



WEB COPY

W.P.No.27492 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27492 of 2017

S.Annadurai

...Petitioner

Vs.

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

2. The Assistant Executive Engineer
(Agricultural Engineering),
Mannargudi, Thiruvarur District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 13.03.2017 requesting for promotion as Assistant Executive Engineer under the 3% quota for Physically Handicapped Persons in the light of the order of the Honourable Supreme Court of India in Civil Appeal No.5389 of 2016 dated 30.06.2016 and G.O.Ms.No.25, Welfare of Differently Abled Persons Department dated 14.03.2013 and pass appropriate orders thereon within a time limit to be fixed by this Honourable Court.



WEB COPY

W.P.No.27492 of 2



For Petitioner : Mr.Mohanraj
For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the first respondent to consider the petitioner's representation dated 13.03.2017, requesting for promotion as Assistant Executive Engineer under the 3% quota for Physically Handicapped Persons in the light of the order of the Honourable Supreme Court of India in Civil Appeal No.5389 of 2016, dated 30.06.2016 and G.O.Ms.No.25, Welfare of Differently Abled Persons Department dated 14.03.2013.

2. The petitioner is working as Junior Engineer (Agricultural Engineering) and he is a differently abled person, assessed with 60% disability. The petitioner was initially appointed as Assistant Soil Conservation Officer on 25.07.1983 and further was promoted to the post of Junior Engineer on 17.11.2007. The next avenue for promotion is to the post of Assistant Executive Engineer.



WEB COPY



3. The petitioner states that vacancies were available in the department during the relevant point of time. The Government issued the orders in G.O.Ms.No.25, Welfare of Differently Abled Persons Department, dated 14.03.2013, identifying 170 categories of posts suitable for different categories of differently-abled persons in Group “A” and Group “B” in direct recruitment and further directed the reservation of 3% for differently abled persons mentioned in paragraph-3 of G.O.Ms.No.602, Social Welfare and Nutritious Meal Programme Department, dated 14.08.1981.

4. Relying on the said Government Order, the learned counsel for the writ petitioner contended that the reservation is to be provided for promotion to the post of Assistant Executive Engineer. However, a perusal of the Government Order issued in G.O.Ms.No.25, Welfare of Differently Abled Persons Department, dated 14.03.2013, reveals that the reservation of 3% for differently abled persons, is provided only for initial appointment in the entry cadres. If at all a direct recruitment is made for the post of Assistant Executive Engineer, then the 3% reservation is to be adopted while recruiting candidates. However, the said reservation is inapplicable for promotion to the post of Assistant Executive Engineer from the feeder



Category of Junior Engineer. The position was made clear by the respondents in their counter affidavit in paragraphs 4, 5 and 8 as extracted under:

“4. As regards the averments raised in paragraphs 3 to 5 and Ground A of the Affidavit, I submit that regarding differently abled persons, the G.O.Ms.No.25, Welfare of Differently Abled Persons (DAP 2.1) Department, dated 14.03.2013 states as follows:

“8. After careful examination of his proposal of the Principal Secretary/State Commissioner for the Differently Abled, the Government approve the list of 170 posts identified under group A and B categories under the purview of Tamil Nadu Public Service Commission for the Persons with disabilities. The Government also direct that the 3% of the vacancies in direct recruitment for the identified posts of A and B groups, where the rule of reservation is applicable or SCs / STs, BCs and other communities, shall be reserved for the differently abled persons. If only one post is available or recruitment in these categories, the usual procedure for recruitment will be followed.....

9. The list of the 170 categories of posts identified as most suitable for the different categories of the differently abled persons in A and B groups in direct recruitment is given in the Annexure to this Order.”

5. In the said Government Order, the post of Assistant Executive Engineer (Agricultural Engineering) is incorporated in SL.No.36. Further, vide G.O.Ms.No.13,



WEB COPY



Welfare of Differently Abled Persons (DAP 2.1) Department, dated 02.03.2016, the Government have issued orders for supersession of orders issued in the above said G.O. and identified the post of Assistant Executive Engineer (Agricultural Engineering) in SL.No.187. It is pertinent to point out that in both the Government Orders, 3% of reservation is earmarked only for direct recruitment and as such the claim of the petitioner for reservation in his promotion cannot be accepted as there is no provision in the Government Order to provide reservation for appointment to the post of Assistant Executive Engineer (Agricultural Engineering) by recruitment by transfer / promotion.

...

8. I therefore, submit that the reservation which is earmarked to persons with disability is applicable at every level appointment only and not for recruitment by transfer / promotion on the basis of physical disabilities. In fact as per proviso to Section 34(1) of the Rights of Persons with Disabilities Act, 2016, the reservation are issued by the appropriate Government from time to time. As of now, no orders have been issued by the Government for reservation in recruitment by transfer / promotion to persons with disabilities. Therefore, the statement of the petitioner that the G.O.Ms.No.25, Welfare of Differently Abled Persons Department, dated 14.03.2013 is for promotion is not correct and misleading. It is not applicable to the case of petitioner and applicable only in the case of direct recruitment."



5. In view of the fact that the reservation of 3% was provided to the differently abled persons only for initial appointment, the claim of the writ petitioner for promotion under the said 3% is not contemplated, and therefore, the petitioner is not entitled for the relief as such sought for in the present writ petition.

6. Accordingly, this petition stands **dismissed**. No costs.

14.10.2022

Index : Yes
Speaking order
sha

To

1. The Agricultural Production Commissioner
and Secretary to the Government,
Agriculture Department,
Fort St. George, Chennai-600 009
2. The Assistant Executive Engineer
(Agricultural Engineering),
Mannargudi, Thiruvarur District.



WEB COPY



W.P.No.27492 of 2

S.M.SUBRAMANIAM, J.

sha

W.P.No.27492 of 2017

14.10.2022