

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.04.2018

Delivered on : 28.04.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.1861 of 2011

1. M.Sithesparan
2. T.Chandrasekaran ..Petitioners

versus

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Agricultural (AAS) Department,
Fort St.George, Chennai-600 009.

2. The Chief Engineer,
Agricultural Engineering,
437, Anna Salai, Nandanam,
Chennai-600 003.

3. P.Natarajan

4. S.Radhakrishnan

5. K.Ramesh

6. A.Kesavamoorthy

7. L.Jayaprakash

8. C.Anantharaman

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Letter No.Pa Aa Pa3/60303/2010 dated 7.12.2010 issued by the 2nd respondent herein, quash the same and consequently direct the respondents 1 and 2 to promote the petitioners as Assistant Engineers in Agricultural Engineering Department retrospectively from 27.7.2007 in pursuance of G.O.Ms.No.312, Agriculture (AA3)/2007 dated 27.7.2007 fixing the seniority above the respondents 3 to 8 herein by taking into account the length of service of the petitioners with all monetary benefits, etc.

For Petitioner : Mr.R.Gandhi, SC for
M/s.R.G.Narendhiran

For Respondents : Mr.J.Pothiraj, Spl.G.P. For R1&R2

For Respondent3to8 : No Appearance

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the Letter No.Pa Aa Pa3/60303/2010 dated 7.12.2010 issued by the 2nd respondent herein, quash the same and consequently direct the respondents 1 and 2 to promote the petitioners as Assistant Engineers in Agricultural Engineering Department retrospectively from 27.7.2007 in pursuance of G.O.Ms.No.312, Agriculture (AA3)/2007 dated 27.7.2007 fixing the seniority above the respondents 3 to 8 herein by taking into account the length of service of the petitioners with all monetary benefits, etc.

2. Both the petitioners herein are appointed as Junior Draughting Officers on 22.08.1986 and 16.07.1986 respectively in Agricultural Engineering Department. When they were appointed, they were in possession of Diploma in Civil and Rural Engineering and Diploma in Civil Engineering respectively and as such, they were qualified to be appointed as Junior Draughting Officers in Agricultural Engineering Department. Subsequently, both the petitioners appeared to have qualified in B.E. Degrees in 2004. According to the petitioners, they had put in 20 years of service as JDO and they had been languishing in the same post without any promotion all the years.

3. The services of the petitioners were governed by both the Tamil Nadu Agricultural Subordinate Service Rules and the Special Rules for Tamil Nadu Agricultural Engineering Service. The next avenue of promotion from the post of JDO is the post of Assistant Engineer (Agricultural Engineering) which was classified as Class V category as per the Special Rules governing the service conditions of the petitioners. As per the Special Rules, panel has to be prepared from among the candidates who acquired B.E.Degrees on the date of acquiring their qualification. The service Rules which had come into force from 1st February 1981 provide for appointment to Class V category, namely, Assistant Engineer in Agricultural Engineering either by 'direct recruitment' or 'recruitment by transfer' from

among the holders of the posts of Assistant Soil Conservation Officer (ASCO), Junior Draughting Officer, Agricultural Engineering Foreman, etc. in Tamil Nadu Agricultural Subordinate Service. Quota has also been fixed as between the 'direct recruitment' and 'recruitment by transfer', at 91:9 ratio, namely, 91 by direct recruitment and 9 by recruitment by transfer' respectively. As per proviso to Rule 3 of the Special Rules, for the appointment to the post of Class V category by recruitment by transfer, list shall be prepared with reference to seniority of the candidates based on the date of acquiring B.E.(Civil) or B.E.(Mechanical) Degree. This proviso appeared to have been added as per the amendment issued vide G.O.Ms.No. 582 Agriculture Department dated 9.11.1995, which had come into force from 9th November, 1995.

4. As stated above, the petitioner had put in more than 20 years of service as JDO. But like the petitioner, there were several Officers in the feeder category, had also put in more than 20 years, awaiting to be promoted to the next post of Asst.Engineer (Agricultural Engineering). Therefore, a proposal was submitted for grant of accelerated promotion to the eligible Officers from the feeder category, namely, JDO, Asst.Soil Conservation Officer, etc. On the basis of the proposal, the Government has issued G.O.Ms.No.312 Agriculture (AA3) Department dated 27.7.2007, by which, 54 B.E. qualified Assistant Soil Conservation Officers and JDOs who had completed 20 years of service in Agricultural Engineering Department, were promoted by 'recruitment by transfer' as one time measure.

