



W.P.(MD)No.21311 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21311 of 2015

and

M.P.(MD)No.2 of 2015

and

W.M.P.(MD)No.1353 of 2017

The Tamil Nadu Agricultural Engineer's
Association,
represented by its Organizing Secretary,
T.Subramanian,
No.507/2, Kalanivasal,
Karaikudi,
Sivagangai District.

... Petitioner

vs.

1.Agricultural Production Commissioner,
and Secretary to Government,
Fort St.George, Chennai – 9.

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

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned letter issued by the 1st respondent in No.34437/AA.3/2013-5, dated 24.03.2015, is illegal and to quash the same as illegal.

For Petitioner : Mr.V.P.Rajan
For Respondents : Mr.C.Baskaran
Government Advocate (Civil side)

ORDER

This writ petition is filed for issuance of Writ of Certiorari, to quash the impugned order, dated 24.03.2015.

2. The Tamil Nadu Agricultural Engineer's Association, represented by its Organizing Secretary, has filed this writ petition. The brief facts as stated in the affidavit are that the Association was formed in the year 1958 and the same was recognized by the Government by G.O.Ms.No.3144, Public Services C.C., Department, dated 20.11.1958. The contention of the petitioner is that the post of Junior Engineer and Assistant Engineer is equal and the duty and responsibility



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are same and are interchangeable. Both posts are feeder category for the next promotion to the post of Assistant Executive Engineer. The Government has issued a G.O.Ms.No.431 Agriculture (AA-3) Department dated 22.10.1996, thereby fixing the seniority between direct recruitment and re-designated Assistant Engineer and the G.O. states as under:

"6-A, Seniority between the Assistant Engineer (Agricultural Engineering) directly appointed and those re-designated as Assistant Engineer (Agricultural Engineering).

The Junior Engineer (Agricultural Engineering) on re-designation as Assistant Engineer (Agricultural Engineering) in a calendar year shall be assigned rank below the last Assistant Engineer (Agricultural Engineering) in the list of candidates selected by the Tamil Nadu Public Service Commission in that calendar year. If no selection is made by the Tamil Nadu Public Service Commission in the category of Assistant Engineer (Agricultural Engineering) in that calendar year, the Junior Engineer (Agricultural Engineering) so re designated as Assistant Engineer shall be assigned rank below the last Assistant Engineer (Agricultural Engineering) in the list lastly communicated for the purpose. For this purpose, the date communication of the list by the commission shall be the criteria to decide the calendar year to which the list belongs. of

Provided that for determining the last Assistant Engineer (Agricultural Engineering) in a calendar year prior to 1.2.81 the list of persons selected by Tamil Nadu Public Service Commission for the post of Agricultural Engineering Supervisor shall be taken into account."



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3. In the light of the above said Rule, the seniority was fixed for promotion to the post of Assistant Executive Engineer among the re-designated Assistant Engineer and the Assistant Engineer by direct recruitment. The rule 2(b) of the Tamil Nadu Agriculture Engineering Service has specified ratio for promotion to the post of Assistant Executive Engineer among the Junior Engineer and Assistant Engineer. The re-designated Assistant Engineers were considered for promotion to the post of Assistant Executive Engineer based on the Junior Engineer seniority also. The Assistant Executive Engineers list were considered for promotion based on the Junior Engineer seniority even though there were re-designated as Assistant Engineer. The 1st respondent issued a letter, dated 24.03.2015, thereby clarifying the rule 6(a) of the Tamil Nadu Agriculture Engineering Service stating that Junior Engineers are coming under the Tamil Nadu Agriculture Engineering Subordinate Service Rules and the Assistant Engineers are coming under the Tamil Nadu Agriculture Engineering Service Rules and as such once the Junior Engineer got re-designation, he will come under the Tamil Nadu Agriculture



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Engineering Service Rules. Hence, the re-designated Assistant Engineers cannot claim promotion based on the Junior Engineer seniority.

4. The 1st respondent issued letter cited above to curtail the re-designated Assistant Engineer from getting the promotion to the post of Assistant Executive Engineer based on their initial appointment and service rendered in the post of Junior Engineer. The re-designated Assistant Engineers continues to perform the same duties and responsibilities as they have done before re-designation in the post of Junior Engineer. Since the re designated Assistant Engineers may not able to get promotion based on their seniority in the post of Junior Engineer and the same is violating the service jurisprudence with regard to promotion. Hence, the petitioner has come up with the present writ petition.

