



WEB COPY

W.A(MD)No.1015 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.03.2022

DELIVERED ON : 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.1015 of 2019

with

C.M.P.(MD) No. 9327 of 2019

- 1.K.Ramesh
- 2.C.Ezhilan
- 3.K.Kumanan
- 4.A.Sivaprakash
- 5.R.Ramesh Kumar

.. 3rd Party/Appellants

VS

- 1.Jegadeesan
Assistant Engineer(AE),
Office of the Assistant Executive Engineer,
Agricultural Engineering Department,
Usilampatti.

.. Petitioner/Respondents

- 2.The Chief Engineer,
Agricultural Engineering Department,
No.487, Anna Salai,
Nandanam, Chennai - 35.

- 3.R.Vaithianathan
Assistant Engineer (Agricultural Engineering)
O/o The Assistant Executive Engineer,
Agricultural Engineering Department,
Srivilliputhur,
Virudhunagar District.

(R3 impleaded vide order dated 23.3.22

made in CMP(MD) No.1648/22

in WA(MD) 1015/19 by PUJ and KRJ)

- 4.T.Raja

- 5.T.Saravana Perumal

(R4 and R5 impleaded vide order dated
23.03.22 made in CMP (MD) No.1522/22
in WA(MD) No.1015/19 by PUJ and KRJ)

.. Respondents



Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.08.2019 made in W.P.(MD) No. 15273 of 2013.

Prayer in WP(MD). 15273/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondent to fix the seniority among the re-designated Assistants Engineers and direct recruitment in the light of G.O.Ms.no. 431 Agriculture (AA-3) Department dated 22/10/1996 .

For Appellants : Mr.Isaac Mohanlal
Senior Advocate

with
Mr.P.Ganapathi Subramanian,
(For appellants and supporting
respondents 3 & 4)
with
Mr.G.Thalai Mutharasu
(For supporting
respondent No.5)

For Respondents : Mr.R.Baskaran,
Additional Advocate General
Assisted by
Mr.S.R.A.Ramachandran,
Additional Government Pleader
for State Authorities

Mr.P.Rajendran
for Mr.V.P.Rajan, advocates
for contesting respondent -
original writ petitioner

JUDGMENT

PARESH UPADHYAY, J.

1. Challenge in this appeal is made to the common order dated 27.08.2019 recorded on group of petitions being W.P.(MD) Nos. 15273,15274,15275,15276 & 15277 of 2013. This appeal is by the third party. This appeal was admitted by this Court vide order dated 14.10.2019 and the impugned order was stayed for the reasons recorded in the said order dated 14.10.2019.

2. We have heard learned advocates for the respective parties at length on different dates. It is noted that, on behalf of the appellants and supporting respondents, submissions are made by Mr.Isaac Mohanlal, learned Senior Advocate. On behalf of the original writ petitioners submissions are made by Mr.P.Rajendran,



learned advocate for Mr.V.P.Rajan. On behalf of the official respondents submissions are made by Mr.R.Baskaran, learned Additional Advocate General assisted by Mr.S.R.A.Ramachandran, learned Additional Government Pleader. Mr.G.Thalaimutharasu, learned advocate for newly impleaded respondent adopted the arguments of Mr.Isaac Mohanlal, learned Senior Advocate. The submissions on their behalf are noted hereinafter. It is noted that, on behalf of all the three sides i.e. the appellants, the writ petitioners and the official respondents, attention of the Court is invited to various G.Os reference to which is made to the extent necessary at appropriate stage.

3. Learned Senior Advocate for the appellants has made the following submission:

3.1 It is submitted that, the dispute between the parties pertains to fixation of seniority in the cadre of Assistant Engineer (Agriculture Engineering Department), which is the feeder cadre for Assistant Executive Engineer. Both the contesting groups are at present Assistant Engineers and even at the time when the writ petitions were filed, they were working as Assistant Engineers however, the original writ petitioners, the contesting respondents in this appeal were initially appointed as Assistant Soil Conservation Officers, who having been stagnated for years, were upgraded as Junior Engineers by relaxing Rules. Further, they were re-designated as Assistant Engineers. This is the way in which the writ petitioners are asserting their right of standing at appropriate place in the seniority list of Assistant Engineers. The appellants however are direct recruit Assistant Engineers.

3.2 It is submitted that, in the writ petition, the petitioners (original Assistant Soil Conservation Officer) made innocuous looking prayer that their seniority be counted in accordance with law. Grievance is made on behalf of the appellant that, in the said petition, only one official respondent was joined, who readily obliged the writ petitioners through counter. It is submitted that, the final directions in the impugned order are to the effect that the respondents are directed to fix the seniority of the writ petitioners as per the rules in force by taking into consideration their respective date of regularisation in the particular post, which prima facie may appear to be innocuous, however the net effect is that, the appellant shall be treated junior to the writ petitioners and the same is done against the orders of the Government and further without hearing the appellants. It is further submitted that, the same has led to the situation where, the present appellants, who are Assistant Engineers since the year 1997 are directed to be shown junior to the writ petitioners who were not even born in the cadre of Assistant Engineers - they were not even Junior Engineers at that time but were working as Assistant Soil Conservation Officers which is the feeder cadre with lower pay

<https://hccse.courts.gov.in/hccse/judst>

It is submitted that, this appeal be allowed.



