



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.2773 of 2012

and

M.P. (MD)No.2 of 2012

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P.Sivaperumal

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Agriculture Department,
Secretariat, St.George Fort,
Chennai-600 009.
- 2.The Chief Engineer,
Office of the Agriculture Engineering Department,
487, Annasalai,
Nandanam, Chennai-35.
- 3.The Executive Engineer,
Office of the Agriculture Engineering Department,
Palani Road, Paraipatty,
Dindigul, Dindigul District.
- 4.K.Bharathi,
Assistant Engineer,
O/o Assistant Executive Engineer,
Agriculture Engineering Department,
Unit Office, Trichy,
Trichy District.
- 5.P.S.Natarajan,
Junior Engineer,
O/o Assistant Executive Engineer,
Agriculture Engineering Department,
Command Area Development Programme,
Aravakurichi, Karur District.
- 6.C.K.Umadevi,
Junior Engineer,
O/o Assistant Executive Engineer,
Agriculture Engineering Department,
Command Area Development Programme,



Tiruppuvanam,
Sivagangai District.

7.V.Sarumathi,
Assistant Engineer,
O/o Assistant Executive Engineer,
Command Area Development Programme,
Madurai.

8.T.N.Sankar Narayanan,
Assistant Engineer,
Housing Development and Police Quarters,
Tuticorin, Tuticorin District.

9.M.Sheela,
Junior Engineer,
O/o Assistant Executive Engineer,
Agriculture Engineering Department,
Kancheepuram, Kancheepuram District.

10. C.Christal Korat,
Junior Engineer,
O/o Assistant Executive Engineer,
Agriculture Engineering Department,
Command Area Development Programme,
Thenkasi, Tirunelveli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned revised seniority list of Assistant Soil Conservation Officer, dated 13.12.2007, issued by the second respondent and the consequential order passed by the second respondent in his proceeding in letter No.Me Pa 4/10941/11, dated 05.12.2011 and quash the same as illegal and consequentially to direct the respondents to fix the petitioner's seniority at appropriate place in conformity with G.O.Ms.No.168, Agriculture (AAIII) Department, dated 14.05.1999 and the consequential benefits thereon within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s Ajmal Associates

For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader
for R.1 to R.3
: Mr.G.Prabhu Rajadurai
for R.4 to R.8
: No Appearance for R.9 and R.10

* * * * *



ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned revised seniority list of Assistant Soil Conservation Officer, dated 13.12.2007, issued by the second respondent and the consequential order passed by the second respondent in his proceeding in letter No.Me Pa 4/10941/11, dated 05.12.2011 and quash the same as illegal and consequentially to direct the respondents to fix the petitioner's seniority at appropriate place in conformity with G.O.Ms.No.168, Agriculture (AAIII) Department, dated 14.05.1999 and the consequential benefits thereon within the period that may be fixed by this Court.

2. The case of the petitioner is that the petitioner was appointed as Irrigation Community Organizer in the year 1991 on NMR basis through employment exchange and he had been working for more than 8 years on daily wages basis and his services were not regularized. Subsequently, the second respondent submitted a proposal to the Government to permit him to make appointment of 75 Irrigation Community Organizers working in Warabandhi scheme on NMR basis who are diploma holders. Pursuant to the same, the Government decided to absorb 75 persons working as Irrigation Community Organizers in the regular vacancy. Accordingly, G.O.Ms.No.168, Agriculture (AAIII) Department, dated 14.05.1999 came to be issued and a direction was also issued to the Chief Engineer (Agriculture Engineering) to make appointment of the above said 75 persons subject to their educational qualifications. In the said Government Order, it was made clear that the appointment of Assistant Soil Conservator should be filled up by following the communal roaster and seniority, in which the petitioner's name was included and issued Serial No.52.

3. Though the Government Order was issued for appointment of 75 posts of Assistant Soil Conservation Officer, only 32 vacancies were available in Agricultural Engineering Department and therefore, the second respondent was directed to appoint only 32 persons in the existing regular vacancies and the remaining posts will be filled up as and when the vacancies arise. As per the said Government Order, the appointments are made periodically depending upon the vacancies arise in the Districts. On 25.05.1999, as many as 32 persons were appointed as Assistant Soil Conservation Officers. Though the Government Order would state that after following the communal roaster, the appointments should be made, the respondents had neither followed the communal rotation nor issued appointment orders based on the seniority list.

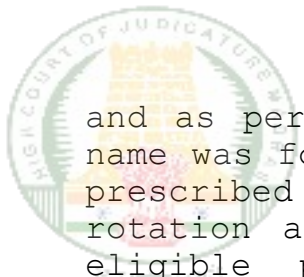
4. The petitioner was appointed as Assistant Soil Conservation Officer only on 01.09.1999. As per the communal roaster, the petitioner has to be appointed as early as on



