

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 26.02.2021

Judgment Delivered on : 16.04.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal Nos.1420 and 1439 of 2019

P.V.Mannarmannan,
S/o P.Venugopal ... Appellant in both the Appeals

Versus

1. The State of Tamil Nadu,
Rep. by its Commissioner for Agriculture Production,
and Principal Secretary to Government,
Agriculture Department,
Fort St.George, Chennai-600 009.
.. First respondent in W.A.No.1420 of 2019
1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Agriculture Department,
Fort St.George, Chennai-600 009.
.. First respondent in W.A.No.1439 of 2019
2. The Chief Engineer,
Agriculture Engineering Department,
Nandanam, Chennai-600 035.
.. Second respondent in both the Appeals

Writ Appeal No.1420 of 2019 filed under Clause 15 of the Letters Patent against the order dated 31.01.2019 passed by the learned Single Judge, in Writ Petition No.3888 of 2015 on the file of this Court.

Prayer in W.P. No.3888 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records relating in Government Letter No.12414/Vene.3/2013-5 dated 11.04.2014 on the file of the first respondent quash the said letter and direct the first respondent to grant the petitioner herein the consequential benefits of relaxation of rule 9(a)(ii) namely moving the petitioner to selection grade, special grade and sanction the periodical increments to which the petitioner is

entitled to from the date of his first appointment in dated 22.02.1979.

Writ Appeal No.1439 of 2019 filed under Clause 15 of the Letters Patent against the order dated 31.01.2019 passed by the learned Single Judge, in Writ Petition No.11108 of 2012 on the file of this Court.

Prayer in W.P. No.11108 of 2012: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records of the first respondent of letter No.5012/AA3/03-26 dated 8.7.11 and quash the same and direct the respondent to treat the petitioner as having been regularised in service with effect from 22.02.1979 in accordance with the G.O. Ms.No.503 dated 24.11.1999 and grant all consequential benefits such as periodical increments, selection grade and special grade etc.

For appellant : Mr.L.Chandrakumar
for Mr.V.Mohan
in both the appeals

For respondents : Mrs.A.Srijayanthi
Special Government Pleader
in both the appeals

COMMON JUDGMENT

R.SUBBIAH, J

These Writ Appeals are filed as against the order of dismissal of the Writ Petitions in W.P.Nos.11108 of 2012 and 3888 of 2015, both filed by the appellant herein.

2. Writ Petition No.11108 of 2012 had been filed by him to quash the order of the first respondent dated 08.07.2011 and to direct the respondents to treat the appellant/writ petitioner as having been regularised in service with effect from 22.02.1979 in accordance with G.O.Ms.No.503, Agriculture (AA.III) Department, dated 24.11.1999 and grant him all consequential benefits such as periodical increments, Selection Grade and Special Grade etc.

3. Writ Petition No.3888 of 2015 also is filed by him to quash the order of the first respondent, dated 11.04.2014 and to direct the first respondent to grant the appellant/writ petitioner the consequential benefits of relaxation of Rule 9 (a)(ii) of the Special Rules for the Tamil Nadu Agricultural Subordinate Services Rules, i.e. moving the appellant/writ petitioner to Selection Grade, Special Grade and sanction of the

periodical increments to which he is entitled to, from the date of his first appointment, dated 22.02.1979.

4. Since both the Writ Petitions were dismissed by common order dated 31.01.2019, both the present Writ Appeals have been filed by him, challenging the same and they are being disposed of by this common judgment.

5. Brief facts which are necessary to decide the issue involved in these appeals are as follows:

(a) The appellant/writ petitioner was appointed as Geological Assistant (Agricultural Engineering) in the Department of Agriculture, by the proceedings of the Director of Agriculture, dated 09.02.1979 and he joined the service on 22.02.1979 in the Office of the Executive Engineer (Agricultural Engineering), Vellore. The Chief Engineer (Agricultural Engineering), by proceedings dated 12.07.1980, issued fully qualified certificate to hold the post of Geological Assistant with effect from the date of joining the post, i.e. 22.02.1979 and made him eligible for drawal of arrears of increments from the date of accrual.