4. On behalf of the contesting respondents - original writ petitioners it is submitted that, the seniority in the cadre of Assistant Engineers need to be fixed keeping in view the Rules holding the field. It is submitted that, the appointment of the appellants was not through Tamil Nadu Public Service Commission and therefore the writ petitioners can not be placed below them. It is submitted that the stand of the official respondent in the counter was just and proper and therefore no interference be made by this Court. It is submitted that this appeal be dismissed.

5. Learned Additional Advocate General has submitted that the Chief Engineer had taken the stand as per the rules and accepting that, learned Single Judge has passed the order and beyond this, nothing more is to be added on behalf of the State. It is submitted that, the writ petitioners were right to contend that, the initial appointment of the appellants was not through Tamil Nadu Public Service Commission. Learned Additional Advocate General concluded his submissions by taking stand that relevant G.O and the say of the Chief Engineer as contained in the counter are on record and considering that, appropriate order be passed by this Court.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under.

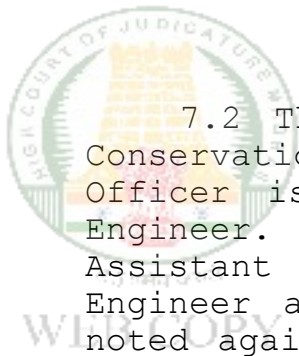
6.1 The present appellants are the direct recruits as Assistant Engineers.

6.2 They were appointed vide G.O.417 dated 06.10.1997. The said appointment was in due consultation with Government and through the mode approved by the Government. It was without giving any concession qua qualification / merits. By the subsequent G.O. 94 dated 26.05.2012, their services were regularized from the date of their initial appointment. The said order was passed in consultation with the Tamil Nadu State Public Service Commission.

6.3 By subsequent G.O.118 dated 02.05.2017, the Government further decided to treat the service of the said Assistant Engineers (group of the present appellants and similarly situated persons) to be regular for all purposes, from their initial date of appointment as Assistant Engineers, including for the purpose of all monetary benefits including increment etc.

6.4 The seniority of the appellants therefore need to be counted from 06.10.1997.

7.1 As against the above, the writ petitioners (contesting respondent group in this appeal) have reached the cadre of Assistant Engineers through the following route.



7.2 They were initially appointed as Assistant Soil Conservation Officers. The post of Assistant Soil Conservation Officer is lower in rank and pay scale as compared to Junior Engineer. Even the post of Junior Engineer is not at par with Assistant Engineer. However, leaving the comparison of Junior Engineer and Assistant Engineer aside for the time being, it is noted again that the writ petitioners were initially appointed as Assistant Soil Conservation Officers and even in the year 1997, when the appellants were appointed as direct recruit Assistant Engineers, they (writ petitioners) were working as Assistant Soil Conservation Officers only.

7.3 They having been stagnated for years as Assistant Soil Conservation Officers, Government thought it proper to give them some concession by upgrading them all as Junior Engineers. This could not have been done because Rules did not provide that mode. For this reason, Rules were amended vide G.O. 533 dated 14.12.2004 and consequently on the basis of the recommendation of the Chief Engineer (Agricultural Engineering), Government issued G.O.479 dated 16.11.2007 whereby those Assistant Soil Conservation Officers who were having qualification of Diploma in Engineering at the time of their initial appointment and who had completed 20 years of service were up-graded as Junior Engineers. Thus, with the said G.O. Dated 16.11.2007, the writ petitioners started being called as Junior Engineers.

7.4 The minimum educational qualification required for being considered for appointment as Assistant Engineer is graduate from the defined faculties such as B.E. (Agriculture) or B.Tech (Agricultural Engineering) or B.Sc. (Agricultural Engineering) etc. That is not the requirement either for Assistant Soil Conservation Officers or even Junior Engineer. A person working on the post of Junior Engineer may be possessing the educational qualification of degree, however the concession which was given by the State to Assistant Soil Conservation Officers, was further extended by re-designating graduate Junior Engineers as Assistant Engineers. As the record stands, in case of Mr.Jagadeesan - the writ petitioner of W.P.(MD) No. 15257 of 2013, this was done by proceedings dated 24.02.2009. Though there is no separate or consolidated order on record about re-designation of other writ petitioners as Assistant Engineers, it is accepted that they could have been re-designated as Assistant Engineers but it can not be at any date earlier than 16.11.2007, the date on which they were upgraded as Junior Engineers.