25.05.1999, however, the petitioner was appointed only on 01.09.1999 and that itself contrary to the provisions of the above said Government Order. Though the petitioner's name was rightly placed in the year 2005, however, there was no inclusion of the petitioner's name in the seniority list in the years 2006, 2007 and 2008 and while so, some persons who were juniors to the petitioner were promoted by overlooking the petitioner. Since the said promotions came to the petitioner's knowledge, he preferred representations on various dates to the respondents requesting them to consider his promotion as Junior Engineer as per the seniority list released on 01.01.2005. However, in the year 2009, the petitioner's name was left in the provisional seniority list of Assistant Soil Conservation Officer released as on 01.01.2000, for which, the petitioner has made a representation, to include his name and fix his seniority in the appropriate place. Acting on his representation, the second respondent, vide his proceedings dated 06.12.2010, issued an order including the petitioner and other employees, whose names were not included in the seniority list and accordingly, his seniority was fixed as 61-A. However, the petitioner's name was placed below than his juniors. Hence, the petitioner preferred another representation to the second respondent to issue revised seniority list placing him in the appropriate place in accordance with G.O.Ms.No.168, dated 14.05.1999. Having been received the petitioner's representation, the second respondent passed the impugned order, dated 05.12.2011 rejecting the petitioner's claim by stating that the promotion was given to the petitioner's juniors, based on the revised seniority list issued by the second respondent, vide his proceedings dated 12.12.2007. Challenging the said order, the present writ petition is filed.

5. Learned Counsel appearing for the petitioner would submit that initially the petitioner and other private respondents were working as Irrigation Community Organizers on NMR basis in the respondent Department for several years and the Government decided to take a policy decision to absorb them as Irrigation Community Organizers in the regular vacancy, for which, G.O.Ms.No.168, Agriculture (AA III) Department, dated 14.05.1999 was issued, in which, the petitioner's name was placed above the private respondents. However, without the knowledge of the petitioner, a revised seniority list was fixed on 12.12.2007 and the petitioner was placed below his juniors, which is unsustainable one. When there was a seniority list exists as per G.O.Ms.No.168, Agriculture (AA III) Department, dated 14.05.1999, without issuing any notice and calling for any objection from the interested persons, publishing the revised seniority is unsustainable and hence, the learned Counsel would pray for appropriate orders.

6. The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that as per G.O.Ms.No.168, Agriculture (AA III) Department, dated 14.05.1999, wherein



and as per rule of reservation/communal rotation, the petitioner's name was found place in Serial No.52. However, the list of persons prescribed in the said Government Order was not based on communal rotation and rule of reservation and that was a general list of eligible persons indicated by the Government for whom, the appointment has to be given in accordance with the rule of reservation and communal rotation. Generally, the seniority will come after appointment and while following the communal rotation, the order of persons mentioned in the said Government Order may vary. Further, the petitioner has misrepresented the said Government Order in his favour for getting promotion earlier than the seniors and hence, the learned Additional Government Pleader would pray for dismissal of the writ petition.

7. Heard the learned Counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned Counsel appearing for the respondents 4 to 8 and perused the materials placed on record.

8. The facts in the present case are not in dispute. Admittedly the petitioner and other private respondents were working as Irrigation Community Organizers on NMR basis in the respondent Department for several years and the Government decided to take a policy decision to absorb them as Irrigation Community Organizers in the regular vacancy, for which, G.O.Ms.No.168, Agriculture (AA III) Department, dated 14.05.1999 was issued. The seniority was fixed while issuing the said Government Order itself. The respondents filed a counter affidavit by stating that initially the Government Order was issued in respect of 75 persons for regular absorption. Further, in the Government Order itself, it is clearly stated that out of 75 posts of Assistant Soil Conservation Officers, only 32 vacancies were available and the remaining posts have to be filled up based on the vacancies arise. Accordingly, as per the vacancy, the petitioner was appointed on 08.09.1999. His date of birth is 15.03.1969, for which, he was fixed in Serial No.52 and thereafter, the respondents revisited the entire list and issued the revised seniority list, based on their appointments, date of birth and joining date, in order to resolve the dispute between the petitioner and the private respondents and the details of the same are as follows:

Name	Date of birth	Date of joining	Date of recognition	Seniority
Petitioner	15.03.1969	08.09.1999	08.09.1999	678
4 th respondent	10.05.1968	28.05.1999	28.05.1999	627
5 th respondent	22.06.1966	07.09.1999	07.09.1999	659
6 th respondent	01.06.1967	28.05.1995	28.05.1995	643



7 th respondent	28.06.1967	28.05.1999	28.05.1999	636
8 th respondent	20.07.1967	06.09.1999	06.09.1999	668
9 th respondent	12.04.1965	27.05.1999	27.05.1999	652
10 th respondent	04.02.1970	27.05.1999	27.05.1999	655

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9. On a cumulative reading of the above statement, it makes it clear that the private respondents are therefore, seniors to that of the petitioner by way of date of joining and also in the seniority. Hence, the grievance expressed by the petitioner is misconceived. Therefore, the writ petition is liable to be dismissed.

10. In view of the above, this Writ Petition sans merit and, accordingly, the same is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary,
Agriculture Department,
Secretariat, St.George Fort,
Chennai-600 009.

2.The Chief Engineer,
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Nandanam, Chennai-35.

3.The Executive Engineer,
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Dindigul, Dindigul District.

+1 CC to M/s.G.PRABHU RAJADUAI, Advocate (SR-4166[F] dated 10/02/2021)

+1 CC to M/s.GP (SR-4311[F] dated 10/02/2021)

<https://hcservices.ecourts.gov.in/hcservices/>



+3 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-4557[F] dated
11/02/2021)

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