



W.P.Nos.21560 of 2004 & 7900 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.21560 of 2004 & 7900 of 2005

B.Jayaprakash

... Petitioner in both W.Ps

- Vs -

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

2. The Chief Engineer,
Agricultural Engineering Department.
825, Anna Salai,
Nandanam, Chennai – 600 035.

... Respondents in both W.Ps

3. P.Kannan

4. P. Subramaniam

5. P.Duraisamy
(3 to 5 Respondents are now
working as Junior Engineers
and service of the Respondents
3 to 5 are through second
Respondent herein)

... Respondents in
W.P.No.21560/2004



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Prayer in W.P.No.21560 of 2004: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the first respondent passed in G.O.Ms.No.62, Agriculture (AA#) Department dated 13.03.2002 and the order of the second respondent passed in No.Estt.I.43088/2002, dated 17.10.2002 and quash the same and consequently directing the respondents 1 and 2 to promote the petitioner as Assistant Executive Engineer with all monetary and attendant benefits and consequently directing the respondents 1 and 2 to fix the seniority of the petitioner below G.Krishnamurthy, the last direct recruit in the post of Junior Engineer and other Junior Engineers in accordance with the Service Rules and the Rule of seniority.

Prayer in W.P.No.7900 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the first respondent passed in G.O.Ms.No.533 Agriculture (AA3) Department dated 14.12.2004 and quash the same so far as the date of implementation of the G.O. and consequently directing the Respondents to fix the ratio and Rule of Rotation with effect from the date of inception of the Agricultural Subordinate Service Rules.

For Petitioner in both W.Ps : Ms. A.L.Ganthimathi

For Respondents 1 & 2 in both W.Ps : Mr. C.Selvaraj
Government Advocate



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COMMON ORDER

The petitioner was appointed as foreman in Agricultural Engineering Department on 15.09.1984 through employment exchange. He was promoted to the post of Junior Engineer on 30.06.1993 as per the Service Rules Viz., Tamil Nadu Agricultural Engineering Subordinate Service Rules.

2. The post of foreman is a feeder category to the promotional post of Junior Engineer. It was stated by the petitioner that the second respondent appointed numerous persons in every categories viz., in the Upper Compressor Driver, Assistant Driller, Drill Supervisor and other non-gazetted technical posts, those who were not qualified under any Rules governing the appointment. Those candidates were not sponsored by employment exchange, but got appointment through back door method. There are 201 such appointments made by the second respondent in several categories which do not fall under any of the Rules. After completion of their work in the scheme, the other persons sought for regularization of their service in view of their academic record as Diploma Holders.



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3. Under G.O.Ms.No.969 dated 21.12.1989 18 Drill Supervisors were regularized as Junior Engineers by relaxing the age and qualification in the said post. The said regularization was made only after the petitioner's appointment as Foreman and the Foreman were deprived of their promotion and placed below the irregular appointees from 21.12.1989. Thereafter, under G.O.Ms.No.19 dated 13.01.1992, the Government regularized 175 irregular appointees as Junior Engineers retrospectively and they were appointed through back door methods. Accordingly, seniority was assigned to them with retrospective effect. In fact, the seniority was assigned subsequent to the direct recruitment of Junior Engineers or seniority approved by the Service Commission. In G.O.Ms.No.62 dated 13.03.2002, the services of those irregular appointees were regularized from the date of their initial appointment. The right of regularization will not confer seniority from the date of initial appointment. The date of retrospective regularization is with effect from initial appointment in W.P.No.21560 of 2004. While, the matter stood thus, the Government in G.O.Ms.No.533 Agricultural (AA3) Department dated 14.12.2004 wrongly applied the ratio mentioned for foreman category. Had it been rightly applied from the appropriate dates, the seniority would have been



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different. The second respondent has refused the claim on the ground that the Rules came into force only from 14.12.2004 and is not applicable for the existing Junior Engineers, who are serving in the Department. Therefore, the action of the respondent in G.O.Ms.No.533 Agricultural (AA3) dated 14.12.2004 in fixing the roster from 2004 is under challenge and for a direction to comply the roster as per the instructions of the Agricultural Subordinate Service Rules.

