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W.P.No. 32433 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 32433 of 2017

and

W.M.P.Nos. 35719 & 35720 of 2017

- 1.O.R. Muralidharan
- 2.G. Govindaraj
- 3.P. Devarajan
- 4.V. Thiagarajan
- 5.V.S. Panneerselvam
- 6.R. Ramakrishnan
- 7.M. Ranga Boju
- 8.D. Kolappa Pillai
- 9.A. Krishnan
- 10.N. Soundarapandian
- 11.V. Govindaraj

... Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Rep., by the Agricultural Production
Commissioner and Principal Secretary to Government,
Agriculture Department, Fort St. George, Chennai – 600 009.
- 2.The Chief Engineer (Agricultural Engineering),
487, Anna Salai, Nandanam, Chennai – 600 035.
- 3.Engineering Graduates Association,
Rep., by its General Secretary,
No.487, Anna Salai, Nandanam,
Chennai – 35.

... Respondents

[R3-Impleaded as per order dated 09.01.2024]



W.P.No. 32433 of 2017

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in G.O.(D) No.268, Agriculture (AA-3) Department, dated 27.10.2017 and quash the same insofar as the petitioners are concerned and consequently direct the respondents to restore the inclusion in panel and promotions already given to them.

For Petitioners : Mr. P. Rajendran

For Respondents : Mr. L.S.M. Hasan Fizal, for R1 & R2
Additional Government Pleader
Mr. N. Subramaniyan , for R3

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 and 2 and Mr.N.Subramaniyan, leaned counsel for the third respondent.

2. Learned counsel for the petitioner contends that 4 Assistant Engineers who were temporarily appointed as Assistant Engineers under Rule 10 (a) (1) of the Tamil Nadu State and Subordinate Services Rules and whose services were regularised by the said Government order issued in 1990, have filed W.P.No.23996 of 2007 challenging the said order issued by the Chief Engineer and promotions given to 15 re-designated Assistant Engineer. One Assistant Engineer filed W.P.No.37019 of



2006 challenging the G.O.Ms.No.431, Agriculture (AA-3) Department dated 22.10.1996 (which provided for retrospective re-designation on acquiring degree in engineering and fixation of seniority of the re-designated Assistant Engineers).

3. Admittedly, the petitioners were not parties to any of the said writ petitions. It appears that the said writ petitions were taken up for hearing in the year 2015 and W.P.No.23996 of 2007 was allowed and W.P.No.37019 of 2006 was dismissed on 05.03.2015. It appears, during the pendency of W.P.No.23996 of 2007, the first petitioner therein had died and 13 out of 15 private respondents had retired from service and the remaining two private respondents have also retired. All the parties to the writ petition i.e., the petitioners and the private respondents were promoted during the pendency of the writ petition. Since the promotion orders issued to the private respondents were set aside in W.P.No.23996 of 2007, they have filed W.A.Nos.1720 and 1786 of 2015. In the light of the order dated 05.03.2015 of this Court in W.P.No.23996 of 2007, the respondent No.1 issued impugned order which is under challenge in the present writ petition.

4. In the counter affidavit filed by the first respondent also it is stated that though the reversion was made vide the impugned G.O., the petitioners were not reverted and the issue of reversion was kept in abeyance subject to the outcome of W.A.No.1271 of 2016 and batch.



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5. During the course of hearing, the learned counsel for the petitioner has placed a copy of order dated 08.09.2023 in W.A.No.1720 of 2015 and batch before this Court. Basing on the judgment of the Division Bench in the said Writ Appeal, the learned counsel sought to allow the writ petition and sought a direction not to disturb the position of the petitioners. The relevant paragraphs of the Division Bench judgment are extracted herein under:-

“36. However, insofar as the writ appellants are concerned, even though they were juniors to the Assistant Engineers directly appointed under Rule 10(a)(i), because of the confusion that had arisen, with the result they were given promotion as Assistant Executive Engineers and in that capacity they had been working for some years and retired from service and moreover, based on which whatever benefit that has been given to them cannot be said to be an unjust enrichment as they have been promoted and from them work as Assistant Executive Engineers had been extracted by the Department.

37. Therefore, those engineers are also entitled to continuously claim the pension based on their last drawn salary, which is already being paid to them. Therefore, that position need not be disturbed.”

6. On perusal of the above stated order, it appears that in view of the fact that the appellants therein had been working for some years as Assistant Executive Engineers and retired from service and moreover, based on which whatever benefits



they got, it cannot be said to be unjust enrichment and department had extracted work from them after promotion and accordingly, held that they are also entitled to claim the pension continuously based on their last drawn salary which is already being paid to them.

7. Learned Additional Government Pleader appearing for the first and second respondents submit that the judgment of the Division Bench in the above stated appeal has become final.

8. Having heard the respective counsel and having gone through the materials available on record and the copy of the judgment of the Division Bench placed by the learned counsel for the petitioner, in our considered view, it is appropriate to follow view as taken by the Division Bench in the interest of justice without going into the merits of the case further.

9. Accordingly, this writ petition is disposed of holding that the petitioners are entitled to continuously claim the pension based on the last drawn salary, which is already being paid to them. The respondents 1 and 2 are further directed not to disturb the position of the petitioners.



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10. Consequently, connected miscellaneous petitions are closed. No costs.

18.03.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

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2.The Chief Engineer (Agricultural Engineering),
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BATTU DEVANAND, J.

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