

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.20932 of 2013
and
M.P.Nos.1 and 2 of 2013

1.Mohanasundaram
2.R.Jayakumar
3.K.Chandrasekaran
4.N.Kaliappan
5.A.Mani
6.R.Ravichandren
7.N.Kumar
8.J.Mohanbharathi
9.S.R.Thirugnanam
10.P.Natrajan
11.M.Thangam
12.B.Vadivel
13.A.Thangaraju
14.G.Selvaraj

.. Petitioners

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Agriculture Department, Secretariat,
Chennai - 600 009.

2.The Chief Engineer (Agricultural Engineering),
487, Anna Salai, Nandanam,
Chennai - 600 035.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorarified Mandamus, to call for the records in the impugned Letter No.GE1/5565/2013 dated 22.02.2013 on the file of the 2nd respondent and quash the same and consequentially direct the respondents to consider the representation of the petitioners dated 21.07.2012, 11.01.2013 and 20.07.2013 for the claims of the M.E. Degree Holders working as Assistant Engineers as a separate class with higher educational qualification to hold the post of Assistant Executive Engineer in the first instance before filing up the further vacancies in the said 3:2 ratio among Degree Holders/ Assistant Engineers and Diploma

Holder/Junior Engineers working in the Tamil Nadu Agricultural Engineering Service in the facts and records of the case.

For Petitioners : Mr.M.Palani

For Respondents : Mr.R.Govindasamy
Special Government Pleader

O R D E R

There are totally 14 petitioners in this case. The case of the petitioners are that they have entered into service as Assistant Soil Conservation Officers from the year 1982 to 1986 in the Agricultural Engineering Department under the Agricultural Engineering Subordinate Service and they were continued till 1986. Thereafter, the petitioners were promoted as Assistant Engineer in the Tamil Nadu Agricultural Engineering State Service. The service details of all the writ petitioners are filed as tabulated statement in the typed set of papers.

2.It is further case of the petitioners is that all the petitioners have acquired M.E. Post Graduate Degree qualification on the dates mentioned in the column 6 in the Tabular statement and the next avenue of promotion is to the post of Assistant Executive Engineer (Agricultural Engineering) in Class-IV as per the Special Rules in the Tamil Nadu Agricultural Engineering Service, as per G.O.Ms.No.1987 Agriculture Department dated 28.08.1981, it is mentioned that after permitted to be referred as Special Rules.

3.As per the Special Rules in Rule 2(b), the appointment rule in the vacancies for the post of Assistant Executive Engineer (AE). The method of recruitment is by three modes in rotation in the ratio 1:3:2 which is as follows:

- i) By direct recruitment
- ii) By Promotion
- iii) By recruitment by transfer
- iv) By promotion
- v) By recruitment by transfer
- vi) By promotion

4.As per Rule 6(a) of the Special Rule, the minimum educational qualification has prescribed for the direct recruitment to the post of Assistant Executive Engineer (AE) in Class-IV is "A Master Degree in Agricultural Engineering" or A Master Degree in Civil or Mechanical Engineering if Candidate with a Master Degree in Agricultural Engineering is not available. Therefore, the petitioners in this writ petition are fully qualified the Master Degree holders in Mechanical or Civil Engineering to hold the post of Assistant Executive Engineer in

the first vacancy and subsequent vacancies as per the roaster.

5.As per the Rule 7(a) of Special Rules, every person appointed, by direct recruitment to the post of Assistant Executive Engineer in Class-IV shall, within a period of his probation should pass the following tests, namely:

- i) Account Test for Public Works Department Officers and Subordinates.
- ii) Departmental Test for Officers of the Tamilnadu Agriculture Department and
- iii) District Office Manual Test (Now Government Office Manual Test).

As per the above prescribed tests, the petitioners have already passed all the above tests and they were fully qualified for promotion to the post of Assistant Executive Engineer (AE) in Class-IV, in terms of other qualification also.

6.The Special Rules also states that there is no direct recruitment of Mechanical Engineering Degree Holders for the post of Assistant Executive Engineer for the past 15 years. The respondents were filled up the direct recruitment quota from among the B.E. Degree and Diploma Holders Assistant Engineers only. Therefore, in the above circumstances, all these petitioners were jointly given representations dated 27.07.2012, 11.01.2013 and 20.07.2013 with a request to considering their claim for filling up the direct recruitment quota available for M.E. Degree holders as upgradation or promotion, pending amendment or protection to such promotion in the light of the precedents given on earlier occasions to B.E. Assistant Soil Conservation Officers and Diploma Holder Junior Engineers (Agriculture Engineering).

