

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 30.01.2020	Delivered on 05.02.2020
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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.30420 of 2017 & 20661 of 2018
& WP(MD).Nos.3639 & 5208 of 2018
and

WMP Nos.233176,33177/2017, 24279/2018 & 2471 of 2019

1.N.Balakrishnan
2.M.Karuppasamy
3.P.Gunasekaran
4.Santha Celine Mary
5.C.Ramprasadh

... Petitioners in W.P.No.30420/2017

1.N.Balakrishnan
2.M.Karuppasamy
3.Santha Celine Mary

... Petitioners in W.P.No.20661/2018

K.Revathi

...Petitioner in W.P(MD).Nos.3639 & 5208/2018

.Vs.

1.The Agriculture Production Commissioner and
Principal Secretary to Government,
Agricultural Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Director of Horticulture and Plantation Crops,
Chepauk,
Chennai 600 005.

3.The Director of Agriculture,
Chepauk, Chennai 600 005.

4.N.Rasakumar
Assistant Director of Horticulture,
Sattankulam Block,
Sattankulam Thoothukudi District.

5.L.Heddibai
Assistant Director of Horticulture,
Athur Block,
Dindigul District.

- 6.G.Nagalingam,
Assistant Director of Horticulture,
Kolathur Block,
Kolathur, Salem District.
- 7.B.Elangovan
Assistant Director of Horticulture,
Udumalpet Block,
Udumalpet, Tiruppur District.
- 8.V.Sekar,
Assistant Director of Horticulture,
Kadayampatti Block,
Kadayampatti, Salem District.
- 9.S.Jaganathan,
Assistant Director of Horticulture,
Chengam Block,
Chengam, Thiruvannamalai District.
- 10.K.Syed Aser Basha,
Assistant Director of Horticulture,
Omalur Block,
Omalur, Salem District.
- 11.B.Jeylakshmi,
Assistant Director of Horticulture,
Thiruchuli Block,
Virudhunagar District.
- 12.R.Ravichandran,
Assistant Director of Horticulture,
Chethupattu Block,
Chethupattu,
Thiruvannamalai District.
- 13.PL.Arumugam,
Assistant Director of Horticulture,
Thuvarankurichi Block,
Thuvarankurichi,
Trichy District.
- 14.T.Hema,
Assistant Director of Horticulture,
Aruppukottai Block,
Aruppukottai,
Virudhunagar District.
- 15.N.Parvathamma,
Assistant Director of Horticulture,
Gudiatham Block,
Gudiatham, Vellore District.

- 1.The Agriculture Production Commissioner and
Principal Secretary to Government,
Agricultural Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 2.The Director of Horticulture and Plantation Crops,
Chepauk, Chennai 600 005.
- 3.The Director of Agriculture,
Chepauk, Chennai 600 005.
- 4.L.Heddibai,
Assistant Director of Horticulture,
Athur Block,
Dindigul District.
- 5.M.Rajendran,
Assistant Director of Horticulture,
Avinashi Block,
O/o.The Deputy Director of Horticulture,
Tirupur District.
- 6.P.Premavathi,
Assistant Director of Horticulture,
Puzhal Block,
O/o.The Deputy Director of Horticulture,
Thiruvallur District.
- 7.PL.Arumugam,
Assistant Director of Horticulture,
Thuvarankurichi Block,
Thuvarankurichi, Trichy District.
- 8.A.Maritmuthu,
Assistant Director of Horticulture,
Watrap Block,
Virudunagar District.
- 9.D.Suseela,
Assistant Director of Horticulture,
Sozhavaram Block,
Thiruvallur District.

...Respondents
in W.P.No.20661/2018

- 1.The Agriculture Production Commissioner and
Principal Secretary to Government,
Agricultural Department,
Secretariat, Fort St.George,
Chennai 600 009.

- 2.The Director of Horticulture and Plantation Crops,
Chepauk, Chennai 600 005.

3.N.Rasakumar
Assistant Director of Horticulture,
Sattankulam Block,
Sattankulam Thoothukudi District.

4.L.Heddibai
Assistant Director of Horticulture,
Athur Block,
Dindigul District.

5.M.Rajendran,
Assistant Director of Horticulture,
Perambalur District.

6.P.Premavathi,
Assistant Director of Horticulture,
Thiruvallur District.

7.B.Elangovan
Assistant Director of Horticulture,
Udumalpet Block,
Udumalpet, Tiruppur District.

8.R.Ravichandran,
Assistant Director of Horticulture,
Chethupattu Block,
Chethupattu,
Thiruvannamalai District.

..Respondents
in WP(MD).No.3639/2018

1.The Agriculture Production Commissioner and
Principal Secretary to Government,
Agricultural Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Director of Horticulture and Plantation Crops,
Chepauk, Chennai 600 005.

3.N.Rasakumar
Assistant Director of Horticulture,
Sattankulam Block,
Sattankulam Thoothukudi District.

4.L.Heddubai
Assistant Director of Horticulture,
Athur Block,
Dindigul District.

5.M.Rajendran,
Assistant Director of Horticulture,
Perambalur District.

6.P.Premavathi,
Assistant Director of Horticulture,
Thiruvallur District.

7.P.L.Arumugam
Assistant Director of Horticulture,
Thuvarankurichi Block,
Thuvarankurichi,
Trichy District.

8.A.Marimuthu,
Assistant Director of Horticulture,
Virudhunagar District.

9.D.Suseela,
Assistant Director of Horticulture,
Thiruvallur District.

