

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 06.01.2017****CORAM:****THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR****W.P. (MD) Nos. 3407, 3408 and 16540 of 2013****and****M.P. (MD) No. 2, 2, 2 of 2013, 1, 1, 1, 2 & 2 of 2014**

V.M.Prem Anand ... Petitioner in W.P.No.3407 of 2013
M.Paranthaman ... Petitioner in W.P.No.3408 of 2013
Vs.

1.Agricultural Production Commissioner and
Secretary to Government,
Fort St.George, Chennai - 9.

2.The Chief Engineer,
Agricultural Engineering Department,
No.487, Annasalai, Nandanam, Chennai - 35.
... Respondents 1 & 2 in W.P.(MD) Nos.
3407 & 3408 of 2013

3.The Assistant Executive Engineer,
Agricultural Engineering Department,
Command Area Development Water Management Programme,
Vaigai Project Unit - III, Madurai 625 016.
... Respondent No.3 in W.P.(MD) No.
3407 of 2013

4.The Assistant Executive Engineer,
Command Area Development Varathama Nathi Reservoir Project,
Palani Unit - I, Dindigul District.
... Respondent No.3 in W.P.(MD) No.
3408 of 2013

Prayer in W.P.(MD) Nos. 3407 and 3408 of 2013: The petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Se.Mu.No.Me.Pa.2/53050/2012 dated 18.02.2013 and quash the same as illegal insofar as the petitioner is concerned.

W.P. (MD) No.16540 of 2013:

A.K.Ravichandran ... Petitioner



1. Agricultural Production Commissioner and
Secretary to Government,
Fort St. George,
Chennai - 9.

2. The Chief Engineer,
Agricultural Engineering Department,
No. 487, Annasalai,
Nandanam, Chennai - 35.

3. The Assistant Executive Engineer,
Agricultural Engineering Department,
Kumbakonam, Thanjavur District.

... Respondents

Prayer: The petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Se.Mu.No.Me.Pa.2/53050/2012 dated 13.09.2013 and quash the same as illegal insofar as the petitioner is concerned.

For Petitioners : Mr.V.P.Rajan

For Respondents : Mr.V.Muruganantham, AGP

COMMON ORDER

The prayer in these Writ petitions is to call for the records of the proceedings dated 18.02.2013 and 13.09.2013 passed by the 2nd respondent and quash the same.

2. The petitioners were appointed in the respondent Department as Assistant Soil Conservation Officer, which is a feeder category for the promotion to the post of Junior Engineer. For the said promotion, an incumbent should have completed the departmental test within a period of 5 years. Since admittedly, the petitioners did not pass the departmental test within the stipulated period of 5 years, even though the petitioners originally were given the posting of Junior Engineer, have been reverted to Assistant Soil Conservation Officer by virtue of the impugned order. Challenging the same, the petitioners have come out with these present Writ petitions.

3. Heard both sides.

4. The learned counsel for the petitioners would contend that though initially the petitioners did not complete the departmental test as required under the relevant rule, subsequently, they have completed the test. However, in view of Rule 9(a)(ii) of the Tamil Nadu Agriculture Engineering Subordinate Service Rules for getting promotion permanently to the post of Junior Engineer, one should have completed the



departmental test within a period of 5 years from the date of appointment to Junior Engineer. Once the said rule prescribed a period of 5 years within which the departmental test was expected to be completed by the incumbent and if the same has not been done within the said period, certainly, the person would not be eligible to hold the post of Junior Engineer. However, since the petitioners have completed the departmental test successfully, there is no further impediment for the respondents to permit the petitioners to continue permanently in the post of Junior Engineer by relaxing the Rule 9(a)(ii) of the said Rule.

5. In this regard, the learned counsel for the petitioners would also invited the attention of this court in G.O.Ms.57 Agricultural Department, dated 23.04.2014 by and under which, such a relaxation of Rule 9(a)(ii) was given in respect of one E.A.Varatharajulu, Junior Engineer. The learned counsel for the petitioners would also invite the attention of this Court that in respect of other two persons, who are similarly placed, this Court by orders dated 25.10.2016 in W.P.(MD)No.19192 of 2012 has given a direction to the concerned respondents to take up the issue raised by the respective petitioners seeking relaxation of the said Rule and a direction to that effect was issued by this Court. The operative portion of the said order is reproduced hereunder:

"7. In the meanwhile, pursuant to the order of the Tamil Nadu Administrative Tribunal in A.A.No.2210/1997, dated 03.04.1997, the Government issued G.O.Ms.No.57 Agricultural Department, dated 23.04.2014 granting relaxation to one E.A.Varadharajulu, Junior Engineer, who had not passed the Departmental test within a period of five years from the date of his upgradation and passed the test with the delay of four months and 18 days, by relaxing Rule 9 (a)(ii) of the Tamil Nadu Agricultural Subordinate Service Special Rules. The learned counsel for the petitioner would submit that it would suffice that his representation may be disposed of considering the relaxation granted to the similarly placed individual vide G.O.Ms.No.57, dated 23.04.2014.

