

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6437 of 2006
(O.A.No.966 of 2003)

N.Ponnuswamy

.. Petitioner

-vs-

1. Secretary to Government
Agriculture Department
Fort St.George
Chennai 600 009

2. The Director of Agriculture
Chepauk
Chennai 600 005

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the respondents to re-fix the petitioner's seniority as Assistant Agricultural Chemist with effect from 18.6.89 i.e., the date of selection declared by the Tamil Nadu Public Service Commission with all consequential and service benefits.

For Petitioner :: M/s G.Bala & Daisy

For Respondents :: Mr.K.V.Dhanapalan
Additional Government Pleader

सत्यमेव जयते
ORDER

The petitioner approached the Tamil Nadu Administrative Tribunal, Chennai by filing O.A.No.966 of 2003 seeking for a direction to the respondents to re-fix his seniority on the ground that he joined the Government service as Deputy Agricultural Officer on 16.2.77. While he was working as Agricultural Officer, he was deputed to study post graduation in agriculture by the department. After joining M.Sc. (Agriculture) in Soil Science and Agricultural Chemistry at Agriculture College & Research Institute at Madurai, he completed the said course in 1985. With that qualification, he applied for the post of Assistant Agricultural Chemist by direct recruitment in the year 1989, when the Tamil Nadu Public Service Commission called for applications from the eligible candidates for

the said post. On his selection, the Tamil Nadu Public Service Commission also issued an order declaring that the petitioner was selected to the post of Assistant Agricultural Chemist on 16.8.89. But the grievance of the petitioner is that although the petitioner was selected to the said post as early as on 16.8.89, the department could not issue an order of appointment, for the reason that O.A.No.1255 of 1989 filed by the Tamil Nadu Agricultural Research Officers Association was pending and an interim order of stay was granted by the Tribunal. Subsequently, the said original application was dismissed for default on 25.4.91. In spite of that, the respondents, further delaying the matter, had issued the order of appointment only on 29.1.92. As there was a delay of three years due to the pendency of the O.A.No.1255 of 1989, the petitioner had lost his seniority. However, bringing to the notice of the respondents, a representation was made to the first respondent to re-fix his seniority as Assistant Agricultural Chemist with effect from 18.6.89. As no order was passed, the petitioner, left with no other option, filed O.A.No.966 of 2003 before the Tamil Nadu Administrative Tribunal seeking re-fixation of his seniority. As the said application came to be transferred to this Court and renumbered as a writ petition, a suitable direction should be issued.

2. Opposing the above prayer, the learned Additional Government Pleader appearing for the respondents sought for dismissing the writ petition, on the ground that it is true that the petitioner was selected to the post of Assistant Agricultural Chemist in the Tamil Nadu Agricultural Service on 16.8.89 by the Tamil Nadu Public Service Commission. After the selection was made by the Tamil Nadu Public Service Commission to the said post, the Tamil Nadu Agricultural Research Officers Association filed O.A.No.1255 of 1989 on the file of the Tamil Nadu Administrative Tribunal against the direct recruitment to the post of Assistant Agricultural Chemist. In the beginning, the Tribunal had granted an order of interim stay. However, the Tamil Nadu Agricultural Research Officers Association had not attended the final hearing, as a result, the Tribunal dismissed the case for default on 25.4.91. Only thereafter, the Government approved the names of the petitioner and Ms.M.Thanikodi for appointment as Assistant Agricultural Chemists by direct recruitment as per G.O.Ms.No.39, Agriculture (AAI) Department dated 29.1.92. Based on these orders, posting orders were also issued and they have joined duty as Assistant Agricultural Chemist on 27.2.92 and 2.3.92 respectively. After sometime, the services of the petitioner in the post of Assistant Agricultural Chemist were regularised with effect from 27.2.92 by issuing G.O.(D) No.25, Agriculture (AAI) Department dated 23.2.94. Later on the Government by issuing G.O.Ms.No.385, Agriculture (AAI) Department dated 11.7.95 fixed the seniority of the petitioner in the post of Assistant Agricultural Chemist below Mr.T.Ganapathy, who also joined as Assistant Agricultural Chemist with effect from 21.2.92, on the basis of Rule 35(aa) of the General Rules for Tamil Nadu State and

Subordinate Service Rules with reference to the date of appointment or joining in the post of Assistant Agricultural Chemist and without altering the order of preference given by the Tamil Nadu Public Service Commission in its selection list for direct recruitment to the post of Assistant Agricultural Chemist. Therefore, when the seniority of the petitioner has been fixed below Mr.T.Ganapathy and Ms.M.Thanikodi, the petitioner, wrongly quoting the date of selection as 16.8.89, preferred an appeal on 29.1.96 for re-fixation of his seniority in the post of Assistant Agricultural Chemist from 16.8.89 i.e., from the date of selection made by the Tamil Nadu Public Service Commission. Considering the case of the petitioner, the Government also in its letter No.15880/AAI/96-6 Agriculture Department dated 16.6.97 informed that the appeal preferred by the petitioner was not feasible of compliance, as he had joined in the post of Assistant Agricultural Chemist by direct recruitment only on 27.2.92. Aggrieved by the said order, the petitioner also preferred a review petition dated 8.11.97 and the same was also rejected by G.O.Ms.No.359, Agriculture (AAI) Department dated 11.9.98. But unfortunately, the petitioner neither challenged the order passed in the appeal petition nor in the review petition. Therefore the present writ petition transferred from the Tribunal has no legs to stand.