...Respondents
in WP (MD) .No.5208/2018

PRAYER in W.P.No.30420 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to impugned Proceedings/Letters of the 1st and 2nd Respondents, viz.(i) letter of the 1st respondent addressed to the 2nd respondent in D.O.Letter No.22647/AA1(2)/2016-3, dated 11-05-2017; and (ii) Letter of the 2nd Respondent addressed to all District heads, (i.e. respective Joint Directors and Deputy Directors of Horticulture) in Letter No.GES3/10518/2016, dated 16-10-2017, quash (i) the impugned D.O.letter of the 1st respondent insofar as it relates to point No.3 and (ii) the impugned letter of the 2nd respondent wherein a seniority list of Assistant Director of Horticulture annexed thereto, and consequently direct the 2nd respondent to prepare a revised seniority lists among the Assistant Directors of Horticulture by placing the deputed Assistant Director of Agriculture working in the posts of Assistant Director of Horticulture below the petitioners and similarly placed regular Assistant Directors of Horticulture working in the Department of Horticulture as on the date as may be prescribed after expiry of 5 years period of Re-structure Scheme in G.O.Ms.No.537,Agriculture (AA8) Department, dated 24.12.2007.

PRAYER in W.P.No.20661 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to impugned Proceedings viz. (i) Letter of the 2nd Respondent addressed to all District Heads, (i.e. respective Joint Directors and Deputy Directors of Horticulture) in Letter No.GES4/15449/2016, dated 19-12-2018, whereby a Revised Seniority list wa made among 'Deputed Assistant Directors of Agriculture and 'Regular Assistant Directors of Horticulture;

and (ii) G.O.Ms.No.51, Agriculture (AA!) Department dated 28.02.2018 whereby the 1st respondent approved the Panel for promotion to the post of Deputy Director of Horticulture, quash the same and consequently direct the 2nd respondent to prepare a revised seniority list by placing the petitioners and other similarly placed regular Assistant Directors of Horticulture working in the Department of Horticulture above the deputed Assistant Directors of Agriculture working in the posts of Assistant Director of Horticulture in the Department of Horticulture, as on the date as may be prescribed after expiry of 5 years period of Re-structure Scheme in G.O.Ms.No.537, Agriculture (AA8) Department, dated 24.12.2007.

PRAYER in WP(MD).No.3639/2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned Proceedings of the 2nd respondent in Lr.No.GES4/10518/2016 dated 07.11.2017 quash the same and consequently direct the respondents herein to finalise and publish the seniority list to the post of Assistant Directors of Horticulture in the Horticulture Department including the name of the petitioner in the panel as per the date of her appointment and as per the seniority published by the Tamil Nadu Public Service Commission for the next promotional post of Deputy Director of Horticulture under the Special Rules of Tamil Nadu Horticulture Service Rules.

PRAYER in WP(MD).No.5208/2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the first respondent in G.O.Ms.51 Agriculture (AA1) dated 28.02.2018 and quash the same and consequently direct the respondents 1 and 2 to promote the petitioner as Deputy Director of Horticulture from the date of promotion of juniors to the petitioner.

For Petitioners : Mr.R.Viduthalai, Senior Counsel
for Mr.S.Rajendiran
(In All WPs)

For Respondents: Mrs.Narmadha Sampath
Addl.Advocate General
Asst.by Mr.P.S.Sivashanmugasundaram
Special Government Pleader

for R 1 to R 3 in W.P.No.30420/2017
for R1 to R 3, R 6 & R7 in
W.P.No 20661/2018

for M/s.D.Jayasingh

for R 4, R 5, R 8 & R 9 in
W.P.No.20661/2018
for R 1 & R 2 in WP(MD) Nos.3639 &
5208/2018

COMMON ORDER

The relief sought for and the issues involved in all these Writ Petitions are common and therefore they are taken up together and this common judgment is delivered.

2. These Writ Petitions challenged the letter of the 2nd respondent addressed to all the District Heads, dated 19.02.2018, G.O.Ms.No.51 Agriculture (AA 1 Department) dated 28.02.2018, wherein, the 1st respondent has approved for promotion to the post of Deputy Director of Horticulture and the impugned Proceedings/Letters of the 1st and 2nd respondents, dated 11.05.2017 and 16.10.2017 and for a consequential direction to prepare a revised seniority list among the Assistant Directors of Horticulture by placing the deputed Assistant Director of Horticulture below the petitioners and similarly placed regularly promoted Assistant Directors of Horticulture in the Department of Horticulture.

3. BRIEF FACTS OF THE CASE ARE AS FOLLOWS:

The Government of Tamil Nadu took a policy decision to restructure the Directorates of Agriculture, Horticulture and Plantation Crops, Seed Certification and Organic Certification, Agricultural Marketing and Agri- Business and also Tamil Nadu Horticulture Development Agency (TANHODA).

3.1. Pursuant to their policy decision, G.O.(Ms) No.537, Agriculture Department, dated 24.12.2007 was issued. The existing Three Tier System was made into Two Tier System. That is, District Level, Taluk Level and Block Level system was made into District and Block level system. The same was to provide technological assistance and subsidies to the farmers at one point. The existing staffing pattern reflected the priorities of "Green Revolution" type production oriented agriculture. The policy of the Government has shifted towards "producing for markets". The entire scenario was discussed with all the Heads of the Directorates referred to above and the Head of the Department of the four Directorates referred to above sent proposals for restructuring their Directorates. Based on the proposals, G.O.(Ms) No.537 was issued on restructure. Pursuant to the policy of restructuring, various measures were taken. All those measures that are stated in the said Government Order are not relevant, except the one relating to staff reallocation under restructure.

3.2. The Government Order in G.O.(Ms) No.537 contains 19 paras with Annexures I V. Paras 1 to 16 gives

various details relating to restructure and para 17 deals with the direction issued by the Government to implement the restructure proposals in respect of four Directorates and TANHODA. The directions are contained in paras 17(i) to 17 (xiv). Paras 18 and 19 are not very much relevant. The cadre strength of technical post for the four Directorates and TANHODA are given in details in the Annexures, running to 42 pages.

3.3. In the restructuring of the Directorates, though reallocation of staff took place, the total strength remained the same after restructure also. There were 8691 technical staff in all the Departments put together and the said number remained constant, after restructure also. 5. The following table provides the details of the strength of various categories of technical staff before restructure, and after reallocation under restructure.