5. According to the petitioner, out of 54 persons promoted, only 5 JDOs alone were considered for promotion and the remaining were considered from other feeder category, namely, Asst.Soil Conservation Officers. Subsequently, it appears that another proposal was submitted for the purpose of providing promotional chances to Asst.Soil Conservation Officers, who were hundreds in number and put in more than 20 years of service. The said proposal was considered by the Government and issued G.O.Ms.No.479 Agriculture (AA3) Department, dated 16.11.2007, whereby, 399 Assistant Soil Conservation Officers who acquired qualification of Diploma in Engineering at the time of their initial appointment and who completed 20 years of service, were upgraded as Junior Engineers. This was also done as one time measure. The criteria which was adopted for the purpose of upgrading the post of Asst.Soil Conservation Officers to that of Junior Engineer, was 20 years of service in the feeder category.

6. The grievance of the petitioners is that when such proposals were submitted and G.Os. were issued promoting several hundreds of Asst.Soil Conservation Officers, few of the Junior Engineers, Assistant Engineers and the petitioners who had put in 24 years of service as JDO, have not been considered.

According to the petitioners, many of the Junior Draughting Officers/Asst.Soil Conservation Officers who had joined the Agriculture Engineering Department after them, had been granted promotion and they had been unjustly overlooked and left to languish in the same post ever since from the date of their initial appointment in 1986. According to the petitioners, few more persons appointed in 2008 and joined the Department only after the petitioners, were promoted. Therefore, the petitioners submitted a representation to the respondents, requesting to promote them as Assistant Engineers in the Agricultural Engineering Department retrospectively from 27.7.2007 in pursuance to G.O.Ms.No.312 dated 27.7.2007. However, the said representation was rejected by the respondents vide communication dated 7.12.2010, stating that all the promotions which were effected earlier and in pursuance of the G.O.Ms.No.312 dated 27.7.2007 were on the basis of seniority which was prepared on the basis of the date of acquiring B.E.Degrees. The persons who were promoted in pursuance of the aforesaid G.O., had acquired the degrees much before the petitioners and the petitioners have to wait their turn to come for claiming their promotion as Asst.Engineers in the Agricultural Engineering Department. The said rejection order is put to challenge in the present Writ Petition with consequential prayer for promotion in pursuance of G.O.Ms.No.312 dated 27.7.2007.

7. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for respondents 1 and 2 and filed a detailed counter affidavit.

8. Shri R.Gandhi, learned senior counsel appearing for the petitioners would submit that the petitioners, though had served for nearly 24 years, had been unjustly overlooked in the matter of promotion despite acquiring B.E. qualification. He would submit that once as one time measure promotions were affected on the basis of number of years of services rendered in the feeder category, the petitioners ought to have been promoted along with others. Therefore, overlooking to promote the petitioners, is per se discriminatory, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India. The learned senior counsel would further submit that once the department had submitted a proposal in order to remove the grievances of the Officers who were working in the feeder category for years together without any chances of promotion and when such promotions were effected to all the persons who had rendered more than 20 years of service, ought to have been promoted regardless the fact whether B.E.degree was obtained earlier or later. Once accelerated promotion was granted as one time measure, it was not open to the Department to stick to the Rule of seniority as provided under proviso to Rule 3. Therefore,

the learned senior counsel would pray for allowing the Writ Petition.

9. Per contra, learned Special Government Pleader appearing for the official respondents would submit that the persons who were promoted ahead the petitioners vide G.O.Ms.No.312 dated 20.7.2007, had acquired their Engineering degrees much prior to the petitioners. As per counter affidavit, the last Junior Draughting Officer and Asst.Soil Conservation Officer, who among 54 persons promoted vide G.O.Ms.No.312, dated 20.7.2007, are Thiru N.Jayaram and Thiru T.Karthikeyan, who acquired degree in Engineering on 24.11.1997 and 14.5.1998 respectively, whereas, the petitioners had acquired their B.E.degrees only in the year 2004. Since the order was issued as one time measure, the concession cannot be extended for future vacancies. In fact, in para 14 of the counter affidavit, it is clearly mentioned the date of acquiring the degrees by the private respondents which clearly demonstrate the fact that all the private respondents have acquired degrees between 1994-97, i.e. well before the petitioners who admittedly acquired their degrees in 2004. In fact, this was precise reason that was stated by the authority concerned which is impugned in the present writ petition.

10. As per the counter affidavit and according to the learned Special Government Pleader, there were several persons who had completed more than 20 years of service like the petitioners and they have also been waiting for promotion like the petitioners herein. Therefore, the petitioners cannot seek to march over them by approaching this Court for grant of the relief.

11. The learned Special Government Pleader would submit that the services of the petitioners being governed by the Special Rules which provide for preparation of seniority only on the basis of date of qualification of B.E.degree, consideration of relief as prayed for by the petitioner would be contrary to the statutory Rule and therefore, the claim of the petitioners cannot be countenanced both in law and on facts.

