



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD) Nos.12580 and 12581 of 2017
and
WMP(MD)Nos.9686 to 9689 of 2017

WP(MD)No.12580 of 2017

T.Eswaran

... Petitioner

vs.

1.The Government of Tamil Nadu,
rep.by its Principal Secretary,
Department of Agriculture,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Agriculture,
Chepuak,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Sivagangai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in Letter No.Ka.Pa.Nil/78748/15 dated 22.07.2016 and the seniority panel in FSE2/78748/2015 dated 22.07.2016 quash the same and direct the 2nd respondent to fix inter - se seniority of all the 1707 Assistant Agricultural officers based on their marks secured in the selection process and by following the communal roster.

WP(MD)No.12581 of 2017

A.Kaleel

... Petitioner

vs.

1.The Government of Tamil Nadu,
<https://hcservices.ecourts.gov.in/hcservices/>
rep.by its Principal Secretary,
Department of Agriculture,



Fort St. George,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Agriculture,
Chepuak,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in Letter No.Ka.Pa.Nil/78748/15 dated 22.07.2016 and the seniority panel in FSE2/78748/2015 dated 22.07.2016 quash the same and direct the 2nd respondent to fix inter - se seniority of all the 1707 Assistant Agricultural officers based on their marks secured in the selection process and by following the communal roster.

For Petitioners	:	Mr.R.Subramanian (in two Cases)
For Respondents	:	Mr.C.M.Mari Chelliah Prabhu Additional Government Pleader in both writ petitions.

COMMON ORDER

These writ petitions have been filed to quash the impugned order of the second respondent and also the seniority panel dated 22.07.2016 and consequently direct the second respondent to fix the inter - se seniority of all the 1707 Assistant Agricultural Officers, based on their marks secured in the selection process and by following the communal roster.

2.Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader for the respondents.

3.The learned counsel appearing for the petitioners submitted that in the temporary seniority list released by the second second respondent on 23.05.2016, the petitioners' names have been found place below the juniors, for which, the petitioners have submitted their objections. But the second respondent, without considering the same, passed the impugned order dated 22.07.2016, publishing the final seniority list and thereby rejected the request of the petitioners with regard to fixation of seniority, on the basis of their date of joining in duty, by quoting Rule 35(a) of the Tamil



Nadu State and Subordinate Service Rules. Aggrieved by the same, the petitioners are before this Court.

4. In order to fortify his contention, the learned counsel appearing for the petitioners relied upon a judgment rendered by this Court in W.A(MD)Nos.221 to 225 of 2018 and 954 to 959 of 2018 dated 04.09.2018, wherein it is held as follows:

"9. Admittedly, selection has been made based upon the marks obtained. That is the reason why, of the 3506 candidates, only 1707 were selected. This selection process has been approved by this Court and confirmed by the Apex Court. The issue of non-appointing some of the candidates those who got higher marks, was raised on the earlier occasion. It was rightly pleaded by the Government that such candidates, who secured higher marks, could not be given appointment though selected, because of the interim order. These persons joined later. Therefore, the question of awarding higher marks in the interview cannot be a ground to be raised in these proceedings, for the reason, this has already been dealt with and concluded in the earlier proceedings. Even otherwise, the same cannot be permitted to raise at this stage. Suffice it to say that all the selected candidates have undergone the very same process. Law is well settled that a candidate cannot be permitted to challenge a process after accepting it and undergone. Therefore, the common law principles of estoppel and acquiescence would certainly apply. Suffice it to note that even the writ petitioners/private respondents were appointed by same mode and those have accepted the rank list.

10. Rule 35(a) is very specific. It clearly mandates that seniority will have to be reckoned between the selected candidates based upon their merit. When once there is no doubt about the list having been drawn based upon the merit, the seniority list drawn based upon it cannot be questioned. After all, it is for the writ petitioners to substantiate it otherwise. In the counter-affidavit filed by the official respondents, the aforesaid position has been stated categorically. Even before us, the mark list has been produced. Secondly, Rule 35(aa) stands on a different footing. One has to read Rule 35(aa) along with the proviso. This can be applied in a case where a person is appointed earlier and working and thereafter, some other person is appointed. Therefore, such situation cannot be applied to a common list, which has been drawn based upon merit.

11. To be noted, we are dealing with a case where mode of recruitment is direct and, therefore,



even on that score, what is applicable is only Rule 35 (a), since Rule 35(aa) deals with different modes of recruitment.

12. In such view of the matter, we are of the view that Rule 35(aa) does not have any application. The proviso makes it clear that even in a case where a junior is appointed to a promoted post thereafter followed by a senior, the inter se seniority in the promoted post will have to be fixed with the senior in the erstwhile cadre as a senior to the junior who is promoted earlier.

13. The learned Single Judge, in our considered view, has wrongly taken into consideration the date of regularisation as the one which gives rise to be considered as a senior between the persons appointed on the same day based upon merit. A regularisation per se is different. It merely gives a status to an employee. Therefore, this regularisation cannot be confused with the inter se seniority. To put it differently, regularisation given in favour of an employee cannot affect the right of another one who is otherwise senior based upon merit, though taken charge subsequently.

14. As rightly held by the Apex Court in *Chairman, Puri Gramya Bank v. Ananda Chandra Das* [1994 (6) SCC 301] and *Suresh Chandra Jha v. State of Bihar* [2007(1) SCC 405], fixing seniority and giving promotion based upon the date of joining in the feeder cadre is a fortuitous one and especially, when rules provide otherwise. Thus, looking from any angle, we are unable to sustain the order of the learned Single Judge. Accordingly, the same stands set aside and the Writ Appeals stand allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed."

5. Though the prayer is for a Certiorarified Mandamus, the learned counsel appearing for the petitioners now confines the same to the extent of seeking a direction to the respondents to consider the claim of the petitioners in the light of the decision rendered by the Division Bench of this Court in W.A.(MD)Nos.221 to 225 and 954 to 959 of 2018 dated 04.09.2018.

6. The learned Additional Government Pleader appearing for the respondents has no serious objection in giving such relief to the petitioners.

7. In view of the submissions made by the learned counsel on either side, the matter is remitted back to the file of the second respondent for passing appropriate orders in respect of the claim made by the petitioners on merits and also in the light of the decision rendered by this Court in W.A.(MD)Nos.221 to 225 and 954 to 959 of 2018 dated 04.09.2018, within a period of six weeks from the date of receipt of a copy of this order.



8. The writ petitions are disposed of accordingly. No costs. Consequently, WMP(MD) Nos. 9686 to 9689 of 2017 are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar (CS)

To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Agriculture,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Commissioner of Agriculture,
Chepuak,
Chennai - 600 005.
3. The Joint Director of Agriculture,
Sivagangai.
4. The Joint Director of Agriculture,
Tirunelveli.

+2 CC to M/s. R. SUBRAMANIAN, Advocate (SR-56169[F] dated 25/03/2019)

+1 CC to M/s. SPL GP (SR-56319[F] dated 25/03/2019)

W.P(MD) Nos. 12580 and 12581 of 2017
22.03.2019

SP:02/05/2019/5P/8C