3.4. The following table provides the details of the strength of various categories of technical staff before restructure, and after reallocation under restructure.

"ABSTRACT"
EXISTING STRENGTH

Department	Addl. DA	Jt. DA	Dy. DA	Asst. DA	A.O/H.O /Dy.A.O	Asst. Secy Officers	Asst. Agri Officer	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Director of Agriculture	7	36	159	292	19960 (including 88 Dy. Agri Officer)	509	4050	7013
Director of Horticulture	-	4	12	43	193	5	934	1191
Director of Seed Certification	-	1	4	30	213	-	-	248
Director of Agricultural Marketing	-	-	2	13	109	-	115	239
Total	7	41	177	378	2475	514	5099	8691

Department	Addl. .DA	Jt. DA	Dy .DA	Asst. .DA	A.O/H. O	Dy.A.O	Asst. Seed Office rs	Asst. Agri Office rs	Tota l
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Director of Agricultu re	5	29	99	435	1100	337	509	2319	4833
Director of Horticult ure TANHODA	1	3	33	396	405	123	5	1633	2599
	1	3	-	5	-	-	-	-	9
Director of Seed Certifica tion	-	2	16	37	289	-	-	-	344
Director of Agricultu ral Marketing		4	29	14	172	52	-	635	906
Total	7	41	17 7	887	1966*	512	514	4587	8691
Additional Requireme nt	-	-	-	509	-509	512	-	-512	0

AO/HO requirement under restructure : 2478

* After upgradation of 509 posts as
ADA/ADH from the existing category
(2475-509=1966) : 1966

The shortfall of 512 posts is met out by Dy.A.O.: 512"

3.5.The Director is the Head of the Department. The Additional Directors, Joint Directors and Deputy Directors are at the Headquarters or District level. The other categories of officers namely, Assistant Directors, Agricultural Officers / Horticultural Officers, Deputy Agricultural Officers / Deputy Horticultural Officers, Assistant Seed Officers, Assistant Agricultural Officers / Assistant Horticultural Officers are

Officer, Assistant Seed Officer, Deputy Agricultural Officer, Agricultural Officer / Horticultural Officer, Assistant Director, Deputy Director, Joint Director and Additional Director are the technical posts in the Departments, in ascending order, with regard to the rank.

4. Before restructure, there were 2475 posts of Agricultural Officers / Horticultural Officers / Deputy Agricultural Officers in all the Departments, as stated in the above tabular column. Among these 2475 posts, 509 Agriculture Officers / Horticulture Officers were upgraded as Assistant Directors. Hence, this strength came down, on reallocation by upgradation, as stated above, from 2475 to 1966.

5. Based on G.O.(Ms)No.537, relating to restructure, the consequential Government Order in G.O.(Ms)No.548, Agriculture Department, dated 28.12.2007 was issued approving the names of the Officers for inclusion in the temporary list, to the upgraded post of Assistant Director of Agriculture / Assistant Director of Horticulture, based on the common seniority and the date of regularisation at the entry level post. The list contained 509 Agricultural Officers / Horticultural Officers, who were upgraded by way of promotion to the post of Assistant Directors.

6. The petitioners in these Writ Petitions were appointed as Horticultural Officers by direct recruitment during the years 1989-1990. The petitioners were thereafter promoted from the post of Horticultural Officer to the post of Assistant Director of Horticulture in the year 2011.

7. The Horticultural Officers and the Tamil Nadu Horticultural Officers Association approached this Court on an earlier occasion and questioned G.O.Ms.No.548, dated 28.12.2007 and also paragraph 11 of G.O.MS.No.537, dated 24.12.2007. Those Writ Petitions mainly centered around the reallocation of Assistant Directors from Agriculture Department to the Horticulture Department.

8. The contention in those Writ Petitions was that when the up-gradation took place, it was based on the common seniority and the date of regularisation in the entry level post. The further contention that was raised was there cannot be a common seniority for up gradation as the posts belongs to different services.

9. There was also another batch of Writ Petitions that was filed questioning para 12 of G.O.Ms.No.537, dated 24.12.2007. In these Writ Petitions, the petitioners questioned the stipulation period of five years for the deployed posts to get permanently transferred to the Horticulture Department, since if any vacancy/promotion/retirement arises during this five year

period, it cannot be allowed to be filled up by the Director of Agriculture by further deploying posts from the Agriculture Department.

10. All the Writ Petitions were taken up together in W.P.Nos.19901 etc., and a common judgment was passed on 19.12.2012. This Court upheld G.O.Ms.No.548, dated 28.12.2007 and also para 11 of G.O.Ms.No.537, dated 24.12.2007. Thereby, this Court held that the interest of the deployed staff from the Agriculture Department will be safeguarded by maintaining their seniority and promotional prospects, based on the date of the regularisation in the entry level post, while they are serving in the deployed post in the Horticulture Department. This Court further held that if during the period of five years, whenever vacancy arises, Director of Agriculture cannot fill up those posts and it should be kept vacant till the expiry of the five years and thereafter, the Director of Horticulture can fill up the posts since these posts get permanently absorbed in the Department of Horticulture. This Court upheld the Policy decision taken by the Government while restructuring the departments and while fixing the norms for fixing seniority, filling up vacancies etc. This Court further directed that the deployed staff in the Horticulture Department should exercise their option within one month after the expiry of the period of five years as contemplated in G.O.Ms.No.537, dated 24.12.2007 as to whether they want to remain in the deployed department or to go back to their parent department. This Court further directed the official respondents not to fill up any deployed posts by bringing any new persons from Agriculture Department to the Horticulture Department, including the Assistant Directors of Agriculture. This judgment has become final and none of the parties filed any appeal against the judgment.

