

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2019

Coram

The Honourable Mr. Justice D.KRISHNAKUMAR

W.P.No.29923 of 2005

T.Mathivanan

...Petitioner

Versus

The State of Tamilnadu
Rep. by its Secretary to Government,
Agriculture Department,
Fort St.George, Chennai - 600 009.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in G.O.Ms.No.533 Agriculture (AA3) Department dated 14.12.2004 and quash the same in so far as the prescription of rotation between the 6 categories and giving prospective effect to the amendment to Rule 2(a) of Tamilnadu Agricultural Subordinate Service Rules with effect from 14.12.2004 and also in so far as the inclusion of unequal sets of posts of Inspector of Hand boring set Grade I Drill Supervisor and Air Compressor Driver are concerned and direct the respondents to revise and reissue the amendment after deleting the above mentioned three categories and to give retrospective effect to the amendment with effect from 07.07.1983 and direct the respondent to effect promotions by following the combined seniority of rest of the categories including Assistant Soil Conservation Officer with effect from the date of appointment in Agricultural Engineering Department.

For Petitioner : No Appearance

For Respondent : Mr.B.Anand,
Government Advocate

O R D E R

Today(31.10.2019), this matter is posted under the caption, "For Orders". However, there is no representation for the petitioner.

2. The relief sought for in the present writ petition is to call for the records on the file of the respondent in

G.O.Ms.No.533 Agriculture (AA3) Department dated 14.12.2004 and quash the same in so far as the prescription of rotation between the 6 categories and giving prospective effect to the amendment to Rule 2(a) of Tamilnadu Agricultural Subordinate Service Rules with effect from 14.12.2004 and also in so far as the inclusion of unequal sets of posts of Inspector of Hand boring set Grade I Drill Supervisor and Air Compressor Driver are concerned and direct the respondent to revise and reissue the amendment after deleting the above mentioned three categories and to give retrospective effect to the amendment with effect from 07.07.1983 and direct the respondent to effect promotions by following the combined seniority of rest of the categories including Assistant Soil Conservation Officer with effect from the date of appointment in Agricultural Engineering Department.

3. The case of the writ petitioner is that he entered into service as Assistant Soil Conservation Officer (ASCO) on 20.03.1985. The Special Rules issued in G.O.Ms.No.1760 dated 10.06.1970 had been already amended to include diploma in Engineering as the qualification for the post of ASCO with effect from 01.01.1978 vide G.O.Ms.No.1829 Agri (AEIII) Department dated 09.01.1988. On the basis of the above said amendment, the petitioner's service was regularized with effect from the date of his initial appointment and at that point of time itself, the rule should have been amended to include the ASCO as a feeder category for the post of Junior Engineer.

3.1 By virtue of the Government Memorandum No.108824/AI III/76-6 dated 29.09.1977, the petitioner was eligible for promotion to the post of Junior Engineer. But the Department partially followed the Memorandum by promoting 10% non diploma holder (ASCOS) and denying promotion to the 90% out of 40% Quota from Diploma Holders by passing G.O.Ms.No.1040 dated 22.05.1979. After the bifurcation of the Department of Agriculture with effect from 01.02.1981, a new set of Rules of Tamilnadu Agricultural Engineering Service Special Rules dated 28.08.1981 was issued with effect from 01.02.1981. More than 175 Diploma holders working in lower categories were promoted as Junior Engineers vide G.O.Ms.No.1280 Agriculture dated 07.07.1983 without following the second proviso to Rule 36A of Tamilnadu State and Subordinate Service Rules and their services were regularized vide G.O.Ms.No.19 dated 13.01.1992.

3.2 The ASCOs requested the Government for amending the rules right from the year 1980 onwards and the proposals for amendment to the Special Rules were sent even as early as in the year 1991 vide Chief Engineer Office Ref.No.EE4/23156/98 dated 28.08.1991 suggesting the category of ASCO for promotion as Junior Engineer. In O.A.No.492/97 dated 22.01.1997 filed by one Mr.K.Anandan, ASCO, the Hon'ble Tamilnadu Administrative

Tribunal directed the respondent herein to pass orders on the amendment proposals dated 24.07.1996 and 05.09.1996 within a period of 4 months, but till 13.12.2004, the respondent had not passed any orders.