(b) While so, subsequent to the representation of the Tamil Nadu Agriculture Engineering Geologists Association regarding the regularisation of temporary Geological Assistants, who are working in the Department from 1979, the Government of Tamil Nadu, while considering their service for over a period of ten years, sent proposals to the Tamil Nadu Public Service Commission (TNPSC) for its concurrence. Thereafter, the TNPSC also gave its concurrence for regularisation of the temporary Geological Assistants under latter part of Regulation 16(b) of the TNPSC Regulations, 1954, with effect from the date of issuance of orders, by relaxing the Rules in favour of the temporary Geological Assistants. Accordingly, the Government of Tamil Nadu regularised the appellant/writ petitioner's service, vide G.O.Ms.No.227, Agriculture (AE.III) Department, dated 30.03.1989.

(c) Further, in exercise of the powers conferred by Rule 48 of the General Rules in Part-II of the Tamil Nadu State and Subordinate Service Rules, contained in Volume-I of the Tamil Nadu Service Manual, 1977, the Governor of Tamil Nadu relaxed the age Rule, viz., Rule 5(a) of the Ad-hoc Rules for the Tamil Nadu General Subordinate Service, issued for the post of Geological Assistants, vide, G.O.Ms.No.1185, Agriculture Department, dated 12.07.1978 and subsequently amended in G.O.Ms.No.1943, Agriculture Department, dated 01.10.1980 in favour of the individuals mentioned in Annexure to G.O.Ms.No.227, Agriculture (AE-III) Department, dated

30.03.1989, so as to enable them to get regular appointment in the respective posts with effect from the date of issuance of the above said order.

(d) Further, the Chief Engineer (Agriculture Engineering), in his proceedings No.EE4/38562/88, dated 17.07.1989, directed the appellant/writ petitioner along with 8 others to pass examinations such as Account Test for PWD Officers and Subordinates, Agriculture Department Test for Technical Officers of the Agriculture Department, District Office Manual Test, within five years from the date of probation, i.e. 30.03.1989. Subsequently, the appellant/writ petitioner's probation was declared as satisfactory with effect from 29.03.1991, vide, Department proceedings in No.A1/4236/91 and by the order of the Executive Engineer (Agriculture Engineering), Vellore, in his proceedings in No.A1/2618/92, dated 26.05.1992 and thus, from 29.03.1991 onwards, the appellant/writ petitioner became full member in the service of the State Government.

(e) Further, the regularisation of service of the writ petitioner was modified by the Government from the date of his temporary appointment, vide G.O.Ms.No.503, Agriculture (AE-III) Department, dated 24.11.1999, with the concurrence of the TNPSC, communicated by its approval letter No.8486/CD-B2/98, dated 03.06.1999.

(f) The appellant/writ petitioner got qualified in the Agriculture Departmental Test for Technical Officers of the Agriculture Department in November 1993, Account Test for PWD Officers and Subordinates passed during 2001-2002 and District Office Manual Test passed during May 2001. Thus, he became fully qualified by passing all the three requisite Departmental Tests/Examinations. Therefore, the Chief Engineer (Agriculture Engineering) made his recommendation by his letter dated 08.02.2003 in Letter No.MEPA 2/90999/2000, to the Secretary of Agriculture Department, seeking relaxation of Rule 9(a)(ii) of the Special Rules of the Tamil Nadu Agriculture Subordinate Services in favour of the appellant/writ petitioner to avail all the service benefits including Selection Grade and Special Grade pay. While so, the appellant writ petitioner was sought to be removed from service for belatedly passing the Departmental Examination(s). At this stage, the Chief Engineer, in his letter dated 08.02.2003, categorically stated that the removal of the appellant/writ petitioner from service ought to have been done in the year 1984, but it is too unfair to remove him from service after his extensive service and stay in the Department till 2003. Hence, Rule 9(a)(ii) of the Special Rules of the Tamil Nadu Agriculture Subordinate Services should be relaxed in favour of the appellant/writ petitioner for his belated pass in the Departmental Tests so as to enable him to avail of the

service benefits, pays and arrears of the Selection Grade and Special Grade promotions together with the continuity of service.

