

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.35071 of 2016

Engineering Graduates Association,
Tamil Nadu Agricultural Engineering
Department,
rep. by its General Secretary. Petitioner

vs.

- 1.The Government of Tamil Nadu,
rep. by its Secretary,
Agricultural Department,
Chennai-9.
- 2.The Chief Engineer,
Agricultural Engineering Department,
487, Anna Salai,
Nandanam, Chennai-35. Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents to consider and pass orders on the representation of the petitioner dated 4.7.2016 sent to the first respondent and communicate the decision taken thereon within a time frame as may be fixed by this Court.

For Petitioner :Mr.N.Subramaniyan

For Respondents :Mr.R.Venkatesh,
Govt. Advocate.

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the respondents to consider and pass orders on his representation dated 4.7.2016 sent to the

first respondent and communicate the decision taken thereon within a time frame as may be fixed by this Court.

3. The case of the petitioner, in brief, is as follows:-

(a) The petitioner association is a recognised one and even though the Assistant Engineers, Assistant Executive Engineers, Executive Engineers, Superintending Engineers and Chief Engineers are their members, the present writ petition has been filed on behalf of the Assistant Engineers only.

(b) Earlier, the diploma holders and their association filed writ petitions in W.P.Nos.15493 of 2015, etc., challenging G.O.Ms.No.34, Agriculture Department dated 17.12.2015, wherein the Special Rules to Tamil Nadu Agricultural Engineering Service was amended with retrospective and the said amendment removed the hostile discrimination suffered by the Assistant Engineer, who are graduate engineers for more than three decades and it protects an Assistant Engineer, who is a graduate from getting overlooked by a less qualified and lesser experienced Junior Engineer in promotion to the next higher category of Assistant Executive Engineer.

(c) The main contentions of the diploma holders in the said writ petitions are that the cadre strength of Junior Engineers are more than the cadre strength of Assistant Engineers and to achieve the same and to substantiate this contention, they have taken into consideration the 399 upgraded Junior Engineers (from the ASCOs) as within the cadre strength of the Junior Engineer category. The said 399 diploma holders upgraded as Junior Engineers from the category of Assistant Soil Conservation Officers, without any test or criteria, but as a financial upgradation that too contrary to the ratio of 75% 25% stipulated under the Special Rules to be maintained in the cadre strength between Assistant Engineers and Junior Engineers are also as Junior Engineers as if they also form part of the cadre strength in the category of Junior Engineer. The said 25% of the cadre strength of the reserved posts shall be filled up by following a rotation. In the said upgradation, only 399 Assistant Soil Conservation Officers were upgraded as Junior Engineers and hence the upgradation of ASCOs as Junior Engineers cannot be considered as promotion of the category of Junior Engineer.

(d) Challenging the aforesaid upgradation, an association of unemployed Agricultural Engineering Graduates filed a writ petition in W.P.No.37329 of 2007 and this Court, by an order dated 24.3.2008 passed the following order:-

"The interim orders as sought for cannot be granted. However, it is made clear that hereafter no appointments shall be made in violation of the ratio of 25% by promotion and 75% by direct recruitment. It is open to the respondents to file counter for vacating this order. It is also made clear that subsequent promotion given to any person based on the impugned order would be subject to the result in main writ petition."

Pursuant to the said order, now the second respondent passed an order dated 8.5.2008 making further appointment of 42 Junior Engineers, as against which a contempt petition was filed before this Court in Cont.P.No.610 of 2008 and the same is pending. While so, now the second respondent is attempting to send proposal to the first respondent stating that the 399 upgraded Junior Engineers would form part of cadre strength of the Junior Engineer contrary to the truth. Hence, the petitioner association made several representations to the second respondent requesting him to cancel the regularization of service of 399 Junior Engineers. But, no action was taken on the said representations. Finally, the petitioner association sent a representation dated 4.7.2016 to the respondents. Since the same was also not considered, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

4. I have heard the learned counsel appearing for the petitioner association and the learned Government Advocate, who has taken notice on behalf of the respondents.

5. Considering the facts and circumstances of the case and considering the submissions made on either side, this Court directs the second respondent to consider the representation of the petitioner dated 4.7.2016 seeking cancellation of the regularization of service of 399 Junior Engineers and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the petitioner association and it is for the second respondent to consider the claim of the petitioner strictly on merits and in accordance with law. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

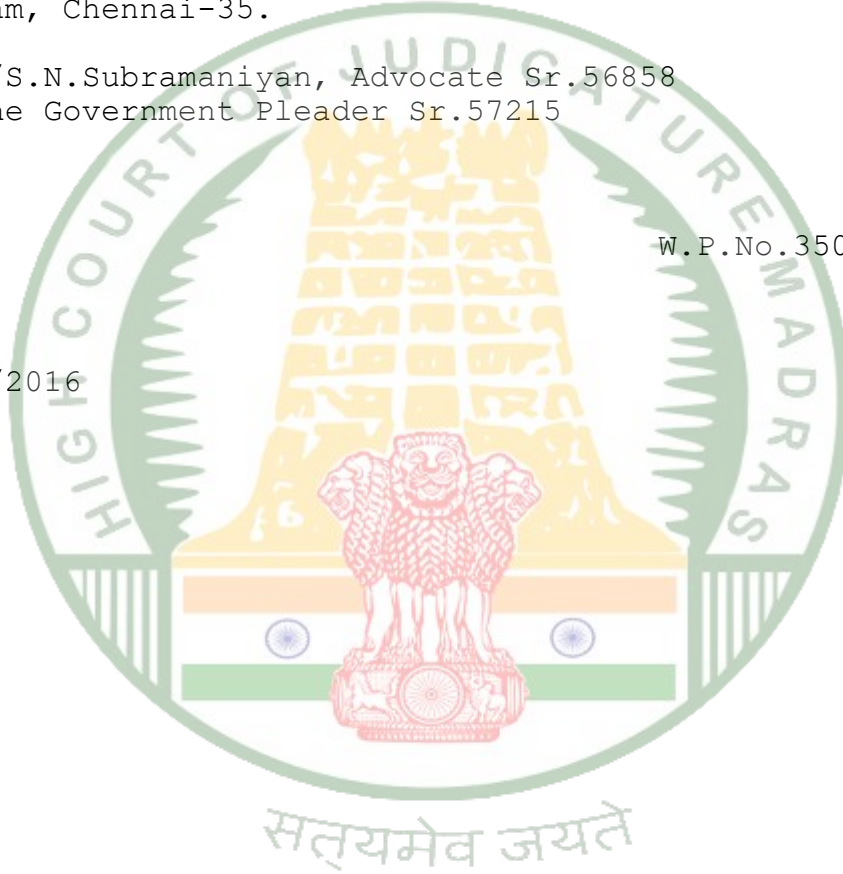
1.The Secretary to Government,
Government of Tamil Nadu,
Agricultural Department,
Chennai-9.

2.The Chief Engineer,
Agricultural Engineering Department,
487, Anna Salai,
Nandanam, Chennai-35.

+1cc to M/S.N.Subramaniyan, Advocate Sr.56858
+1cc to the Government Pleader Sr.57215

W.P.No.35071 of 2016

sm[co]
srg 20/10/2016



WEB COPY