11. After the above judgment was passed, the persons who were deployed in the Horticulture Department exercised their option during January 2013. The official respondents construed the option exercised by the deployed staff for permanent absorption in the Horticulture Department, to take effect from the date of their joining in the Horticulture Department. Effectively this would mean that the services of the deployed staff, who were brought in as Assistant Director of Horticulture in the year 2007-2008, shall be reckoned from then on their seniority was also accordingly fixed. A D.O. letter dated 11.05.2017, was issued by the Government to fix the seniority of the Assistant Director of Horticulture, originally appointed in the Horticulture Department and the Assistant Director of Horticulture, who were deployed from the Department of Agriculture and had exercised their option. The seniority was directed to be fixed in the following manner.

Seniority of the staff shall be fixed in the following order	Remarks
Existing regular staff (Regular staff of Horticulture Department) of Horticulture Department.	-
Deployed staff (staff of Agriculture deployed to Horticulture) of Agriculture Department after the junior-most of existing regular staff (Regular staff of Horticulture Department).	Among the deployed staff (staff of Agriculture deployed to Horticulture) of Horticulture, their TNPSC seniority shall not be altered.

12.As per the direction of the Government, seniority was fixed and it was sent to the Government for approval through letter dated 11.10.2017. The Government approved the seniority by its letter dated 17.10.10217.

13.The Director of Horticulture by his proceedings dated 19.02.2018, informed to all the Joint Directors and Deputy Directors of Horticulture the State wide seniority list approved by the Government for the post of Assistant Director of Horticulture and further directed it to be communicated to all concerned. The Director also called upon them to see if there are any omissions/corrections to be made and if there are any representations to be made by the Assistant Directors of Horticulture, the same must reach within 15 days in the Office of the Director of Horticulture. The petitioners found their name being brought below the names of the Assistant Directors of Horticulture, who were deployed from the Department of Agriculture. Therefore, objections were submitted to the seniority list on the ground that the persons who were deployed from the Agriculture Department can be construed to permanently belong to the Department of Horticulture, only after the expiry of the five years i.e., in January 2013 and their seniority can be reckoned only from then on and the petitioners had reached the post of Assistant Director of Horticulture in the year 2011 itself and they should be placed above the deployed Officers from the Department of Agriculture.

14.The Government went ahead and finalized the seniority list and approved the Panel for promotion to the post of Deputy Director of Horticulture. Aggrieved by the same, the present Writ Petitions have been filed before this Court.

15. SUBMISSIONS:

Mr. R.Viduthalai, learned Senior Counsel lead the

arguments on the side of the petitioners and he made the following submissions:

- The petitioners are working as Assistant Director of Horticulture after being promoted from the post of Horticultural Officer to which they were directly recruited by the Horticulture Department. They were promoted in the year 2011. The contesting private respondents were originally employees of the Agriculture Department and they were sent on deputation to work in the Horticulture Department as Assistant Director of Horticulture. As per G.O.Ms.No.537, dated 24.12.2007, they were temporarily transferred for a period of five years and they will become permanent employees of the Horticulture Department only after the expiry of five years and when they exercise their option, which happened only during January 2013 and therefore, they cannot be treated to be seniors to the petitioners.
- Clause 17(x) of G.O.Ms.No.537, dated 24.12.2007, the Officers deputed from the Agriculture Department holding the post of the Assistant Director of Horticulture were given option regarding their absorption in the Horticulture Department permanently only in January 2013 and till then they will have their lien only with their parent department viz; Department of Agriculture.
- No formal orders accepting the option exercised by the deployed persons, has been passed and therefore, they are deemed to continue their lien only with the parent department.
- 15 days time was given for giving objections with regard to the inter se seniority list, by letter dated 19.02.2018 and even before the expiry of 15 days, the Government released the temporary list of promotees to the post of Deputy Director of Horticulture and that itself shows the haste with which the list was finalized.
- The option exercised by the deployed Assistant Directors can have effect only from the date of giving option and it cannot be given a retrospective effect.
- The relevant service rules which came into effect on 27.11.2015, does not provide for absorption as a mode of recruitment and therefore, the deployed persons cannot be considered for further promotion in defiance of the relevant Service Rules.
- Absorption of persons, who were deputed from the date anterior to the date on which the relevant posts were created are transferred permanently, is inconsistent with the law settled by the Hon'ble Supreme Court.

- The learned Senior Counsel in order to substantiate his submissions relied upon the following judgments:
 - (i) State of Punjab .v. Inder Singh reported in [1997 (8) SCC 372].
 - (ii) Rajinder Singh .v. State of Punjab and others reported in [2001 (5) SCC 482].
 - (iii) Ponnusamy .v. Government of Tamil Nadu reported in [2009 SCC Online Madras 505]
 - (iv) Director, Central Bureau of Investigation and another .v. D.P.Singh repoted in [2010(1) SCC 647].
 - (v) Mrigank Johiri .v. Union of India reported in [2017 (8) SCC 256].

16.Per contra, Mrs.Narmadha Sampath, learned Additional Advocate General appearing on behalf of the Official respondents made the following submissions:

- The petitioners are re-agitating the same issue which has already been decided by this Court in the earlier round of litigation and this Court had already upheld Clause (xi) of G.O.Ms.No.537, dated 24.12.2007 and G.O.Ms.No.548, dated 28.12.2007 and thereby the seniority of the deployed Officers to the Department of Horticulture will be based on their regularization of service by TNPSC at entry level.
- Immediately after the option was exercised, pursuant to the Orders passed by this Court in the earlier batch of Writ Petitions, the seniority of the deployed Officers will date back to the date of their joining in the Horticulture Department in the year 2007 or 2008, as the case may be.
- The petitioners assumed the post of Assistant Director of Horticulture only in the year 2011 and therefore, they can be placed only below the seniority of the deployed staff.
- It was the Policy decision of the Government to restructure the Department of agriculture and form a separate Department for Horticulture, which was earlier a part of the Department of Agriculture and as a one time measure, a common seniority based on the date of the regularization in the entry level post was prepared and upheld by this Court and therefore, the deployed staff who are admittedly senior, cannot be placed below the petitioners, who were not even Horticultural Officers, when the deployed staff were working in the Department of Agriculture.
- The learned Additional Advocate General in order to substantiate her submissions, relied upon the following judgments:
 - (i) K.Meghachandra Sing & Ors .v. Ningam Siro & Ors reported in [2020 (1) S.C.T 93].
 - (ii) Pawan Pratap Singh and Others .v. Reevan Singh and Others reported in [2011 3 SCC 267].
 - (iii) State of Uttar Pradesh and Others .v. Ashok

Kumar Srivastava and Another reported in [2014 14 SCC 720].