12. In reply, the learned senior counsel would reiterate his submissions that once the basis of promotion was only completion of 20 years as envisaged in G.O.Ms.No.312, dated 20.7.2007, the question of sticking to seniority proviso does not arise at all since the G.O. which is culmination of proposals sent by the department to alleviate the grievance of the officers who had been stagnating in the post for more than 20 years without promotion. Therefore, he would submit that in the larger perspective of the things, the petitioners ought to have been promoted along with others in 2007.

13. Although notices have been served on the private

respondents, they were not represented before this Court.

14. This Court has considered the rival submissions of the learned senior counsel appearing for the petitioners and the learned Special Government Pleader appearing for respondents 1 and 2.

15. As regards the contention raised on behalf of the petitioners that 'when the Government had issued G.O.Ms.No.312 dated 20.7.2007 on the basis of the fact that the Officers who had served for more than 20 years to be promoted as they were stagnating in the same post, the question of following the proviso to Rule 3 does not arise at all', may appear to be an attractive argument in the sense, but when facts and circumstances are critically examined, it would only demonstrate what the department has followed the principle of seniority strictly as envisaged in the Special Rules and admittedly, the persons who were promoted numbering 54 vide G.O.Ms.No.312 dated 20.7.2007, have all acquired B.E.degrees much before the petitioners in 1994 and 1997 as against the petitioners acquiring the qualification in 2004. Therefore, this Court is unable to appreciate as to how such action on the part of the official respondents can be held to be discriminatory or unreasonable violating Articles 14 and 16 of the Constitution of India. As rightly contended by the learned Special Government Pleader that G.O.Ms.No.312, dated 20.7.2007 was issued as one time measure for promoting certain number of Officers without completely tilting the balance of the ratio as provided for in the Special Rules between the 'direct recruitment' and the 'recruitment by transfer'. Such exercise on the part of the department cannot be the subject matter of controversy since the department had taken action only to extend the benefit of one time promotion to certain number of persons and the department had chosen to follow the seniority strictly as per the proviso to Rule 3. Although the department has adopted the yardstick of 20 years of service, however, the facts and circumstances of the case would disclose that there were hundreds of Officers who had put in more than 20 years of service in the feeder category and in view of the ratio provided under the Special Rules, it cannot be possible for the department to promote all the Officers at one stroke who had completed 20 years of service. Therefore, they had adopted a fair approach in the matter of promotion and accordingly effected the promotions on the basis of seniority which prepared by applying the yardstick of date of acquiring B.E.degree as per proviso to Rule 3 of the Special Rules. Such action on the part of the department cannot be faulted with at all.

16. Moreover, the facts as disclosed are not disputed as the last JDO and Asst.Soil Conservation Officer out of 54

promotees, were acquiring B.E.degree qualification much before the petitioners to qualify themselves and therefore, such promotion cannot give rise to any valid plea of discrimination. After all, the persons who had acquired degree qualification much before the petitioners could acquire, had been considered and promoted and those persons had also competed more than 20 years of service in the feeder category. Moreover, it is to be seen that the petitioners themselves have admitted in the affidavit filed in support of the writ petition, that the date of B.E.degree qualification is the basis for preparation of seniority. The relevant averment in this regard as found in paragraph 3 of the affidavit is extracted as under:

"3. Thus, it is clear without ambiguity that the date of acquiring B.E.degree shall be the basis or criteria for the preparation of panel of seniority on regular basis with respect to the appoint to the post of Class V by recruitment by transfer, which is the normal Rule, prevail."

17. Having taken such a position in the affidavit, whether it was open to the petitioners to sing a different tune in their verbal version contrary to their own admission. Even in any event, if the criteria of number of years of service alone can be taken into consideration, the petitioners have not chosen to challenge the proviso to Rule 3 of the Special Rules. In the absence of such challenge, the petitioners cannot make any attempt to succeed in their attempt to get the relief. Once it is admitted fact that the entire promotions which took place pursuant to various G.Os. including G.O.Ms.No.312 dated 20.7.2007 within the frame work of the statutory rules, such promotions cannot be called into question validly.

18. For the above said reasons, this Court does not find any merit and substance in the writ petition and it does not find any infirmity in the order impugned in the writ petition rejecting the petitioners' claim for promotion.

19. Accordingly, the Writ Petition stands dismissed as devoid of merits. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

Suk

To

1. The Secretary to Government,
Agricultural (AAS) Department,
Fort St.George, Chennai-600 009.

2. The Chief Engineer,
Agricultural Engineering,
437, Anna Salai, Nandanam,
Chennai-600 003.

+1cc to Mr.R.G.Narendhiran, Advocate, sr.no.32098

+1cc to the Government Pleader, sr.no.32781

W.P.No.1861 of 2011

AK(CO)

RRK(04/06/18)



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