(g) On 06.03.2008 and 02.10.2008, the appellant/writ petitioner made representations to the Chief Engineer (Agriculture Engineering) for relaxing the said Rule 9(a)(ii) in his favour for delayed pass in the Departmental Tests, by quoting three precedents in the Departments, but the Government did not turn up to the request of the writ petitioner till the date of filing of the Writ Petition. The appellant/writ petitioner was due to retire from service in August 2012. At this stage, as no orders had been passed on his representations, dated 06.03.2008 and 02.10.2008, the appellant filed W.P.No.6962 of 2011 before this Court for issuance of a Writ of Mandamus to direct the respondents to treat the appellant as having been regularised in service with effect from 22.02.1979 in accordance with the said G.O.Ms.No.503, Agriculture (AE-III) Department, dated 24.11.1999 and grant all consequential benefits such as periodical increments, Selection Grade and Special Grade etc.

(h) This Court, in the said Writ Petition in W.P.No.6962 of 2011, by order dated 22.03.2011, directed the petitioner to send a copy of the representation, dated 02.10.2008, along with a copy of the order, to the first respondent by Registered Post, within a period of two weeks from the date of receipt of a copy of the order, and thereafter, the first respondent was directed to consider the said representation and pass orders on merits and in accordance with law, within a period of three months. On 08.07.2011, the first respondent sent a letter to the appellant informing that his request for relaxation of Rule 9(a)(ii) of the said Rules, had been rejected.

(i) Hence, on 27.10.2011, the appellant submitted a representation to the first respondent for ratification and thereafter, he filed one of the present two Writ Petitions, namely W.P.No.11108 of 2012 praying to quash the Letter No.5012/AA3/03-26, dated 08.07.2011 of the respondents and direct the respondents to treat the petitioner as having been regularised in service with effect from 22.02.1979 in accordance with G.O. Ms. No.503, dated 24.11.1999 and grant all consequential benefits such as periodical increments, Selection Grade and Special Grade, etc. The appellant also filed M.P.No.1 of 2012 in W.P.No.11108 of 2012 praying for interim injunction to restrain the respondents from in any manner terminating or discharging the appellant/writ petitioner's service, except by retirement on superannuation. This Court, by order dated 01.08.2012, in the said M.P.No.1 of 2012 in W.P.No.11108 of 2012, granted interim injunction as prayed for by the petitioner therein (i.e. the appellant in W.A.No.1420 of 2019), for two

weeks and, further, on 16.08.2012, in view of the fact that no counter affidavit was filed by the respondent(s) therein to vacate the interim injunction already granted, this Court made the interim injunction absolute. Further, on 31.08.2012, the first respondent, by G.O.Ms.No.187, Agriculture (AE-III) Department, passed orders relaxing Rule 9(a)(ii) of the said Rules in favour of the appellant. On the same day, by proceedings issued by the second respondent, the appellant was permitted to retire from service on attaining superannuation.

(j) Thereafter, again on 05.02.2014, the appellant represented to the first respondent that, since Rule 9(a)(ii) of the said Rules, was relaxed in his favour, orders may be passed conferring service benefits from the date of his regularisation, which have not been granted to him, such as Selection Grade, Special Grade, annual increments, arrears of pay revision, etc.

(k) The first respondent, on 11.04.2014, sent a letter to the second respondent stating that the relaxation of Rule 9(a)(ii) of the said Rules itself being a concession extended to him, his request for consequential service benefits cannot be considered. Challenging this rejection letter, dated 11.04.2014, W.P.No.3888 of 2015 is filed by the appellant/writ petitioner for the relief stated supra.

6. The learned Single Judge dismissed both the Writ Petitions on the reasoning that the appellant/writ petitioner has not passed the Departmental Tests/Examinations within five years and he was also allowed to continue in service. Although the above said Rule 9(a)(ii) of the said Rules was relaxed in his favour recognising the belated passing of the Departmental Examinations, he had passed the said examinations only after 18 years and 3 months and therefore, the learned Single Judge was of the view that the appellant/writ petitioner is not entitled to get the benefit of Selection and Special Grades as the same should be given only to those candidates who have completed ten and twenty years of service respectively, after passing the Departmental Examinations within five years from the date of regularisation. Aggrieved by the above order passed by the learned Single Judge, the present Writ Appeals have been filed by the writ petitioner.

