.Ms.No.431, Agriculture (AA-III) department dated 22.10.1996 and letter No.10512/AA-3/2005-18 dated 18.08.2006 which are inconsistent and violative of Tamil Nadu State and Subordinate Service Rules, 1955 and to consequently direct the first respondent to refix the seniority of re-designated Assistant Engineers from the date of regularisation and not from the date of re-designation.

2. WP.No.23996 of 2007 is filed by four individuals for quashing the proceeding of the second respondent in Letter No.EEP.1.306/2005, dated 02.05.2007 and the consequential promotion orders issued to respondents 4 to 18 in Letter No.GE2/20372/2007-1; Letter No.GE2/30372/2007-2; and Letter No.30372/2007-3, dated 01.06.2007 and to consequently direct the second respondent to refix the seniority of the petitioners in accordance with the Rules and to promote the petitioners based on such seniority.

3.While the petitioner in WP.No.37109 of 2006 is one P.Sundar, General Secretary, Engineering Graduates Association, Agricultural Engineering Department, Chennai, the Engineering Graduates (Agricultural Engineering) Association represented by its General Secretary is impleaded as the 19th respondent in WP.No.23996 of 2007.

4.The core issue involved in the writ petitions is with regard to fixation of seniority between the Graduate Assistant Engineers and Re-designated Assistant Engineers.

5.The few facts which are relevant for consideration herein are as follows :

The petitioners herein being graduates were appointed as Assistant Engineers temporarily prior to 1984 and the services of the petitioners was regularised vide GO.Ms.No.444, dated 13.06.1990. As per the GO, the services of the graduate Assistant Engineers (Agricultural Engineering) temporarily appointed on or before 31.12.1985 shall be regularised with retrospective effect from the date of their temporary appointment in the said post in accordance with their existing seniority. The same GO provides for fixation of their seniority below the last selected/last approved candidate of the year 1984 by TNPSC. Accordingly the service of the petitioners was regularised and the petitioners became Assistant Engineers from the date of their initial appointment and their seniority was placed below the last candidate selected by TNPSC during 1984. The

respondents 4 to 18 were initially appointed in various categories such as Foreman, Draftsman, Air Compressor and Driver etc., and they were appointed as Junior Engineers temporarily during 1983 to 1985. Both the posts i.e., Assistant Engineer and Junior Engineer are the feeder categories for the promotional post of Assistant Executive Engineer in the ratio of 3:2. The Graduate Assistant Engineers also draw the higher pay than the diploma holder Junior Engineers.

6. While so, G.O.Ms.19 dated 13.01.1992 came to be passed, thereby the services of the Junior Engineers was regularised from the date of their appointment in that post and as per the same GO, their seniority was assigned below the last selected candidate/approved by the TNPSC. Accordingly, the services of the respondents 4 to 18 and similarly placed persons were regularised from the date of their appointment as Junior Engineers. Thereafter, G.O.Ms.No.431 Agriculture (AA-3) department dated 22.10.1996 came to be issued for re-designating Junior Engineers as Assistant Engineers on acquiring a degree in Engineering or passing 'A & B' AMIE. By virtue of this GO, 17 Junior Engineers out of 177 junior engineers were re-designated as Assistant Engineers. As per the same G.O.431 dated 22.10.1996 the re-designated Assistant Engineers were assigned their rank below the last Assistant Engineer (AE) in the list of candidates selected by the TNPSC in the calendar year and if no selection is made by TNPSC in the category of Assistant Engineer (AE) in that calendar year, the Junior Engineer (AE) so re-designated as Assistant Engineer (AE) shall be assigned rank below that last Assistant Engineer (AE) in the list lastly communicated and the date of communication of the list by the commission shall be the criteria to decide the calendar year to which the list belongs. In pursuance of the same, provisional seniority list of the Assistant Engineers (AE) was prepared on 01.01.2000 and was issued in Lr.No.EEP1/7409/2000 dated 21.11.2002 of the second respondent. The provisional list called for representations from any aggrieved persons with valid reasons for correction, addition or deletion within three months from the date of its approval. It is not in dispute that no representation was received from any corner. As a result, the provisional list dated 22.11.2002 became final, as per which, the re-designated Assistant Engineers were placed below the graduate Assistant Engineers. The first respondent/Government also confirmed the proposal sent by the second respondent. It appears that the panel of Assistant Engineer fit for promotion to the next Assistant Executive Engineer for the year 2004-2005 was also drawn by the second respondent vide Lr.No.PAP1/26367/2005 dated 20.04.2006 based on the same seniority list dated 21.11.2002.