17.Mr.V.Selvaraj, learned counsel appearing for the contesting private respondents adopted the arguments of the learned Additional Advocate General. The learned counsel submitted that the petitioners cannot be allowed to re-agitate the issue which has become final in the earlier round of litigation. The learned counsel submitted that once this Court has upheld Clause (xi) of G.O.Ms.No.537, dated 24.12.2007 and G.O.Ms.No.548, dated 28.12.2007, the deployed staff automatically retain their seniority based on their regularization of service at entry level fixed by TNPSC. Therefore, the petitioners can never claim seniority over the deployed staff. The learned counsel submitted that due to the interim Order granted by this Court, many deployed staff have either retired or died during the interregnum period and they were not able to enjoy the fruits of actually serving as the Deputy Director of Horticulture and at the best they will only be given a notional promotion even if they succeed in this batch of Writ Petitions.

18.Mr.R.Viduthalai, learned Senior Counsel appearing on behalf of the petitioners in his reply submissions pointed out to the fact that the Special Rules for the Tamil Nadu Horticultural Service has come into force on 27.11.2015 and the appointment or promotions can take place only in accordance with these rules and the same has been made clear under Clause 17(x) of G.O.Ms.No.537, dated 24.12.2007, which specifically states that after the option is exercised, the posts shall be continued to be filled up only by following the Service Rules of the Directorate of Horticulture. The learned Senior Counsel submitted that the contesting private respondents do not even have the educational qualifications provided for the post of the Assistant Director of Horticulture and therefore, there is no question of considering them to the promotion to the post of Deputy Director of Horticulture. The learned Senior Counsel concluded his submissions by submitting that the earlier Order passed by this Court in the batch of Writ Petitions will not have any bearing to the issue that has been raised in the Present Writ Petitions.

DISCUSSION:

19.This Court has carefully considered the submissions made on either side and the materials available on record.

19.1.The seminal issue that arises for consideration in the present Writ Petitions is as to whether the deployed staff from the Department of Agriculture, who were deputed to the Department of Horticulture in the post of Assistant Director of Horticulture can be placed above the petitioners who were employed originally in the Department of Horticulture

and thereafter promoted to the post of Assistant Director of Horticulture, in the seniority list. This issue can be decided only if the status of the deputed staff is properly understood from the relevant Government Orders and the Orders passed by this Court in the earlier round of litigation.

19.2.The Policy decision taken by the Government of Tamil Nadu to restructure the Department of Agriculture and the resultant restructuring that took place and the redeployment of staff that happened, were all discussed in detail in the earlier round of litigation and therefore, there is no requirement to go through the same exercise again. Therefore, this Court can directly get into the issue that is involved in the present Writ Petitions.

19.3.In order to arrive at a decision in the present case, certain findings that were given in the earlier round of litigation becomes very significant since it has a bearing in the present case and the earlier order has also become final.

19.4.The relevant findings in the earlier Common Order dated 19.12.2012, is extracted hereunder:

9.3.These writ petitions are mainly centering around the reallocation of Assistant Directors in the Horticulture Department.

39.After the formation of separate Directorate for Horticulture, on the recommendations of the Director of Horticulture, the following posts transferred to Horticulture Department were redesignated as follows by G.O.(Ms) No.1063, Agriculture Department, dated 29.05.1980.

Posts transferred to Horticulture Department	Re-designated post
Joint Director of Agriculture (Commercial Crops)	Joint Director of Horticulture
Horticulturists	Deputy Director of Horticulture
Assistant Horticulturists and District	Assistant Director of Horticulture
Agricultural Officers	Horticulture Officer
Deputy Agricultural Officers (Horticulture)/Deputy Agricultural Officers (Extension)	Horticulture Officer

57.The aforesaid details make it clear that the post of Assistant Director of

Horticulture, Deputy Director and Joint Director of Horticulture are governed by the Tamil Nadu Agricultural Service Rules. The Horticultural Officer is governed by the Tamil Nadu Agricultural Subordinate Service Rules.

58.The above details make it clear that as per the concerned Special Rules, the following qualifications and method of appointment are prescribed for the post of and Agricultural Officer, Assistant Director of Agriculture, Deputy Director of Agriculture and Joint Director of Agriculture, in the Agriculture Department and also for the post of Horticultural Officer, Assistant Director of Horticulture, Deputy Director of Horticulture and Joint Director of Horticulture in the Horticulture Department:-

AGRICULTURE DEPARTMENT

Sl.N o	Name of the Post	Qualification Prescribed	Method of appointment
1.	Agricultural Officer	B.Sc., (Agriculture)	Direct recruitment
2.	Assistant Director of Horticulture	B.Sc., (Agriculture) for promotion from the post of Agricultural Officer	Direct recruitment or promotion
3.	Deputy Director of Agriculture	B.Sc., (Agriculture)	Promotion
4.	Joint Director of Agriculture	B.Sc., (Agriculture)	Promotion

HORTICULTURE DEPARTMENT

Sl.N o	Name of the Post	Qualification Prescribed	Method of appointment
1.	Horticultural Officers	B.Sc., (Horticulture)	Direct recruitment

