



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.14073 of 2017

and

W.M.P.Nos.15290, 15291, 15292 & 22216 of 2017

- 1.V.Antonisamy
- 2.S.Chandar
- 3.N.Sakthivel
- 4.S.Sakthivel
- 5.A.Thiyagarajan
- 6.P.Mohan Kumar
- 7.A.Sundararaj
- 8.C.Ravichandran
- 9.K.Dhanapal
- 10.N.Jayakumar
- 11.M.Venkatakrisnan
- 12.A.Arokkiasamy
- 13.D.Senthil Kumar
- 14.R.Sivakumar
- 15.R.Jaganathan

.. Petitioners

Vs.

- 1.State of Tamil Nadu,
Rep.by its Secretary,
Department of Agriculture,
Fort St.George, Chennai-09.
- 2.The Commissioner of Agriculture,
O/o.The Commissionerate of Agriculture,



Chepauk,
Chennai – 5.

3.K.Sekar
Assistant Agriculture Officer,
Rishivandiam,
Villupuram District.

4.M.Ramesh
Assistant Agriculture Officer,
ADA Office, Thiruvalavankodu,
Thiruvallur District

.. Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.Ka.Ba.Ni2/19797/2017, dated 13.03.2017 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to re-fix the seniority in the cadre of Assistant Agriculture Officer, recruited through employment exchange in the year 2009, by adhering to the date of joining in service.

For Petitioners .. Mr.K.Thilageswaran

For Respondents .. Mr.S.Ravikumar,
Special Government Pleader.

**ORDER**

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This writ petition has been in the nature of Certiorari Mandamus seeking records of the 2nd Respondent dated 13.03.2017 and to quash the same and direct the respondents to refix the seniority in the cadre of Assistant Agriculture Officer recruited through employment exchange in the year 2009 by adhering to the date of joining in service.

2.The petitioners had been appointed as Assistant Agriculture Officer in the year 2009 after the names were sponsored by the respective Employment Exchanges. They have also passed their Diploma in Agriculture. They were working at various places across the State of Tamil Nadu. The said recruitment had not been done by any approved agency like Tamil Nadu Public Service Commission. They had also not written any examination to be so appointed as Assistant Agriculture Officer. They now dispute the seniority in which they have been placed.

3.Earlier, questioning the seniority, W.P.(M.D.)No.19041 of 2016 had been filed, seeking the very same relief. A learned Single Judge had



passed an order in the said writ petition granting the relief sought by the writ petitioners therein. Thereafter, a batch of writ appeals were filed and they had come up for consideration before the Division Bench in ***W.A.(MD)Nos.221 to 225 of 2018 batch, M.Rajinikanth vs. S.Jegadeesan and others.*** The Division Bench by an order dated 04.09.2018 after examining the entire issues relating to seniority and also the mode of selection of Assistant Agriculture Officer like the petitioners herein through Employment Exchange, had finally held as follows, after taking into consideration the applicability or otherwise of Rule 35(a) and Rule 33(aa) of the Tamil Nadu Sub-Ordinate Service Rules. The Division Bench had held as follows:

'9. Admittedly, selection has been made based upon the marks obtained. That is the reason why, of the 3506 candidates, only 1707 were selected. This selection process has been approved by this Court and confirmed by the Apex Court. The issue of non-appointing some of the candidates those who got higher marks, was raised on the earlier occasion. It was rightly pleaded by the Government that such candidates, who secured higher marks, could not be given appointment though selected, because of the



interim order. These persons joined later. Therefore, the question of awarding higher marks in the interview cannot be a ground to be raised in these proceedings, for the reason, this has already been dealt with and concluded in the earlier proceedings. Even otherwise, the same cannot be permitted to raise at this stage. Suffice it to say that all the selected candidates have undergone the very same process. Law is well settled that a candidate cannot be permitted to challenge a process after accepting it and undergone. Therefore, the common law principles of estoppel and acquiescence would certainly apply. Suffice it to note that even the writ petitioners/private respondents were appointed by same mode and those have accepted the rank list.

10. Rule 35(a) is very specific. It clearly mandates that seniority will have to be reckoned between the selected candidates based upon their merit. When once there is no doubt about the list having been drawn based upon the merit, the seniority list drawn based upon it cannot be questioned. After all, it is for the writ petitioners to substantiate it otherwise. In the counter-affidavit filed by the official respondents, the aforesaid position has been stated categorically. Even before us, the mark list has been produced. Secondly, Rule 35(aa) stands on a



different footing. One has to read Rule 35(aa) along with the proviso. This can be applied in a case where a person is appointed earlier and working and thereafter, some other person is appointed. Therefore, such situation cannot be applied to a common list, which has been drawn based upon merit.

11. To be noted, we are dealing with a case where mode of recruitment is direct and, therefore, even on that score, what is applicable is only Rule 35(a), since Rule 35(aa) deals with different modes of recruitment.

12. In such view of the matter, we are of the view that Rule 35(aa) does not have any application. The proviso makes it clear that even in a case where a junior is appointed to a promoted post thereafter followed by a senior, the inter se seniority in the promoted post will have to be fixed with the senior in the erstwhile cadre as a senior to the junior who is promoted earlier.

13. The learned Single Judge, in our considered view, has wrongly taken into consideration the date of regularisation as the one which gives rise to be considered as a senior between the persons appointed on the same day based upon merit. A regularisation per se is different. It merely gives a status to an employee. Therefore, this regularisation cannot be confused with the inter se seniority. To put it



differently, regularisation given in favour of an employee cannot affect the right of another one who is otherwise senior based upon merit, though taken charge subsequently.

*14. As rightly held by the Apex Court in **Chairman, Puri Gramya Bank v. Ananda Chandra Das [1994(6) SCC 301]** and **Suresh Chandra Jha v. State of Bihar [2007(1) SCC 405]**, fixing seniority and giving promotion based upon the date of joining in the feeder cadre is a fortuitous one and especially, when rules provide otherwise. Thus, looking from any angle, we are unable to sustain the order of the learned Single Judge. Accordingly, the same stands set aside and the Writ Appeals stand allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.*

4.The learned Special Government Pleader pointed out that the appeals against the said judgment of the Division Bench had also been dismissed by the Hon'ble Supreme Court in S.L.P.(Civil) No.2680-2688 of 2019 by judgment dated 21.01.2019.

5.In view of the same, this Court can never interfere with the impugned orders, since it is inconformity with the directions issued. The



contention of the petitioners were that at the time when they filed the writ petitions, the writ petitions were pending before the Madurai Bench, but they had now attained finality by the judgement of the Hon'ble Supreme Court.

6. In view of the same, the said Judgment would be applied to the petitioners also. In the result,

- (i) The writ petition therefore stands dismissed. No costs.
- (ii) The stay petition in W.M.P.No.15292 of 2017 stands dismissed.
- (iii) The vacate stay petition in W.M.P.No.22216 of 2017 stands allowed.
- (iv) W.M.P.Nos.15290 and 15291 of 2017 are closed.

31.08.2023

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking order: Yes/No
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To

- 1.The Secretary,
Government of Tamilnadu
Department of Agriculture,
Fort St.George, Chennai-09.
- 2.The Commissioner of Agriculture,
O/o.The Commissionerate of Agriculture,
Chepauk,
Chennai – 5.



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C.V.KARTHIKEYAN,J.

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