8. The conjoint consideration of what is noted in para : 6 and 7 above makes it clear that, the original writ petitioners (the contesting respondents in this appeal) were initially appointed as Assistant Soil Conservation Officers, and who having been stagnated for years were upgraded as Junior Engineers vide G.O. 479 dated 16.11.2007. The Government of Madras too by amending Rules vide G.O. 533 dated 14.12.2004



and were further re-designated as Assistant Engineers thereafter. We hold that, they can not be treated to be senior to the present appellants and similarly situated Assistant Engineers, who are Assistant Engineers since the year 1997 and even the same is regularized in due consultation with the State Public Service Commission from their initial date of appointment for all purposes. We also find that, the writ petitioners were not even born in the cadre of Assistant Engineers, at the time of appointment of the present appellants as Assistant Engineers. Further, they (the writ petitioners) were not even Junior Engineers at that time but were working as Assistant Soil Conservation Officers which is the feeder cadre with lower pay scale. This appeal therefore needs to be allowed.

9. Though attention of the Court is invited to other general Rules and some G.Os, none of them would help the writ petitioners since the Government has, from time to time passed different G.Os dealing with the service conditions of both the contesting groups, which are referred above. A question may crop up, how the sole contesting respondent in the writ petition - the Chief Engineer assisted the Court by filing counter which was not only inconsistent but was in straight conflict with the policy decisions of the Government as contained in different G.Os. In this regard, the following further facts need to be noted.

10.1 Though the very prayer clause in the writ petition referred to the seniority claim of the writ petitioners over the direct recruit Assistant Engineers i.e. the persons like the present appellants, no direct recruit Assistant Engineer was joined as party respondent - not even in representative capacity.

10.2 The sole respondent was the Chief Engineer. Not only there was no contest, even a counter was filed giving walkover in favour of the writ petitioners. Relevant part of para : 10 of the said counter, filed by the Chief Engineer dated NIL, 2019, reads as under:-

"10. Therefore, on assumption that the petitioners who were re-designated as Assistant Engineers (Agricultural Engineering) in the year 2007 will be placed below the Assistant Engineers (Agricultural Engineering) whose services were regularized in the year 2012, the present Writ Petitions were filed. Such presumption of the petitioners is not necessary since the Assistant Engineers (Agricultural Engineering) who were regularized in the year 2012 vide G.O.Ms.No.94, Agriculture (AA3) Department, dated 26.05.2012 will be placed only in the year 2012 for seniority purpose."

10.3 The above stand of the sole official respondent, as <https://hcservicesaionline.gov.in/hcservicesaionline> counter which was filed in the year 2019 was not only



in straight conflict with the G.O. 94 dated 26.05.2012, which was issued after due consultation with the State Public Service Commission but was also in conflict with subsequent G.O. 118 dated 02.05.2017. Such an attempt on the part of the said authority, to over reach the policy of the State, to favour one group would not have escaped the notice of the authorities of the Government. Inaction on the part of the State to deal with such tactic can not be gone into in this appeal, in absence of the said officer being party respondent in his personal capacity and therefore that aspect is left there. However so far merits of the said stand is concerned, we find that, the same was unsustainable in substance and in procedure. Firstly, it was in conflict with the orders of the Government and it was also behind the back of the affected persons (the present appellants). The order of learned Single Judge being based on this stand of the official respondent, is erroneous and the same needs to be corrected in this intra-court appeal.

11. For the above reasons, the following order is passed:-

11.1 This appeal is allowed by holding that, the original writ petitioners (the contesting respondents in this appeal), who were initially appointed as Assistant Soil Conservation Officers and who having been stagnated for years were upgraded as Junior Engineers vide G.O. 479 dated 16.11.2007 that too by amending Rules vide G.O. 533 dated 14.12.2004 and were further re-designated as Assistant Engineers thereafter can not be treated to be senior to the present appellants and similarly situated Assistant Engineers, who are Assistant Engineers since the year 1997, which is regularized in due consultation with the State Public Service Commission from their initial date of appointment for all purposes.

11.2 The impugned common order passed by learned Single Judge dated 27.08.2019 recorded on group of petitions being W.P(MD) Nos. 15273, 15274, 15275, 15276 & 15277 of 2013 is quashed and set aside. The said writ petitions are dismissed.

11.3 In view of disposal of the appeal, C.M.P. would not survive. It stands disposed of accordingly.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar (CS)

ssm



To

The Chief Engineer,
Agricultural Engineering Department,
No.487, Anna Salai,
Nandanam, Chennai - 35.

+1 CC to M/s.ISAAC CHAMBERS, (K.Ragatheesh Kumar) Advocate (SR-22603
[F] dated 29/04/2022)

+1 CC to M/s.G. THALAIMUTHARASU, Advocate (SR-22618[F] dated
29/04/2022)

+1 CC to M/s.V.P.RAJAN, Advocate (SR-22871[F] dated 29/04/2022)

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MGJ(16.05.2022) 8P 5C