7.The petitioners further stated that the 2nd respondent without authority of law simply given a negative reply letter No.GE1/5565/2013 dated 22.02.2013 quoting the existing rules. But the petitioners are stated that the 2nd respondent should not passed such orders, but he may forward the petitioners representation with remarks to the 1st respondent, who is the Government and the Government is the authority to pass such order, but in the petitioners case, it was not done and the 2nd respondent himself has rejected the petitioners representations given reply by saying that as per direct recruitment of B.E. Degree Holders should be appointed in the post. The diploma holders were sent a representation dated 16.08.2012 for their promotion to the entire vacancies of Assistant Engineers, the 2nd respondent has hurriedly forwarded a proposal in Letter No.GE3/37377/2011 dated 21.03.2013 to the 1st respondent. The 2nd respondent also sent another proposal letter No.GE3/59220/2011 dated 28.12.2011 and 25.03.2013 to the 1st respondent for

upgradation of 177 Assistant Engineers to the level of Assistant Executive Engineer so as to accommodate Assistant Engineers only based on the 20 years of service without referring to 1:3:2 ratio, but for both the proposals the legitimate expectations of the M.E. Degree Holders Assistant Engineers were not even brought to the notice of the 1st respondent. The representations of the petitioners are still pending with the 1st respondent without taking comprehensive decision. Therefore, these petitioners are approaching this Court, challenging the order dated 22.02.2013 and filed the writ petition before this Court with the above prayer.

8.No counter affidavit has been filed, but the Chief Engineer (Agricultural Engineering), Nandanam, Chennai-600 035 has given para wise remarks which was produced by the learned Special Government Pleader along with the Government Orders before this Court.

9.The 2nd respondent in his statement states that as per the Rule 2(b) of the Special Rules for the Tamil Nadu Agricultural Engineering Service, the method of appointment to the post of Assistant Executive Engineer is (1)direct recruitment, (2) promotion from Assistant Engineer, (3)recruitment by transfer from Junior Engineer and the post of Assistant Executive Engineer comes under the Tamil Nadu Public Service Commission.

10.The 2nd respondent further states that it is the case of the petitioner is that they are the Assistant Engineers who have completed M.E. Degree through part time mode and now they are seeking to elevate them as Assistant Executive Engineer in the vacancies earmarked for the direct recruitment and they are seeking not to fill up the quota and seeking direction to fill up the post of Assistant Engineers who completed M.E. Degree in engineering.

11.The 2nd respondent further states that as per the Government Order in G.O.Ms.No.273, Agriculture (AA3) Department, dated 19.09.2016, the direct recruitment was deferred by way of Government Policy and therefore, the Government has issued amendment shortly, in the said circumstances, the 2nd respondent states that there are only two methods of appointment to the post of Assistant Executive Engineer viz., (1)Promotion from Assistant Engineer and (2)Recruitment by transfer from Junior Engineer.

12.The direct recruitment post of Assistant Executive Engineer was deferred and the Rule 2(b) of the Special Rules for the Tamil Nadu Agricultural Engineering Service was deleted, in which the G.O.Ms.No.273, Agriculture (AA3) Department, dated 19.09.2016 has passed with the concurrence of Tamil Nadu Public

Service Commission as stated above the question of filling up of the quota allotted for direct recruitment from the working persons does not arise. Therefore, the respondents prayed for dismissal of the writ petition.

13.I heard Mr.M.Palani, learned counsel appearing for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents and perused the entire records.

14.It is the case of the petitioner is that they were entered into service in the year 1982 as Assistant Soil Conservation Officers and served till 1986 in the Agricultural Engineering Department under the Agricultural Engineering Subordinate Services. Thereafter, the petitioners were promoted as Assistant Engineer in the Tamil Nadu Agricultural Engineering State Services.

15.It is admitted fact that all the petitioners have acquired the M.E. Post Graduate Degree qualification on the dates mentioned in the column 6 to the tabular statement and the next avenue of promotion is to the post of Assistant Executive Engineer (Agricultural Engineering) in Class-IV as per the Special Rules to the Tamil Nadu Agricultural Engineering Services, vide G.O.Ms.No.1987 Agricultural Department dated 28.08.1981.

16.The Assistant Executive Engineer (A.E.) appointment was made on three modes in rotation in the ratio of 1:3:2 which is as follows:

- i) By direct recruitment
- ii) By promotion
- iii) By recruitment by transfer
- iv) By promotion
- v) By recruitment by transfer
- vi) By promotion

17.As per the Rule 6(a) of the Special Rules, for the direct recruitment to the post of Assistant Executive Engineer (A.E.) in Class-IV, is a Master Degree in Agricultural Engineering or A Master Degree in Civil or Mechanical Engineering if Candidate with a Master Degree in Agricultural Engineering is not available. Therefore, these petitioners are fully qualified in the Master Degree Holders in Mechanical or Civil Engineering to hold the post of Assistant Executive Engineer in the first vacancy and subsequent vacancies after the appointment of Assistant Executive Engineer, as per the roster. As per Special Rule 7(a) every person appointed, by direct recruitment to the post of Assistant Engineer in Class-IV shall, within a period of his probation should pass the following tests namely:

- i) Account Test for Public Works Department Officers and Subordinates.
- ii) Departmental Test for Officers of the Tamilnadu Agriculture Department and
- iii) District Office Manual Test (Now Government Office Manual Test).

