

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.No.52 of 2017

T.Arjunan

... Appellant

versus

1. The Chief Engineer,
(Agriculture Engineering)
328, Anna Salai, Nandanam,
Chennai 600 035.
 2. The Assistant Executive Engineer (AE)
Kundha River Valley Project,
Mount Pleasant,
Coonoor 643 102.
 3. The Secretary to Government,
Department of Agriculture,
Fort St. George,
Chennai 600 009.
- ... Respondents

3rd respondent impleaded as party respondent vide order of this Court dated 09/04/2018 made in CMP No.2120/2017 in WA No.52/2017 by HGRJ & MDIJ

Appeal filed against the order passed by this Court dated 15.06.2016 passed in W.P.No. 38431 of 2006 (O.A.No.6994 of 1999)

Prayer in WP.No.38431/2006:Original Application No.6994/1999 filed before the Tamilnadu Administrative Tribunal, on abolition, transferred to the file of this Court and renumbered as writ petition No.38431/2006 seeking for a writ of certiorarified mandamus, calling for the records of the first respondent in connection with the orders passed by him in his proceedings No. Lr No. LC1/53771/99 dt 6.10.99 and quash the same and direct the respondents to give him appointment to the post of Field Assisant with effect from the dae of appointment i.e. 26.1087 given to others.

For Appellant : Mr.T.S.Rajamohan

For Respondents: Mr.V.Anandhamoorthy
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dismissing the Writ Petition filed by the appellant in WP No.38431 of 2006 (O.A. No.6994 of 1999) on the file of the Tamil Nadu Administrative Tribunal, Chennai.

2. In the Writ Petition, the appellant sought for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the proceedings dated 06.10.1999, to quash the same and to direct the respondents to appoint him as a Field Assistant with effect from the date of his initial appointment, viz. 26.10.1987. The learned Single Judge had dismissed the Writ Petition, solely on the ground that the appellant's request for regularisation was rejected on the ground that he was working only as a casual labourer on NMR basis, and therefore, his services cannot be regularized. The learned Single Judge also relied upon the judgment of the Hon'ble Supreme Court in *Secretary to Government, School Education Department, Chennai v. R.Govindasamy and others* made in CA Nos.2726 to 2729 of 2014 etc. batch of cases.

3. Aggrieved by the said dismissal, the appellant is before us by way of this Intra Court Appeal.

4. We have heard Mr.T.S.Rajamohan, learned counsel appearing for the appellant and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents.

5. The appellant was appointed as Nominal Muster Roll employee prior to 19.07.1979 and he has been continuously working in the Soil Conservation Scheme of the Agricultural Engineering Department. With a view to provide for regularisation of these Nominal Muster Roll employees in the Soil Conservation scheme in the Agricultural Engineering Department to regular post of Soil Conservation Field Assistant, the Government issued G.O.Ms.No.19 dated 05.01.1989, introducing amendments to the Service Rules. The amendments made are as follows:

"Amendments

In the said Rules - in (1) sub-rule (a) of rule 2, under Class III for the entries in column (2), against category 7 in column (1) Soil Conservation Field Assistant the following entries shall be substituted, namely:-

i. Direct recruitment: or

ii. Recruitment of candidates appointed through the Employment Exchange as nominal muster rolls and completed five years of service in the Soil Conservation Schemes in the Agricultural Engineering Department provided they are fully qualified for the post; (or) candidates who were appointed as nominal muster rolls otherwise than through the Employment Exchange upto the 19th July 1979 and completed five years of service in the Soil Conservation Scheme of the Agricultural Engineering department provided they are fully qualified for the post."

From the said amendments made, it is clear that candidates who were appointed as Nominal Muster Roll employees otherwise than through the Employment Exchange up to 19.07.1979 and who had completed 5 years of service in the Soil Conservation Schemes of the Agricultural Engineering Department, provided they are fully qualified for the post, could be appointed to the regular post of Soil Conservation Field Assistant.

6. It is not in dispute that the appellant was appointed prior to 19.07.1979 and he had completed 5 years of service as a Field Assistant in the Soil Conservation Schemes of the Agricultural Engineering Department. It is not also in dispute that the appellant is qualified for the said post. The request of the appellant for appointment pursuant to G.O.Ms.19 dated 05.01.1989 was rejected solely on the ground that the post of Field Assistant is covered by the Special Rules for the Tamil Nadu Agricultural Subordinate Service and it can be filled up only by referring to the Employment Exchange and only when there is a sanctioned post. Inasmuch as the appellant was engaged as a casual labourer on Nominal Muster Roll basis, without reference to Employment Exchange, he cannot be given the benefit of regularisation.