7. The learned counsel appearing for the appellant/writ petitioner submitted that, the appellant had rendered 35 years of clear record of service. By G.O.Ms.No.503, Agriculture (AA.III) Department, dated 24.11.1999, the appellant's service along with 8 others, was regularised with effect from 22.02.1979. It is no doubt true that, as per the pre-condition for regularising his service, the appellant had to pass the departmental examinations within five years from the date of

regularisation. But the appellant/writ petitioner had passed the Departmental Examinations only in 2002 and that he did not pass the Departmental Examinations within 5 years from the date of regularisation. Since the appellant had not passed the departmental examinations within five years, the second respondent, by letter dated 08.02.2003, made recommendation to the first respondent seeking relaxation of Rule 9(a)(ii) in his favour on the ground that the appellant had extended his service, even after belatedly passing the departmental examination. On 31.08.2012, i.e. on the date of retirement, G.O.(Nilai).No.187, Agriculture (AE-III) Department was issued by the first respondent relaxing Rule 9(a)(ii) of the Rules in favour of the appellant/writ petitioner. Since Rule 9(a)(ii) had been relaxed, now the appellant is seeking consequential benefits that would flow there-from. Hence, he submitted a representation to the first respondent on 05.02.2014 seeking to sanction periodical increments, Selection Grade, Special Grade, pay commission fixation arrears, etc., but the said representation was rejected by the first respondent. According to the learned counsel for the appellant/writ petitioner, the first respondent is not justified in rejecting his representation after relaxing Rule 9 (a) (ii) in his favour.

8. In the above context, the learned counsel for the appellant/writ petitioner submitted that, when the Government had chosen to relax the Rule and extend retrospective benefits, it is nothing but automatic that all service accruals which stood crystallised there-from or from the retrospective date, shall enure to the benefit of the appellant. The learned Single Judge, without considering the above aspects, had dismissed both the Writ Petitions. In this regard, the learned counsel for the appellant/writ petitioner invited the attention of this Court to the order passed in G.O.(3D).No.263, Agriculture (Ve.Ne.3) Department, dated 21.11.2008, in and by which, the belated passing of Departmental Test(s) stood relaxed in favour of one M.Chandrasekaran, who was one among the persons whose services stood relaxed retrospectively like that of the appellant. The said Chandrasekaran was granted all the benefits and hence, the learned counsel for the appellant/writ petitioner prayed for similar relief to the appellant and resultantly, to allow the Writ Appeal by setting aside the order passed by the learned Single Judge.

9. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that as per G.O.Ms.No.227, Agriculture (AE-III) Department, dated 30.03.1989, his services were regularised from the date of the said G.O. Subsequently, he made a representation before the authority(ies) to regularise his service from the date of his initial appointment i.e. on 22.02.1979. The Government had

accepted his request and regularised the service of the appellant/writ petitioner from the date of initial appointment, i.e. on 22.02.1979, as per G.O.Ms.No.503, Agriculture (AA.III) Department, dated 24.11.1999, as a condition under Rule 9(a)(ii) of the Tamil Nadu Agricultural Subordinate Service Rules and that the appellant/writ petitioner shall pass the Departmental Examination(s) within five years from the date of regularisation. But the appellant/writ petitioner could not pass the Departmental Examinations within the prescribed period. As per Rule 9(a)(ii) of the Tamil Nadu Agricultural Subordinate Service Rules, if the appellant/writ petitioner could not pass the said Departmental Examination(s), he ought to have been terminated from service. In fact, he had passed all the Departmental Examination(s) only in the year 2002. Hence, only on a sympathetic consideration, Rule 9(a)(ii) had been relaxed in favour of him and he was allowed to retire from service on 31.08.2012, i.e. after giving relaxation of the said Rule 9(a)(ii) and to that effect, G.O.(Nilai).No.187, Agriculture (Ve.Ni.3) Department, dated 31.08.2012 was also issued. Though the appellant/writ petitioner was given the benefit of relaxation of Rule 9(a)(ii) of the said Rules, he was not given any increment, Selection Grade and Special Grade till his retirement. As per Rule 9(a)(ii) of the said Rules, unless he passes the Department Examination(s), he will not be given any Selection Grade, Special Grade and other consequential benefits. Therefore, the learned Special Government Pleader appearing for the respondents submitted that the learned Single Judge is right in dismissing the Writ Petition and prayed for dismissing the Writ Appeal.