8. Considering the request made by the learned counsel for the petitioner and without going into the merits of the application, a direction is issued to the second respondent to forward the representation made by the Writ petitioner, dated 03.07.2014 to the first respondent and in turn, the first respondent is directed to consider the representation in accordance with law and pass orders within a period of eight weeks from the date of receipt of a copy of this order.

<https://hcservices.ecourts.gov.in/hcservices/> Hence, the Writ petition is disposed of with the above observations. No order as to costs.

Consequently, connected Miscellaneous petitions are closed."

6.The learned counsel for the petitioners submitted that in view of the said G.O.Ms.No.57 as well as the orders of this Court referred to above, the similar request made by the petitioners dated 13.06.2014, 31.10.2014 & 10.06.2014 may also be directed to be considered and orders to that effect be passed by the respondents 1 and 2.

7.The learned Additional Government Pleader, who appears for the respondents, would contend that Rule 9(a)(ii) is very clear by and under which, a mandate has been issued wherein a five years outer limit has been prescribed within which, the Junior Engineer, who got promotion, should have completed the required departmental test. Since the petitioners have not completed the departmental test within the period of 5 years admittedly, the respondents had no option except to revert the petitioners to the original post namely, Assistant Soil Conservation Officer. That has been rightly done by the respondents in the order impugned. Therefore, the same need not be interfered with as the impugned order passed by the respondents and strictly in accordance with the Rule 9(a)(ii).

8.This Court has considered the rival submissions made by the learned counsel appearing for both sides.

9.As it has been pointed out by the learned counsel for the petitioners that no doubt within the five years period, the petitioners have not completed the departmental test successfully. However, subsequently, they have completed the test and they have become eligible. The only issue is because of the five years made in Rule 9(a)(ii) within which, the petitioners have not completed the test successfully. In order to meet out such contingencies, normally the Government would have power to relax such a rule only in selective cases after having considered the relative merits of each of the case. One such case has also been mentioned by the learned counsel for the petitioners where one Mr.E.A.Varatharajulu was given such relaxation of Rule 9(a)(ii) and to that effect, G.O.Ms.No.57 Agriculture Department, dated 23.04.2014 was passed.

10.Considering the said development, this Court in the judgment referred to above had given a direction to the respondents therein to consider the case of the petitioners in that case for giving relaxation. Following the said decision as well as on consideration of G.O.Ms.No.57 dated 23.04.2014, this Court is inclined to pass the following order:

The petitioners' representations shall be considered by the 1st respondent on the same being forwarded by the 2nd respondent. While considering the representations of the petitioners, the 1st respondent shall take into account of the relaxation already given in a similar case by G.O.Ms.No.57 Agriculture Department, dated 23.04.2014 and also taking into account that the petitioners have



subsequently, completed all departmental test successfully as required under the Rule. The applications of the petitioners submitted to the 2nd respondent shall be forwarded to the 1st respondent as indicated above within a period of 2 weeks from the date of receipt of copy of this order and on receipt of the same, the 1st respondent has to pass orders as directed above within a period of 8 weeks thereafter.

11. Since the petitioners have already been promoted as Junior Engineer and have been working as such, of course, pursuant to the orders passed by this Court dated 05.03.2013, the petitioners' present position as Junior Engineer shall not be disturbed till a final order is passed by the 1st respondent as directed above.

12. With these above directions, the Writ petitions are disposed of. No costs. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar

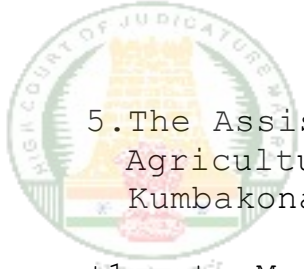
To

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Command Area Development Varatham Nathi Reservoir Project,
Tamil Nadu, Dindigul District.



5.The Assistant Executive Engineer,
Agricultural Engineering Department,
Kumbakonam, Thanjavur District.

+1cc to Mr.Special Government Pleader in SR.No:1499

+1cc to Mr.V.P.Rajan, Advocate in Sr.No:1640

+1cc to Mr.Special Government Pleader in SR.No:1500

+1cc to Mr.Special Government Pleader in SR.No:1501

+1cc to Mr.V.P.Rajan, Advocate in SR.No:1641

+1cc to Mr.V.P.Rajan, Advocate in SR.No:1642

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AE/RR/24.04.2017/6P/12C

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