3.3 In the meanwhile, representations were sent to the Department to give retrospective effect to the amendment with effect from the date of G.O.Ms.No.1280 dated 07.07.1983 and also the Chief Engineer had sent proposals to the Government dated 25.02.1999, 10.03.1999 and 26.03.1999 in Lr.No.ED2/32852/95 recommended retrospective effect from 07.07.1983 to the rules and the same was accepted by the Secretary to Government Agricultural Department, the Secretary to Government Personnel and Administrative Reforms Department and the Secretary to Government, Law Department and the then Minister for Agriculture had also signed and approved and the matter was finally sent to the Tamil Nadu Public Service Commission, however, the same was kept pending.

3.4 The Chief Engineer in his Letter dated EE4.23720/2001 dated 02.05.2001 has categorically stated that the date of regularization in the respective feeder category may be taken as the criteria for fixing the combined seniority for the preparation of panel for promotion/recruitment by transfer from among the six feeder categories to the post of Junior Engineer (Agri. Engg) and also that there is no need for fixing any ratio or rotation among the six feeder categories.

3.5 By order dated 22.01.2004 made in W.P.No.7460 of 1998, the undertaking given by the Government stating that speedy action will be taken to amend the rules and a ratio has to be fixed in accordance with the cadre strength of the six posts was recorded by the Division Bench of this Court and the said writ petition was disposed of. However, even after several months, the rule was not amended and hence the petitioners in W.P.No.7460/1998 filed C.A.No.580 of 2004 and the same was admitted by the Division Bench of this Court and finally the respondent issued G.O.Ms.No.533 dated 14.12.2004 amending the Tamil Nadu Agricultural Subordinate Service Rules with prospective effect so as to deprive the seniority of the ASCOs and while fixing the ratio they have taken into account, the cadre strength of the feeder categories to the feeder category to the post of Junior Engineer and fixed the ratio irrationally. Hence, the petitioner has filed the present writ petition seeking for the relief stated supra.

4. The learned Government Advocate appearing for the respondent submitted that in the counter affidavit, the respondent has stated as follows:

(i) The statutory background to the post of Junior Engineer in Agricultural Engineering Department is governed by the

Special Rules for the Tamil Nadu Agricultural Subordinate Service issued in G.O.Ms.No.1760, Agriculture Department, dated 10.06.1970. The method of appointment for the post of Junior Engineer as amended in G.O.Ms.No.533, Agriculture (AA3) Department, dated 14.12.2004 is as follows:

1. Direct Recruitment

(or)

2. Promotion from the following posts namely:

1.Agricultural Engineering Foreman

2.Assistant Soil Conservation Officer

3.Junior Draughting Officer

(or)

3. Recruitment by transfer from the following posts namely:-

1.Drill Supervisor

2.Inspector of Hand boring Set Grade-I

3.Compressor Driver

Provided that 25% of the posts in the total cadre strength of Junior Engineer (Agricultural Engineering) and Assistant Engineer (Agricultural Engineering) taken together shall be reserved for appointment by the above said methods.

Provided further that the said 25% of the reserved posts shall be filled up by following the rotation as indicated below:-

Rotation 1	Direct Recruitment
Rotation 2	Promotion from the post of Agricultural Engineering Foreman
Rotation 3	Promotion from the post of Assistant Soil Conservation Officer
Rotation 4	Promotion from the post of Assistant Soil Conservation Officer
Rotation 5	Promotion from the post of Assistant Soil Conservation Officer
Rotation 6	Promotion from the post of Assistant Soil Conservation Officer
Rotation 7	Promotion from the post of Junior Draughting Officer
Rotation 8	Recruitment by transfer from the post of Drill Supervisor
Rotation 9	Recruitment by transfer from the post of Inspector of Hand Boring Set, Grade-I
Rotation 10	Recruitment by transfer from the post of Compressor Driver

Provided that 25% of the posts in the total cadre strength of Junior Engineer (Agricultural Engineering) and Assistant

Engineer (Agricultural Engineering) taken together shall be reserved for appointment by the above said methods.