Sl.No	Name of the Post	Qualification Prescribed	Method of appointment
2.	Assistant Director of Horticulture	B.Sc., (Agriculture) and M.Sc., (Agriculture) with specialisation Horticulture or M.Sc., (Horticulture)	Direct recruitment
3.	Deputy Director of Horticulture	B.Sc., (Agriculture) or B.Sc., (Horticulture)	Promotion
4.	Joint Director of Horticulture	B.Sc., (Agriculture) or B.Sc., (Horticulture)	Promotion

64. The controversy arose when 509 Agricultural Officers/Horticultural Officers were upgraded as Assistant Directors. Earlier, there were totally 378 Assistant Directors. On restructure, it became 887 Assistant Directors and the additional requirement of 509 (887-378=509) was met by upgradation of Agricultural Officers/Horticultural Officers. The details are found in the above table. When upgradation took place based on the common seniority and the date of regularisation in the entry level post as per G.O.(Ms) No.537, Agriculture Department, dated 24.12.2007, writ petitions were filed in the year 2008, questioning the same. The attack during the year 2008 was para 11 of G.O.(Ms) No.537 that is the basis for issuance of G.O.(Ms) No.548, based on common seniority. The upgradation list of Agricultural Officer / Horticultural Officer for Assistant Director of Agriculture is based on the common seniority and also on the date of regularisation in the entry level post. Hence, writ petitions filed in the year 2008 sought to quash para 11 of G.O.(Ms) No.537 and also to quash G.O.(Ms) No.548.

67. The second argument that the common seniority for upgradation would not arise as the posts are belonging to different services has no merit, since the upgradation is based on the restructure and the same is the policy of the Government. In fact, in view

of restructure, the Horticulture Department is the ultimate beneficiary and more posts have come to the Horticulture Department. On the one hand, the petitioners cannot say that they welcome the additional posts of Assistant Directors that come to their Department due to the policy of restructure and on the other hand, they cannot say that the other portion of policy of the Government is not acceptable to them. While preparing the common seniority list, the seniority as assigned in Tamil Nadu Public Service Commission is taken as the basis. In my view, I do not find any infirmity in the same. The Horticultural Officers who were initially not recruited regularly by way of selection cannot ask to count their service from the date of appointment for the purpose of seniority, though they were subsequently regularised in service. The subsequent regularisation from the date of appointment is for other purposes and not for counting seniority. The reliance placed by the respondent Department and the Government on Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules also supports the case of the Department. Hence, I do not find any infirmity in para 11 of G.O.(Ms) No.537 and also G.O.(Ms) No.548. Hence, the writ petitions filed in the year 2008 viz., W.P.Nos.19901, 25894 and 29016 of 2008 are liable to be dismissed.

68.The next is the issue relating to interpretation of para 12 and para 17(x) of G.O.(Ms) No.537 placed on by both the parties. In my view, the plain reading of G.O.(Ms) No.537 does not empower the Director of Agriculture to fill up the vacant posts that would arise due to the promotion / retirement of the deployed staff in the Directorate of Horticulture. In fact, the purpose of the Restructure Scheme also would get defeated, if the vacancies arose in the deployed post due to promotion / retirement of deployed staff were filled from the Directorate of Agriculture, time and again. Para 10 safeguards the interest of the deployed staff by ensuring them that they will continue to enjoy the same seniority and promotional prospects while they are serving in the deployed post in the Horticulture Department or Seed Certification or Agricultural Marketing.

73. But the Restructure Scheme nowhere contemplates that the Director of Agriculture can go on filling the vacant deployed posts again and again, whenever the vacancy arises due to promotion / retirement. I am fortified by the word "one time measure" used at the end of para 11 of G.O.(Ms) No.537, to come to the conclusion that the Director of Agriculture cannot seek to fill the vacancies arose in the deployed posts in the Horticulture Department from his Directorate.

76. As I have stated, the reallocation of staff under restructure is a one time measure. The details of the same are also stated in Annexures I V. Therefore, whenever vacancies arose in the deployed posts due to promotion or retirement, that could be left to the Director of Horticulture to fill the same after five years, when those posts are permanently transferred. The Government anticipated that such a contingency would be less and it is also the fact that not so many vacancies arose in various posts and the details of the filling up of deployed posts in small number was given in the reply affidavit of petitioner as extracted above. The details as stated in the reply affidavit of the petitioner Sangam in W.P.No.12025 of 2012 that was extracted above, also confirms the same.

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83. Yet another reason is that I have traced the history of the development that took place in the Agriculture Department and the formation of the Horticulture Department and the Special Rules governing various posts in both the Departments. The educational qualification prescribed for the post of Assistant Director of Agriculture under the Tamil Nadu Agricultural Extension Service is B.Sc., (Agriculture) for the persons promoted from the post of Agricultural Officer, while the qualification for the post of Assistant Director of Horticulture is M.Sc., (Agriculture) with specialisation in Horticulture or M.Sc., (Horticulture). Even

the upgradation made from the cadre of Horticultural Officers may not possess the qualification of M.Sc., (Horticulture), as the qualification prescribed for Horticultural Officer under the Special Rules is B.Sc., (Horticulture). In fact, when G.O.(Ms) No.537 provided for upgradation of 509 posts of Agricultural Officers / Horticultural Officers as Assistant Directors by way of restructure, the Government of Tamil Nadu should have relaxed the qualification prescribed under the Special Rules by exercising its power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules, since the upgradation is done pursuant to restructuring of Departments by the Government and hence, the Government is perfectly justified in exercising its power under Rule 48. Therefore, I am of the view that the Government shall pass necessary orders giving relaxation for the required qualification. At the time of restructure, it was to adjust the excess staff in Agriculture Department by way of deployment to Horticulture Department, as a one time measure and the excess staff in Agriculture Department was thus adjusted and thereafter, deployment cannot be used as a method to bring in un-qualified persons contrary to the Special Rules. The Restructure Scheme is also not for the same.