7. The premise on which the impugned order came to be passed is opposed to the relevant rules. We have already extracted the Amended Rule, which enables Nominal Muster Roll employees, who were appointed otherwise than through Employment Exchange prior to 19.07.1979 and had completed 5 years of service in the Soil Conservation Schemes could be appointed as Soil Conservation Field Assistant. Apparently, the amendments introduced by G.O.Ms.No.19 dated 05.01.1989 were not brought to the notice of the learned Single Judge, when the Writ Petition came to be disposed of. The Judgment of the Hon'ble Supreme Court in *R.Govindasamy's* case, referred to supra, cannot be applied to the facts of the present case when the Government Order issued as early as on 05.01.1989 enables appointment of persons like the appellant as Soil Conservation Field Assistant, immaterial of the fact whether they were recruited through Employment Exchange or not.

8. We are, therefore, constrained to interfere with the order of the learned Single Judge, inasmuch as the learned Single Judge dismissed the Writ Petition solely relying upon the judgment in *R.Govindasamy's* case, referred to supra. In view of the fact that a specific amendment was carried out to the service Rules by the Government, to enable Soil Conservation Field Assistant to be recruited, from among the nominal muster roll employees, who were appointed without reference to Employment Exchange prior to 19.07.1979 and he continued to serve the Department for more than 5 years. We do not think that the appellant could be denied the benefits of the amendments introduced by the said Government Order.

9. In view of the foregoing reasons, the Writ Appeal stands allowed. The respondents are directed to appoint the appellant as a Soil Conservation Field Assistant, as per the G.O.Ms.No.19 dated 05.01.1989. Needless to state that the appellant would be entitled to all other attendant benefits attached to his appointment. There will be no order as to costs.

Sd/-
Assistant Registrar(co)

// True Copy//

Sub Assistant Registrar

jv

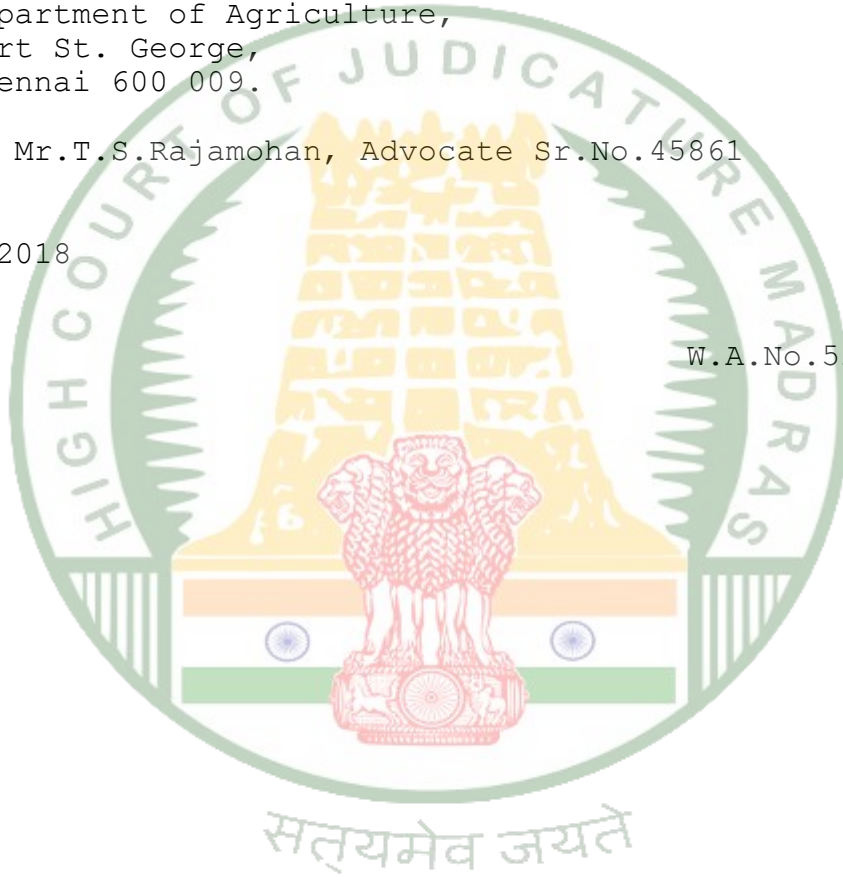
To

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+1cc to Mr.T.S.Rajamohan, Advocate Sr.No.45861

SSI (CO)
sm:6.8.2018

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