7. While so, the second respondent/Chief Engineer has drawn a provisional seniority list as on 01.01.2005 vide his Letter No.EEP1/48093/98 dated 25.09.2006, as per which the respondents 4 to 18, who were the redesignated Assistant Engineers, were placed above the graduate Assistant Engineers. There were number of representations made against the same and writ petitions in WP.No.49646 of 2006 and WP.No.10432 of 2007 were filed to quash the seniority list dated 25.09.2006 and to promote the Assistant Engineers based on the earlier seniority list dated 21.11.2002. Both the writ petitions were disposed of by common order dated 26.03.2007, thereby directing the second respondent to publish a final seniority list after hearing objections from all the parties. Thereafter, the final seniority list of Assistant Engineers as on 01.01.2005 was drawn by the second respondent in letter No.EEP.1.306/2005 dated 02.05.2007. Following the same, the respondents 4 to 18 were promoted to the post of Assistant Executive Engineers. Aggrieved against the final seniority list and the consequential promotion order given to the respondents 4 to 18 as arbitrary, illegal, and unlawful. WP.No.23996 of 2007 is filed by four of the Graduate Assistant Engineers.

8. As far as WP.No.37019 of 2006 is concerned, the same is filed by the General Secretary of the Association against the retrospective operation of GO.Ms.No.431 dated 22.10.1996 and the Letter issued by the first respondent/Secretary to the Government and for directing the second respondent/Chief Engineer to place the Assistant Engineers appointed during 1984-85 in appropriate place in accordance with the order issued in GO.No.431 dated 22.10.1996 and to re-fix the seniority of the re-designated Assistant Engineers from the date of their regularisation and not from the date of their re-designation.

9. During the pendency of the writ petitions, the petitioners as well as the respondents were promoted as Assistant Executive Engineers and the first petitioner in WP.No.23996 of 2007 passed away. The respondents 4 to 9, 11, and 13 to 18 already retired from service on various dates. The respondents 10 and 12, who were promoted as Assistant Executive Engineers, are due to retire on 31.07.2015 and 28.02.2016 and out of four petitioners the 1st petitioner died and the petitioners 2 to 4 remain in service.

10. Further, it is also brought to the notice of this Court, that the amended Rule 6(A) vide GO.No.431 dated 22.10.1996 was challenged by way of WP.No.31477 of 2006 by the individual who is one of the Graduate Assistant Engineers against the retrospective operation of the GO and the same was dismissed on the ground that the amendment in

service rule is legislative in character and only the State Government has power to bring them into force retrospectively and Only when the vested right of any individual is affected by such retrospective effect, any challenge can be made and the service rules cannot be challenged on the ground that the chance of promotion is likely to be affected and as the contesting respondents were no longer in service, no relief can be granted to the petitioner. Aggrieved against the same, the individual preferred WA.No.1720 of 2009 which was by order dated 13.06.2012 dismissed by the Division Bench by holding that there is nothing illegal or illogical or irregular in the action of the Government in enforcing the amended rules retrospectively.

11. According to the petitioners, WP.No.23996 of 2007 is not filed for challenging the retrospective operation of GO.No.431 dated 22.10.1996 but is filed is only challenging the application of the same for fixation of seniority between the Graduate Assistant Engineers and re-designated Assistant Engineers as such the issue raised herein is entirely different and new one and requires to be agitated and the same is not hit by res-judicata. It is their specific contention that the petitioners having been directly recruited as Graduate Assistant Engineers and having been regularised vide GO.No.444 dated 13.06.1990 from the date of their appointment prior to 1984 and their seniority having been fixed by virtue of the same GO below the last selected candidate of the year 1984 batch by TNPSC, the respondents 4 to 18 having been appointed in various other lower posts and temporarily appointed as Junior Engineers after 1984 and having been regularised vide GO.No.19 dated 13.01.1992 and having been re-designated as Assistant Engineers from the date of acquiring BE degree from 1984-89 and having been already placed below the Graduate Assistant Engineers who were regularised vide GO of the year 1990, cannot be suddenly placed above the Graduate Assistant Engineers. It is also argued on the side of the petitioners that the second respondent having already finalised the seniority list thereby placing the graduate Assistant Engineers above the redesignated Assistant Engineers and the same having been become final, the same cannot be suo-moto revised after three years. According to the learned counsel for the petitioners when GO.No.431 speaks about the seniority between the directly recruited Assistant Engineers and the re-designated Assistant Engineers and as the regularisation of the graduate Assistant Engineers and their fixation of seniority vide 1990 GO is intervened between the same, and as the seniority between the graduate Assistant Engineers and the redesignated Assistant Engineers is different issue, the same is not covered under GO.No.431 dated 22.10.1996. Whereas Rules 35(aa) and 35(f) of the Tamil Nadu State and Subordinate Service Rules alone is applicable to fix the

seniority and the seniority shall be determined with reference to the date on which one is appointed to service, class, category or grade. It is further contended that the final seniority list drawn on 2005 and 2006 having been not challenged within the period specified under the service rules, the same cannot be revised arbitrarily and the redesignated Assistant Engineers who failed to challenge the earlier seniority list, cannot derive any benefit under the revised seniority list.