91.The deployed staff in the Horticulture Department shall exercise their option within one month after the expiry of the period of five years as contemplated in para 12 of G.O.(Ms) No.537 as to whether they want to remain in the deployed Department or to go back to their parent Department and based on their option, necessary orders shall be passed by the competent authority.

92.In these circumstances, I am not inclined to quash paras 12 and 17(x) of G.O.(Ms) No.537, since I have come to the conclusion that these paras do not empower the Director of Agriculture to fill in the vacant deployed post during the five years period. However, I make it clear that the persons who were already posted in the deployed posts as disclosed in the reply affidavit of the petitioners referred to above, shall not be disturbed. The respondents are directed not to

fill any deployed posts by bringing in new persons from Agriculture Department to Horticulture Department, including the Assistant Directors of Agriculture, who are empanelled in G.O.(Ms)No.22, Agriculture Department, dated 22.01.2012.

19.5.The above findings given by this Court can be captured with the following bullet points.

- The Special Rules provided for the qualifications and method of appointment both for the Agriculture Department as well as the Horticulture Department when they were functioning under the consolidated Department of Agriculture, before the restructuring took place.
- Para 11 of G.O.Ms.No.537 dated 24.12.2007 and G.O.Ms.No.548 dated 28.12.2007 were upheld.
- The interest of the deployed staff is safeguarded by ensuring them that they will continue to enjoy the same seniority and promotional prospects while they are serving in deployed post in the Horticulture Department.
- The Director of Horticulture was given the complete authority for filling up the post of permanent transfer after expiry of the five years and during the period of five years, the Director of Agriculture was held not to have the powers to fill up the vacancies in the deployed posts. This implies that the Director of Agriculture had lost control over the deployed staff, who were sent to the Department of Horticulture as Assistant Director of Horticulture.
- The seniority will be reckoned based on the date of the regularisation in the entry level post as ranked by the TNPSC as a one time measure for all those who were deployed as Assistant Director of Horticulture in the Department of Horticulture.
- When G.O.Ms.No.537, dated 24.12.2007, provided for up-gradation of 509 posts as Assistant Directors by way of restructure, the qualification prescribed under the Special Rules must be relaxed by exercising powers under Rule 48 of the Tamil Nadu State and Subordinate Service Rules since the up-gradation is done pursuant to the restructuring of department by the Government as a one time measure.
- The Court cannot sit on appeal over the Policy decision of the Government which decided to restructure the Department of the Agriculture and to redeploy the staff in the newly created departments.

19.6. The main focus of the argument of the learned Senior Counsel appearing for the petitioners is that the persons who were deputed to the Department of Horticulture continued to have their lien in the Agriculture Department and they can be considered as the staff of the Horticulture Department only after they exercised their option in the year 2013. Therefore, their seniority can be reckoned only from January 2013 and not before that. In order to substantiate this submission, the learned Senior counsel relied upon the judgment of the Hon'ble Supreme Court in State of Punjab .v. Inder Singh, referred supra and the Division Bench of this Court in S.Ponnusamy and Others, referred supra. These judgments have reiterated the settled position that when an employee is deputed to a post outside his cadre to another Department, after the expiry of the period of deputation, he has to come back to his parent department, since he continues to have his lien in the parent department.

19.7. The issue is whether the deployed staff continued to have lien with the parent department and whether the Department of Agriculture had any say when they were working as Assistant Director of Horticulture in the Horticultural Department. This Court while interpreting Clause 17(x) and 17(xii) of G.O.Ms.No.537, dated 24.12.2007, has categorically held that the Director of Agriculture loses his control over the Department of Horticulture over the deployed staff and even if the deployed staff is to be re-transferred to the parent department, for any reason, the same can be done only with the prior approval of the Government. The further finding of this Court that the Director of Agriculture cannot fill up any vacant deployed post, only further confirms the fact that the persons deployed to the Department of Horticulture becomes a part of it. This arrangement does not fall into the usual understanding of the term "deputation" as understood in service jurisprudence. The reason being that the Government in its wisdom has taken such a Policy decision. That is the reason why the Government in its letter dated 11.05.2017, states that the deployed staff are to be treated as holding temporary posts in Horticulture Department and on the completion of five years, after they have exercised their option, they have to be permanently absorbed in the Department of Horticulture. This is the understanding of G.O.Ms.No.537, by the Government which passed the G.O., pursuant to its Policy decision and this Court cannot give a different meaning to the intent of the Government with regard to the redeployed staff.

19.8. In view of the above discussion, this Court is of the considered view that the impugned letter dated 11.05.2017, issued by the Government requires no interference and this letter cannot be construed to be overwriting the Government Order and this letter only reiterates the whole

purpose of G.O.Ms.No.537, dated 24.12.2007.

19.9.If the above D.O. letter dated 11.05.2017, is upheld, then obviously the service of the deployed staff in the Horticulture Department will commence from the year 2007 of 2008, as the case may be. Therefore, the seniority of the deployed staff will have to be fixed accordingly, in the promotion panel to the next promotion to the post of Deputy Director of Horticulture.

19.10.This Court is not in agreement with the submission of the learned Senior Counsel that the deployed staff will not fulfil the qualification prescribed in the Special Rules that came into force in the year 2015. It must be borne in mind that the deployed staff were designated as Assistant Director of Horticulture from the year 2007-2008 itself and this Court had held that due to the restructuring, the qualification under the Special Rules shall stand relaxed under Rule 48 of the Tamil Nadu State and Subordinate Service Rules. For the present, it is not necessary for this Court to see if the deployed staff fulfil the qualifications prescribed for the post of Assistant Director of Horticulture. Clause 17(x) of G.O.Ms.No.537 dated 24.12.2007, only said that after the expiry of five years, when the posts stands permanently transferred, any post falling vacant by way of promotion or retirement can be filled up by duly following the Service Rules of the Director of Horticulture. Now, the Department of Horticulture is covered by Special Rules which came into force on 27.11.2015. This Court is only concerned about whether the deployed staff are qualified to be considered for promotion to the post of Deputy Director of Horticulture. The rules only provides promotion as a source of filling up these posts. The qualification prescribed is that the person must have served as an Assistant Director of Horticulture for a period of not less than three years. All the deployed staff have fulfilled this qualification. Therefore, all of them are qualified to be considered for promotion to the post of Deputy Director of Horticulture.