5. When the writ petition was taken up for hearing, it was submitted by the petitioner and the respondents that the issue was considered elaborately by the



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Honourable Division Bench, in an order, dated 24.08.2022, wherein it is held as follows:

“33. In the instant case, the process to make appointment to the post of Assistant Executive Engineer was started much prior to the amendment of the Rule under challenge and thereby the recommendation already made cannot be governed by the amendment when the process to the extent of making recommendation of the candidates was completed, though the orders of appointment may not have been issued waiting for the outcome of this litigation. Therefore, the respondents were under an obligation to give effect to the recommendations already made without affecting it by the amended provision which was brought much after the selection. Therefore, the amendment given retrospective effect cannot nullify the selections already initiated and completed, barring issuance of the order of appointment. It is clarified that the acceptance of the aforesaid argument of the petitioners is not on the ground of accrued rights, but on the ground that the rules of the game cannot be changed in the midst of selection process. Therefore, this is also a ground to hold that the Rules so amended by the government order under challenge would not have effect on the selections already made for appointment to the post of Assistant Executive Engineer.



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34. The challenge to the proviso added to Rule 2(b) vide the government order dated 17.2.2015 has also been made. For ready reference, the amended Rule is quoted hereunder:

“(b) Appointment to vacancies arising in Class IV shall be made by direct recruitment, by promotion from among the holders of the post of Assistant Engineer in Class V and by recruitment by transfer from among the holders of the post of Junior Engineer (Agricultural Engineer) in the Tamil Nadu Agricultural Engineer Subordinate Service in the ratio of 1:3:1 and shall be filled up in the following order of rotation, namely:~

- i. By direct recruitment;*
- ii. By Promotion;*
- iii. By recruitment by transfer*
- iv. By promotion; and*
- v. By promotion*

Provided that no Junior Engineer (Agricultural Engineering) appointed in a particular year shall be considered for appointment to the post of Assistant Executive Engineer (Agricultural Engineering) by recruitment by transfer unless and until the Assistant Engineer (Agricultural Engineering) appointed in the



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same year is considered for promotion to the post of Assistant Executive Engineer (Agricultural Engineering).”

35. The proviso to Rule 2(b) of the Special Rules provides that no Junior Engineer appointed in a particular year vis-a-vis the Assistant Engineer appointed in the same year would be considered for appointment to the post of Assistant Executive Engineer, unless all the Assistant Engineers appointed in the said year are given promotion. The proviso aforesaid vitiates even the ratio of promotion between the Assistant Engineers and Junior Engineers. The aforesaid can be illustrated by giving an example that in the year 2010 assuming ten Assistant Engineers were appointed and in the same year eight Junior Engineers were appointed, then as per the proviso, till all the ten Assistant Engineers are given appointment to the post of Assistant Executive Engineer, the eight Junior Engineers would not be given appointment even in the ratio given in the Rule. If in a given year there are six posts of Assistant Executive Engineer to be filled up by appointment from amongst the Assistant Engineers and Junior Engineers, then ignoring the ratio of 3:2 earlier applicable and now 3:1, only the Assistant Engineers would be considered and given appointment, making it 100% appointment for Assistant Engineers, while earlier ratio was 3:2 and now 3:1. The ratio aforesaid is violated by the proviso. The



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State Government could not give justification to bring the proviso when the promotion from the post of Assistant Engineer and Junior Engineer has to be made in the ratio fixed by them. Therefore, we find reason to strike down the proviso added to Rule 2(b) by the government order dated 17.2.2015.

36. The appointment to the post of Assistant Executive Engineer would be made in the ratio operating from time to time i.e., 3:2 prior to the amendment and now 3:1 as per the amendment aforesaid which has been approved by us, though nullifying its retrospective effect from 1.4.2011, but allowing it to be made applicable from the date of the judgment in the case of P.Sundar, supra. The exercise of filling up the posts of Assistant Executive Engineers would be governed by this judgment. If the appointment was made to the post of Assistant Executive Engineer by taking the Rule to be effective from 1.4.2011, then it would not be affected, however, if appointments have already been given, then they would be adjusted against the subsequent years- vacancies, as now the intervening period is of 11 years. It is, however, with the arrangement that those Junior Engineers and Assistant Engineers eligible and recommended for appointment in the year 2011 would be given appointment as the Rule was amended much after the



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recommendation and further vacancies till the amendment is given effect from 24.7.2013 would be as per the unamended provision.

37. The writ petitions are disposed of with the above directions. In view of the orders passed in the writ petitions, the contempt petitions are closed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

6. The Hon’ble Division Bench has disposed of the writ petitions with certain directions. Therefore, this Court is of the considered opinion that the respondents shall consider the name of the petitioner for promotion as per the directions of the Hon’ble Division Bench.

7. With the above said direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

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S.SRIMATHY, J

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Note:

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