Now, the four rotations i.e., rotations 3, 4, 5, 6 given to the Assistant Soil Conservation Officers was reduced to one vide G.O.Ms.No.309, Agriculture (AA3) Department, dated 19.10.2016 and the said Special Rules for the Tamil Nadu Agricultural Subordinate Service was amended as follows:

Rotation 1	Direct Recruitment
Rotation 2	Promotion from the post of Agricultural Engineering Foreman
Rotation 3	Promotion from the post of Assistant Soil Conservation Officer
Rotation 4	Promotion from the post of Junior Draughting Officer
Rotation 5	Recruitment by transfer from the post of Drill Supervisor
Rotation 6	Recruitment by transfer from the post of Inspector of Hand Boring Set, Grade - I
Rotation 7	Recruitment by transfer from the post of Compressor Driver

The petitioner is requesting to delete the categories of Drill Supervisor, Inspector of Hand Boring Sets and Compressor Driver from the above amendment and to give retrospective effect from 07.07.1983 and also to accord promotions duly preparing a combined seniority of all the above categories for further promotion as Junior Engineer (Agricultural Engineering).

(ii) The main intention of the petitioner on his prayer to delete some feeder categories from the above amendment and to prepare a combined seniority of all other categories for promotion as Junior Engineer (Agricultural Engineering) retrospectively is for getting promotion earlier. That is, if the other feeder categories of Drill Supervisor, Inspector of Hand Boring Sets and Compressor Driver are deleted from amendment, he may get the chance of promotion somewhat earlier duly occupying the place provided to him in the amendment. As the petitioner is stagnating without any promotion for more than 20 years, he is praying for such relief.

(iii) The grievance of the petitioner has already been met with in the way of elevation to further posts. The above mentioned amendment was made in the year 2004. But the petitioner was elevated in the year 2007 to two higher posts viz., [Assistant Soil Conservation Officer] --> [Assistant Engineer (Agricultural Engineering) on recruitment by transfer w.e.f. 30.03.2009].

He further submitted that the present writ petition has become infructuous at this distant point of time since the petitioner had been elevated as stated by the respondent in the counter affidavit.

5. In view of the statement made by the respondent in the counter affidavit, nothing survives in this writ petition for further adjudication and therefore, the same is dismissed as infructuous by this Court. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

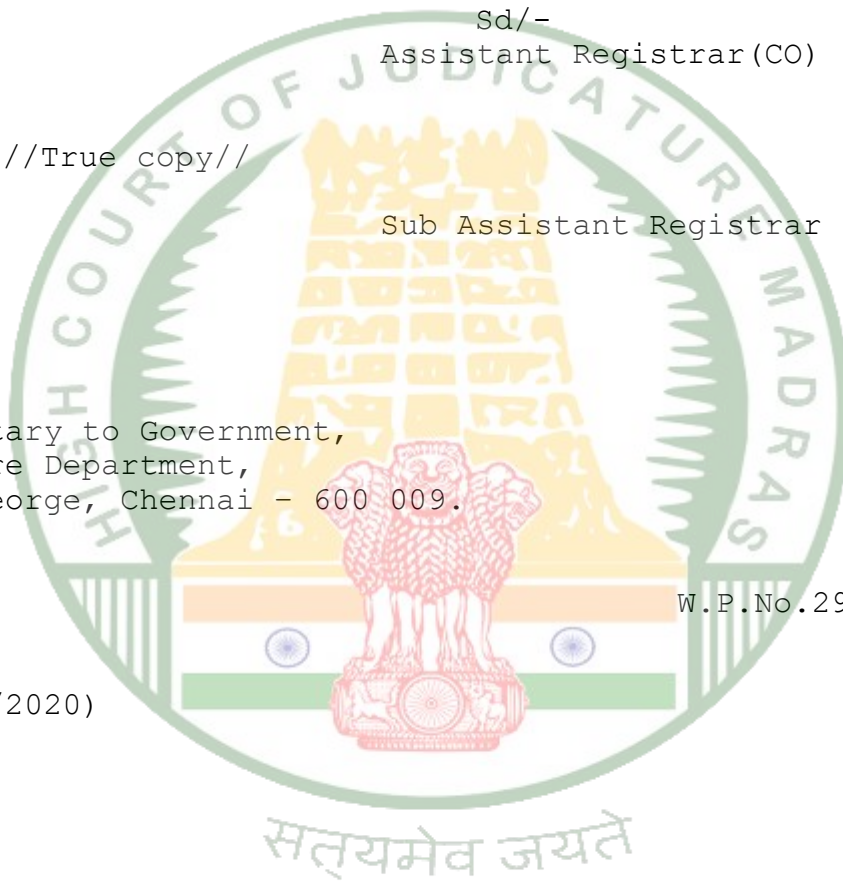
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To

The Secretary to Government,
Agriculture Department,
Fort St.George, Chennai - 600 009.

W.P.No.29923 of 2005

PVS (CO)
GMY (06/02/2020)



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