12. Whereas the learned counsel for the contesting respondents would seriously oppose the claim of seniority made by the writ petitioners herein mainly by relying on the retrospective operative portion of the GO.No.431. According to the learned counsel for the contesting respondents, the writ petitioners, having been regularised and the same having been communicated to TNPSC during 1990 and the date of communication of the list being the criteria, they are rightly placed below the redesignated Assistant Engineers who become redesignated Assistant Engineer during 1984-1989 much before the date of communication of the list.

13. Heard the rival submissions made on both sides and perused the records.

14. The writ petitioners admittedly became regularised as Graduate Assistant Engineers from the date of their appointment from 1984 vide GO.No.444 dated 13.06.1990 and their seniority was as per 1990 GO already fixed as per 1990 GO below the last selected candidate of 1984 TNPSC batch. It is equally admitted that the respondents 4 to 18 have become Junior Engineers during 1984 - 1989 and only after 1984 their services were regularised as Junior Engineers vide GO.No.19 dated 13.01.1992 and their seniority was fixed below the candidate last selected/approved by the TNPSC. That means, they are placed below the graduate Assistant Engineers whose regularisation was approved by the TNPSC vide GO.No.19. That is why, the seniority list as on 01.01.2000, for the year 2004-2005 was drawn based on such arrangement and the same arrangement continued even after the issuance of GO.431 dated 22.10.1996. While so, confusion was created only by the letter issued by the first respondent dated 18.08.2006, in under which, the first respondent/Secretary to Government instructed the second respondent/Chief Engineer to prepare the revised seniority list of the Assistant Engineers by duly placing the redesignated Assistant Engineers above the graduate Assistant Engineers. It is sought to be done mainly by interpreting GO.No.431 as if the date of redesignation is the main criteria and not that of regularisation and in compliance with the same, the Chief Engineer revised the seniority

and issued the provisional seniority list on 22.10.1996 and the final seniority list on 02.05.2007.

15.As rightly argued by the learned counsel for the petitioners, the confusion and anomaly is created only by wrong interpretation of GO.No.431 dated 22.10.1996 and by wrongly applying amended Rule 6(A), that too, by seeking to revise the seniority already fixed after more than three years, which is as rightly argued by the learned counsel for the petitioners not only arbitrary, but also against Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules. Wherein the time limit prescribed for making application for revision of seniority is three years and the same time limit is also applicable to the authority concerned for revising the seniority.

16.The actual dispute to be gone into herein is with regard to the mode of fixation of the seniority between the Graduate Assistant Engineers and the re-designated Assistant Engineers. As already stated the services of the temporarily recruited Assistant Engineers were re-designated and their seniority was fixed under 1990 GO below the last selected TNPSC 1984 batch candidate. As per GO.19, the services of the Junior Engineers were regularised from the date of their appointment in their post and their seniority was fixed below the lastly selected or lastly approved list by the TNPSC. Further, the Junior Engineers became the Assistant Engineers only between 1985-89 much after the petitioners/graduates became the Assistant Engineers. If that is so, they cannot become the seniors in the cadre of Assistant Engineers above the graduate Assistant Engineers, whose regularisation as Assistant Engineers is much earlier in point of time. The amended rule 6(A) cannot be construed to lead to such a situation to place juniors above the seniors in the seniority list. As rightly argued by the learned counsel for the petitioners, as there is no selection after 1984, the list referred to in the amended Rule 6(A) can only mean the list of candidates approved by the TNPSC i.e, the last list approved is the list of temporarily appointed Assistant Engineers, who were regularised during 1990 to which batch the petitioners belong to.

17.The other interpretation that could be drawn is that as there is no selection made after 1984 batch and as the seniority refers to in the GO is between directly recruited and re-designated and there is no directly recruited batch after 1984 batch, the same Rule 6(A) is not applicable to fixation of seniority of the petitioners and the respondents. In that event, one may have to go to the General Rule 35(aa) which is applicable to the fixation of seniority to a particular post the recruitment to which is through more than one