4. The learned counsel for the petitioner would vehemently contend that the irregular appointees/respondents have stolen a march over the petitioner's seniority. They were regularized by virtue of G.O.Ms.No.19 dated 13.01.1992. Had the ratio been properly complied, the petitioner would have been promoted to the post of Junior Engineer much earlier to the regularization of the contesting respondents. Therefore, the Government shall comply roster as per the Rules and re-draw the seniority list. By the wrong fixation of seniority, his promotion to the post of Junior Engineer and seniority is seriously affected and is deprived of further promotion. Therefore, impugned orders shall be set aside.



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5. The learned counsel for the petitioner relied on the judgment in the case of *State of Tamil Nadu and Another Vs. E.Paripoornam and others* reported in *1992 Supp (1) SCC 420*.

6. The learned Government Pleader appearing for the respondents, relying on the counter affidavit, made his objections.

7. Heard both sides.

8. The Tamil Nadu Agricultural Engineering Subordinate Service Rules prior to 13.12.2004 provides for appointment under three methods. (i) Direct Recruitment (or) (ii) Recruitment by transfer from the Madras Industries Subordinate Service or Madras Engineering Subordinate Service (or) (iii) Promotion from Category (2) (Agricultural Engineering Foreman). Direct recruitment is made through the Tamil Nadu Public Service Commission and promotion from the category '2' was made by the second respondent (Chief Engineer). The post of Assistant Soil Conservation Officer (Diploma Holders) was not a feeder category. Based on their representations, the post of Assistant



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Soil Conservation Officer, Junior Draughting Officer, Drill Supervisor, Inspector of Hand Boring Set Grade – I and Compressor Driver were added as feeder category with effect from 14.12.2004 by G.O.Ms.No.533 (Agricultural Department) dated 14.12.2004.

9. During the year 1983, qualified and experienced hands were not available in the open market and many posts of Junior Engineer (Agricultural Engineering) were kept vacant. In order to execute drought relief schemes, the second respondent sought permission from the Government to make temporary appointment of Junior Engineer (Agricultural Engineering) from the Diploma Holders, who were already working in various lower categories. Under G.O.Ms.No.1280 Agricultural Department, dated 07.07.1983, Government has permitted the second respondent to make temporary appointment to the Post of Junior Engineer (Agricultural Engineering) from the lower categories who were holding Diploma in Engineering. Thus, 175 Diploma Holders from various lower categories in the Tamil Nadu Agricultural Subordinate Service and Tamil Nadu Agricultural Engineering Subordinate Service were appointed temporarily as Junior Engineer



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(Agricultural Engineering) in the year 1983 – 1985. By virtue of G.O.Ms.No.19 Agricultural Department, dated 13.01.1992, the post of Junior Engineer (Agricultural Engineering) which fall under the purview of the TNPSC were regularized, after getting concurrence of the TNPSC from the date of their appointment in the year 1983. This G.O.Ms.No.19 dated 13.01.1992 included the contesting respondents appointment from the date of their appointment in the year 1983.

10. The contesting respondents filed an original application before the Tamil Nadu Administrative Tribunal in O.A.No.2195 of 1998 seeking regularization of service from their initial appointment to the post of Junior Engineer (Agricultural Engineering). The Tribunal by its order dated 17.03.1998, directed the first respondent to consider the contesting respondent's representation within a period of four weeks from the date of receipt of this order. According to the contesting respondents, they were initially appointed as Air Compressor Driver on 11.06.1969 and 18.10.1969 respectively and later posted as Agricultural Engineering Supervisor now re-designated as Junior Engineer (Agricultural Engineering) on 26.06.1973 and 04.10.1973



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respectively. Thereafter, they were deputed to Tamil Nadu Engineering and Service Co-operative Federation Limited (ENCOFED) with effect from 26.07.1973 and thereafter, they were reverted back to the parent Department. On reversion, they were wrongly posted as Assistant Driller and Assistant Air Compressor instead of Junior Engineer (Agricultural Engineering) during that process, his juniors were acting as Junior Engineer (Agricultural Engineering). Thereafter, the contesting respondents were promoted to the post of Junior Engineer and joined on 08.12.1983 and 15.12.1983 respectively. The Government considered the mistake committed in this matter and therefore regularized them to the post of Junior Engineer (Agricultural Engineering) through a Special Selection conducted by the Tamil Nadu Public Service Commission as per G.O.Ms.No.424, Agriculture Department, dated 15.03.1978 and placed them at the appropriate seniority position. They were placed below the candidates who were selected by the TNPSC as per G.O.Ms.No.964, Agricultural Department, dated 21.12.1989.