10. Keeping the above submissions made on either side, we have carefully perused the entire materials available on record.

11. Though very many contentions were raised in this Writ Appeal, the only question that has to be decided in this Writ Appeal is, as to whether the benefits such as periodical increments, Selection Grade, Special Grade, etc., can be extended to the appellant/writ petitioner, since the respondents have relaxed Rule 9(a)(ii) of the said Rules in his favour.

12. As a condition precedent under Rule 9(a)(ii) of the said Rules, the appellant/writ petitioner has to pass all the Departmental tests within five years from the date of regularisation of his service. But he has not passed the said Departmental Examination(s) within the specified time. However, he has completed the said Departmental Examination(s) only belatedly, i.e. in the year 2002. Since he has passed the Departmental examinations belatedly, Rule 9(a)(ii) of the said Rules had been relaxed in his favour by virtue of G.O.Ms.No.187, Agriculture (Ve.Ne.3) Department, dated 31.08.2012 and

considering his request he was also allowed to retire from service on 31.08.2012.

13. Now, it is the contention of the respondents that the said relaxation of Rule 9(a)(ii) was made only on sympathetic consideration. As per Rule 9(a)(ii), unless he passes the Departmental tests, he is not entitled for grant of Selection Grade/Special Grade, etc. That is the reason why he had not been conferred with those benefits. Just because the Rule had been relaxed in his favour, it does not mean that he is entitled for the consequential benefits.

14. But we find that the appellant had put in more than 33 years of service. He joined the service in 1979 and by virtue of G.O.Ms.No.503, Agriculture (AA.III) Department, dated 24.11.1999, his services had been regularised with effect from 22.02.1979, his initial date of appointment. When the Government has chosen to relax the Rules and regularise his service from the date of his initial appointment, the Government is not justified in freezing the monetary/other consequential benefits on the ground that continuance of the appellant in service even after passing the departmental tests belatedly itself is a concession. Such a reasoning offered by the respondents cannot be accepted. The respondents, having condoned the belated passing of the Departmental Tests and even allowing the respondent to retire from service, cannot refuse the necessary benefits payable to the appellant/writ petitioner. When the Government ratified all the misdeeds of the appellant, his legitimate expectation would be to get all the consequential benefits on his retirement. Such an expectation of the appellant cannot be discarded at any rate. The necessary consequential benefits, such as periodical increments, Selection Grade, Special Grade, etc., payable to the appellant for the service he had rendered all along, had to be extended to him after the necessary Rules were relaxed in his favour. If the consequential benefits are not extended to the appellant, there is no use in condoning the belated passing of the Departmental Examinations, or allowing the appellant/writ petitioner to retire from service. Further, during his entire tenure, the appellant did not face any Departmental proceedings or was inflicted with any punishment. It is to be mentioned at this juncture that, when a Rule had been relaxed in favour of an employee, the consequential benefits as prayed for by the appellant/writ petitioner, have to be granted automatically, otherwise, the relaxation in favour of an employee will be otiose. In this case, the appellant had put in 35 years of unblemished service, which is also required to be taken note of by this Court while testing the validity and or correctness of the order of rejection passed by the respondents.

15. Hence, for the reasons stated above, both the Writ Appeals are allowed. The respondents are directed to grant all the consequential benefits that had accrued to the appellant/writ petitioner on account of his relaxation of Rule 9 (a)(ii) of the Rules, more particularly, the periodical increments, Selection Grade, Special Grade, etc., within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS.VII)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Agriculture Production,
and Principal Secretary to Government,
Agriculture Department,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Secretary to Government,
State of Tamil Nadu,
Agriculture Department,
Fort St.George, Chennai-600 009.
3. The Chief Engineer,
Agriculture Engineering Department,
Nandanam, Chennai-600 035.

+4cc to Mr.V.Mohan, Advocate SR.NOs.23041 and 23042
+1cc to The Government Pleader SR.NO..23378

AKM/30.04.21/ 10P- 9C/ सत्यमेव जयते

Judgment

in W.A.Nos.1420 and 1439 of 2019
Judgment delivered on 16.04.2021

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