In fact these petitioners were already passed all the three tests, therefore, these petitioners are fully qualified for the promotion to the post of Assistant Executive Engineer (A.E.).

18. In this regard, it is made clear that for the past 15 years, there was no direct recruitment of M.E. Degree Holders for the post of Assistant Executive Engineer in the respondent Department and hence, the respondents were filled up the direct recruitment quota from among the B.E. Degree and Diploma Holders Assistant Engineers only. Therefore, the petitioners were sent representations on 27.07.2012, 11.01.2013 and 20.07.2013, but all in sudden, the 2nd respondent by his letter No.GE1/5565/2013 dated 22.02.2013 quoting existing rules for the direct recruitment of the M.E. Degree Holders for the post of Assistant Executive Engineer and the direct recruitment only be made through the M.E. Post Graduate Degree Holder.

19. The case of the petitioners is that the 2nd respondent without forwarding the said representations to the 1st respondent, since the Government authority alone having power to pass such orders whether they may follow the direct recruitment of M.E. Degree Holders or appointing the person, who having B.E. Degree Holders in Assistant Engineer or Assistant Executive Engineer.

20. During the course of arguments, the learned counsel appearing for the petitioners has produced a G.O.Ms.No.273, Agriculture (AA3) Department, dated 19.09.2016 in which the Government has deferred the direct recruitment and deleted the provision from the Rule 2(b) of the Special Rules for the Tamil Nadu Agricultural Engineering Service in the way of policy decision. The Government will issue necessary amendment to the rules shortly. Therefore, the G.O. says that there are only two methods of appointment to the post of Assistant Executive Engineer viz., (1) Promotion from Assistant Engineer and (2) Recruitment by transfer from Junior Engineer. The G.O. says that

"7. The Government have carefully examined the proposal of the Chief Engineer (Agricultural Engineering) in the light of the views offered by the Tamil Nadu Public Service Commission and decided to accept it. Accordingly, the Government direct that, the Direct recruitment to the post of Assistant Executive Engineer (Agricultural Engineering) be deferred subject to condition that the proposal for direct recruitment

of Assistant Engineer in the department should be sent every year without going for temporary appointment under Rule 10(a)(i). The Chief Engineer (Agricultural Engineering) is directed to send necessary amendment proposal to the Government."

21. When the Rule 2(b) of the Special Rules in Tamil Nadu Agricultural Engineering Service, the method of appointment to the post of Assistant Executive Engineer is (1) direct recruitment, (2) promotion from Assistant Engineer, (3) recruitment by transfer from Junior Engineer. The post of Assistant Executive Engineer comes under the purview of Tamil Nadu Public Service Commission, the petitioners are the Assistant Engineers, who have completed M.E. degree through part time mode, they are request to the respondents to promote them as Assistant Executive Engineer in the vacancies earmarked for the direct recruitment. When the Government not to fill up the quota allotted for direct recruitment and in turn asking to divert and fill up that quota by promotion from the Assistant Engineers who completed M.E. Degree in Engineering. These petitioners are fully eligible for the appointment of Assistant Executive Engineer through by way of promotion of Assistant Engineer.

22. Therefore, the petitioners are make out the case before this Court for the prayer sought for in this case. Since the petitioners who entered into service in the year 1982 and served till the year 1986 as Assistant Soil Conservation Officers and thereafter 177 persons were promoted as Assistant Engineer and continue till date working as Assistant Engineer. Though the petitioners also acquired the Master Degree in M.E. and working as Assistant Engineer and they are fully qualified as per the G.O.Ms.No.273 Agriculture Department, dated 19.09.2016 and they are liable to be promoted as ***Assistant Executive Engineer**.

23. In the result:

(a) this writ petition is allowed by setting aside the impugned Letter No.GE1/5565/2013 dated 22.02.2013 passed by the 2nd respondent;

(b) the 1st respondent is directed to consider the petitioners representations dated 21.07.2012, 11.01.2013 and 20.07.2013, according to their Master Degree qualification in Engineering and in the light of G.O.Ms.1987 Agriculture Department, dated 28.08.1981 whereas the petitioners were made claim from the year 2013 and to pass appropriate orders, after affording opportunity to the petitioners for promoting the petitioners as ***Assistant Executive Engineer**;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

***Amended as per order
of this court dated
19/12/2017 in WP.No.20932/13
-s/d-
Assistant Registrar (CS-II)
dt 20/12/2017**

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,
State of Tamilnadu,
Agriculture Department, Secretariat,
Chennai - 600 009.

2.The Chief Engineer (Agricultural Engineering),
487, Anna Salai, Nandanam,
Chennai - 600 035.

To be Substituted
to the order
already despatched on
15/12/2017

+1cc to the Government Pleader, S.R.No. 66664/17
+1cc to Mr.M.PALANI Advocate, S.R.No. *91062

सत्यमेव जयते

W.P.No.20932 of 2013
and
M.P.Nos.1 and 2 of 2013

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