3. This Court, fully agreeing with the submissions made by the learned Additional Government Pleader for the respondents, finds no merits or substance in the writ petition. As rightly contended by the learned Additional Government Pleader, the petitioner was appointed as Assistant Agricultural Chemist by direct recruitment as per G.O.Ms.No.39, Agriculture (AAI) Department dated 29.1.92 and he also joined the service on 27.2.92. Thereafter his services were also regularised in the said post with effect from 27.2.92 as per G.O.(D) No.25, Agriculture (AAI) Department dated 23.2.94. Later on, G.O.Ms.No.385, Agriculture (AAI) Department dated 11.7.95 was also issued fixing the seniority of the petitioner in the post of Assistant Agricultural Chemist below the name of Mr.T.Ganapathy, who has also joined as Assistant Agricultural Chemist with effect from 21.2.92 as per Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules with reference to the date of appointment in the post of Assistant Agricultural Chemist. But, unfortunately, the petitioner has not made the said Mr.T.Ganapathy as a party to this proceedings. On this score also, the writ petition is liable to be dismissed. Secondly, when the petitioner was regularised with effect from 27.2.92, he has also preferred an appeal on 29.1.96 for re-fixation of his seniority in the post of Assistant Agricultural Chemist from 16.8.89. But the Government have rejected the petitioner's appeal informing that the request was not feasible of compliance. Subsequently, the petitioner also preferred a review petition dated 8.11.97 and the same was also rejected by the Government in G.O.Ms.No.359, Agriculture (AAI) Department dated 11.9.98. When the petitioner had already made an appeal and the same was also rejected and as against that, the review petition filed by

the petitioner order was also not entertained, the present writ petition also deserves to be dismissed, as he had not challenged any of the order. Therefore, this Court finds no substance in the writ petition and accordingly the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Agriculture Department
Fort St.George
Chennai 600 009

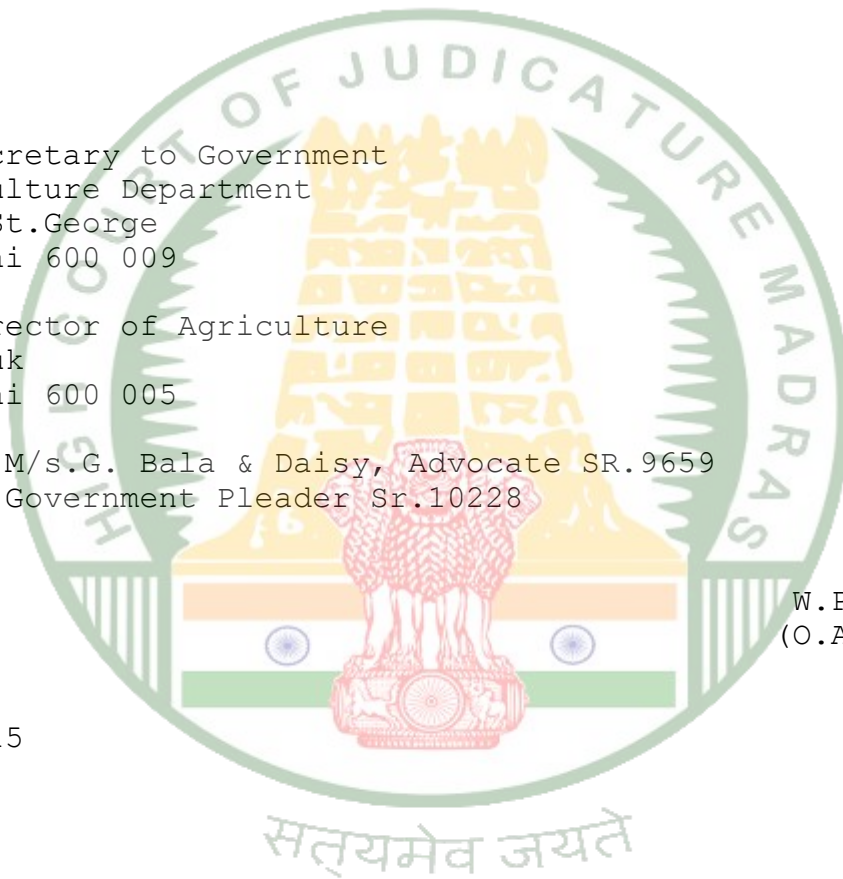
2. The Director of Agriculture
Chepauk
Chennai 600 005

+ 1 cc to M/s.G. Bala & Daisy, Advocate SR.9659

+ 1 cc to Government Pleader Sr.10228

W.P.No.6437 of 2006
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KGK (CO)
Eu 31.03.15



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