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11. On further representation made by the contesting respondents, the Government modifying the order as per G.O.Ms.No.19, Agricultural Department, Dated 13.01.1992 regularized the services of the contesting respondents from the date of their temporary appointment to the post of Junior Engineer (Agricultural Engineering) by virtue of G.O.Ms.No.62 Agricultural Department, dated 13.03.2002.

12. Considering the fact that the petitioner was appointed to the post of foreman on 15.09.1984 and he was regularly promoted as Junior Engineer (Agricultural Engineering) on 30.06.1993 and the fact that the contesting respondents were appointed as Air Compressor and Driver on 11.06.1969 and 18.10.1969 and promoted as Junior Engineer (Agricultural Engineering) and later posted as Agricultural Engineering Supervisor now re-designated as Junior Engineer (Agricultural Engineering) on 26.06.1973 and 04.10.1973 respectively. It is made clear that the contesting respondents were posted as Junior Engineers (Agricultural Engineering) in the year 1973 itself. Because of deputation, they were wrongly posted as Assistant Driller and Assistant Air



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Compressor based on their initial appointment and this mistake was rectified and thereafter again, posted as Junior Engineer (Agricultural Engineering) and joined on 08.12.1983 and 15.12.1983 respectively. Therefore, it could be inferred that the contesting respondents have joined as Junior Engineer(Agricultural Engineering) in the year 1983, the mistake committed by the second respondent, their services were regularized through Special Selection conducted by TNPSC as per G.O.Ms.No.424, Agriculture Department, Dated 15.03.1978 from the date of their promotion on 08.12.1983 and 15.12.1983.

13. In such view of the matter, it is noted that the petitioner is acting as Junior Engineer (Agricultural Engineering) in the regular capacity from the year 1983 onwards. Whereas, the petitioner was appointed as feeder category of foreman only on 15.09.1984. While, the contesting respondents were holding the post of Junior Engineer, the petitioner was not at all inducted in the Government Services. Even assuming that the petitioner was appointed in the year 1984, he cannot compare himself with the persons who were already holding the post of Junior Engineer and claim seniority. The petitioner was regularly promoted as Junior Engineer (Agricultural Engineering) on



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30.06.1993, that is, after regularization of the contesting respondents in the post of Junior Engineer (Agricultural Engineering) with effect from the date of their initial appointment, by virtue of G.O.Ms.No.19 dated 13.01.1992. Therefore, even before regular promotion of the petitioner, the contesting respondents were regularized with effect from the date of initial appointment. Since the contesting respondents were appointed in the regular capacity as Junior Engineer (Agricultural Engineering), the petitioner had no such right to claim any seniority over and above the other persons. Even assuming that the ratio introduced by G.O.Ms.No.533 Agricultural (AA3) Department dated 14.12.2004, it was given with retrospective effect, it will not confer any right to the petitioner to get seniority and promotion. Even assuming that the contesting respondents are removed from the seniority list, it will advance the petitioner to 6th or 7th position from his present position. By no stretch of imagination, the petitioner can place them above the contesting respondents. The petitioner cannot be assigned the seniority position to a date before he born in the government service.

14. Hence the challenge to the retrospective regularization of the



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contesting respondents by the petitioner is not sustainable. A government servant has a right to be considered for promotion, but not a vested right to promotion.

15. Whenever a Rule is notified and the ratio is fixed providing roster in various feeders categories, it could only be applied without affecting the vested rights of the persons, who were promoted prior to the effect of the Rules. The claim of the petitioner to apply the ratio from the inception of Agricultural Engineering Service is far fetched and not sustainable. In any angle, the claim of the petitioner to re-fix the seniority over and above the persons who were appointed before the date he entered the service is unsustainable and as such cannot be granted.

Writ Petitions, having no merits, dismissed. No costs.

19.07.2021

Index:Yes / No
Internet:Yes / No
Speaking / Non-Speaking Order
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