19.11.This Court has already held that the seniority of the deployed staff is safeguarded by para 10 by ensuring that they will continue to enjoy the same seniority and promotional prospects while they are serving in the deployed post. The seniority is considered from the date of their regularisation in the entry level post as a one time measure. This assurance given to the deployed staff cannot be taken away. Infact, these deployed staff have been working for a very long time, even before the petitioners were appointed as Horticultural Officers in the year 1989-1990. It is only with this assurance, the deployed staff took charge as Assistant

Director of Horticulture in the Department of Horticulture.

19.12. In the considered view of this Court, the Government had examined the entire issue and had taken a decision in line with G.O.Ms.No.537, dated 24.12.2007, to the effect that once the deployed staff had opted for permanent absorption, they must be considered to be deemed to have been absorbed from the date of their joining in the Horticulture Department. At the end of the five year period during January 2013, pursuant to the Orders passed by this Court, when the deployed staff exercised their unconditional option and were absorbed in Horticulture Department, the service of the deployed staff as Assistant Director of Horticulture commences from the year 2007-2008, as the case may be. Consequently, their seniority must be fixed accordingly.

CONCLUSION:

20. In view of the above discussion, this Court does not find any ground to interfere with the impugned Proceedings/Letter/Government Order and the Government was perfectly right in determining the seniority of the deputed staff and accordingly, all the above Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Agriculture Production Commissioner and
Principal Secretary to Government,
Agricultural Department,
Secretariat, Fort St. George, Chennai 600 009.
2. The Director of Horticulture and Plantation Crops,
Chepauk, Chennai 600 005.
3. The Director of Agriculture,
Chepauk, Chennai 600 005.
4. N. Rasakumar
Assistant Director of Horticulture,
Sattankulam Block,
Sattankulam, Thoothukudi District.

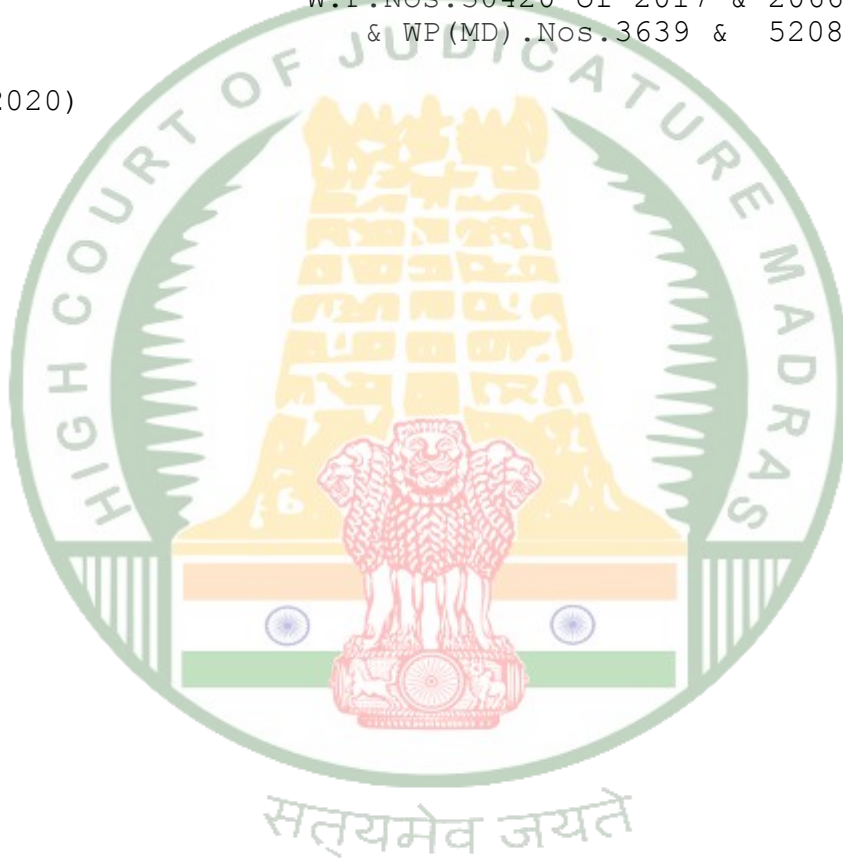
- 5.L.Heddibai
Assistant Director of Horticulture,
Athur Block,
Dindigul District.
- 6.G.Nagalingam,
Assistant Director of Horticulture,
Kolathur Block,
Kolathur, Salem District.
- 7.B.Elangovan
Assistant Director of Horticulture,
Udumalpet Block,
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- 8.V.Sekar,
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- 9.S.Jaganathan,
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- 10.K.Syed Aser Basha,
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- 11.B.Jeylakshmi,
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Virudhunagar District.
- 12.R.Ravichandran,
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- 13.PL.Arumugam,
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Thuvarankurichi, Trichy District.
- 14.T.Hema,
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Aruppukottai, Virudhunagar District.

15.N.Parvathamma,
Assistant Director of Horticulture,
Gudiatham Block,
Gudiatham, Vellore District.

+4cc to Mr.S.Rajendiran, Advocate, S.R.No. 9108
+1cc to the Government Pleader, S.R.No. 10021

Pre-Delivery Common Order made in
W.P.Nos.30420 of 2017 & 20661 of 2018
& WP(MD).Nos.3639 & 5208 of 2018

VSN II(CO)
GN(09/03/2020)



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