method of recruitment. As per Rule 35(aa), the fixation of inter-se seniority among the appointees from two feeder categories shall be determined by having regard to the date of appointment. While in the case of petitioners it is before 30.07.1984, the date of appointment in the case of the contesting respondents 5 to 18 is after 10.12.1984, except the fourth respondent/Adaikalasamy whose date of appointment as Assistant Engineer is after 1984. It is also relevant to mention at this juncture that when the contesting respondents were regularised in the post of Junior Engineers only from 28.05.1984 onwards, they cannot be construed to become the Assistant Engineers much before the same, so as to place them above the petitioners in the seniority list. As rightly argued by the learned counsel for the petitioners, Rule 6(A) cannot be mechanically understood so as to place the respondents above the petitioners without duly considering their date of appointment and their date of regularisation as Junior Engineers, the date of their acquiring BE Degree and date of their re-designation as Assistant Engineers. If the argument of the respondents to the effect that by virtue of amended Rule 6(A) vide GO.No.431 they became Assistant Engineers on the date of their acquiring BE degree which is the criteria to fix the seniority is acceptable, it is likely to render GO.No.444 dated 13.06.1990 and GO.No.19 dated 13.01.1992 to be meaningless and the same would in turn likely to render the regularisation of the petitioners and their fixation of seniority during 1990 to be ineffective and lead to very serious anomaly insofar as seniority of the petitioners is concerned which is fixed as early as 1990. This court finds greater legal force in the argument advanced by the petitioners that Rule 6(a) is wrongly interpreted to provide for fixation of the seniority of the re-designated Assistant Engineers much before their appointment as Junior Engineers which is the basic criteria for their re-designation as Assistant Engineers.

18. Such interpretation could only be in conformity with the principle laid down by the Hon'ble Supreme Court in the judgment reported in 2013 (14) Scale 435 - B.Thirumal V. Ananda Sivakumar and Others. The issue raised therein is as to whether the Assistant Engineer (Electrical) can be considered for promotion to the post of Assistant Executive Engineers against 75% quotas meant for Assistant Engineers (Electrical). The Apex Court after detailed discussion, was of the view that the re-designation was granted with effect from the date on which the higher qualification was acquired and the re-designated officer continued to hold the post of Junior Engineer after re-designation and except financial benefit and status, re-designation did not bring about any other change and re-designation only served to reward perusing higher studies without causing any undue disadvantage to diploma Junior Engineer or to

directly recruited Assistant Engineers. The Hon'ble Supreme Court ultimately held that the degree holder Junior Engineers continue to be members of the Subordinate Engineering Service even after they were re-designated as Assistant Engineers upon their having acquired a degree qualification. They can, therefore, be considered only against the 25% quota reserved for the Subordinate Service and not against 75% reserved for the State Service members directly recruited to that service or appointed by transfer in terms of the Rules.

19.The observation of the Hon'ble Supreme Court about the nature and consequences of the redesignation in respect of redesignated Junior Engineers of Electrical Department is squarely applicable to the redesignated officers of the Agricultural department also.

20.In view of the above stated position the judgments of the Hon'ble Supreme Court reported in (i) (2012) 7 SCC 610 - Vijay Kumar Kaul and others V. Union of India and others (ii) AIR 2011 SC 3162 State of Uttarakhand and another V. Archana Shukla and others and (iii) Unreported order in Civil Appeal No.7794 of 1997 - Association of Tamil Nadu Highways Engineers V. K.Sriramachandran (D) and others dated 20.02.2002 cited on the side of the respondents are not factually applicable to the facts of the present case.

21.In my considered view, the impugned orders fixing the seniority of the contesting respondents above the petitioners by such erroneous interpretation of Rule 6(A) and the consequent promotion given to the respondents 4 to 18 are arbitrary, biased, lacking in bonafide and non application of mind and are legally unsustainable and stand quashed. The petitioners by virtue of regularisation as Assistant Engineers from 1990 and also by reason of their fixation of seniority below lastly selected candidate of the year 1984 batch by TNPSC is entitled to have the seniority above the respondents with other monetary and service benefits if any and the relief sought for in WP.No.23996 of 2007 is granted as prayed for.

22.In so far as the relief sought for in WP.No.37019 of 2006 is concerned as the writ petition challenging the retrospective operation of the GO was already dismissed, the same cannot be reagitated herein, as such the petitioner in WP.No.37019 of 2006 is disentitled to get any relief in this writ petition.

23.In the result, the WP.No.23996 of 2007 is allowed as prayed for. Consequently, connected miscellaneous petitions are closed. No costs.

24.In the result, the WP.No37019 of 2006 is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Agriculture Department
Fort St.George, Chennai-9.
- 2.The Chief Engineer,
Agricultural Engineering Department,
Nandanam, Chennai.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

+1cc to M/s.C.K.Chandrasekhar, Advocate, S.R.No.12829
+2cc's to Mr.N.Subramaniam, Advocate, S.R.No.13132 & 12802
+2cc's to Mr.P.Rajendran, Advocate, S.R.No.12782 & 12781
+2cc's to Mr.M.Devendran, Advocate, S.R.No.12620 & 12621
+1cc to Mr.A.V.Arun, Advocate, S.R.No.12787
+1cc to Mr.G.Sumitra, Advocate, S.R.No.12547

W.P.Nos.37019 of 2006
and
23996 of 2007

JSV(CO)
CA(25/06/2015)

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