

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.11932 of 2011

K.Parthasarathy

.. Petitioner

Vs.

The Commissioner of Agriculture,
Chepauk, Chennai - 5.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the respondent herein in his Proceeding No.mggp4/163665/2008 dated 30.03.2011 and quash the same and consequently direct the respondent herein to grant the petitioner selection grade pay of Assistant with effect from 19.01.1999 with all consequential service and monetary benefits.

For Petitioner .. Mr.Ravi Shanmugam

For Respondent .. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader

ORDER

Challenging the order of the respondent dated 30.03.2011 and for a consequential direction to the respondent to grant selection grade pay of Assistant with effect from 19.01.1999 with all consequential service and monetary benefits, the petitioner has filed this writ petition.

2.The case of the petitioner is that he was appointed as Junior Assistant on compassionate grounds in Agriculture Department on 10.07.1985. Subsequently, G.O.Ms.No.1017 Agriculture Department dated 01.06.1987 was issued, regularising

the services of the petitioner as Junior Assistant with effect from the date of original appointment i.e. on 10.07.1985. Thereafter, the probation was also declared after satisfactorily completing the probation period of two years on 26.10.1987 vide order dated 01.03.1989. On 13.01.1989, the petitioner was promoted as Assistant on regular basis. After having been appointed on regular basis as Assistant, the petitioner joined the post on 19.01.1989. According to the petitioner, the Government servants who had rendered 10 years of service in any particular post are entitled to be granted selection grade and on completion of 20 years of service, are entitled to be granted special grade. On the basis of instructions in the Government Orders, the petitioner was granted selection grade pay vide order dated 16.04.2009 with effect from 19.01.1999 by the Additional Director of Agriculture. However, subsequent to the issue of the order granting selection grade to the petitioner, another order was issued on 14.05.2009 seeking to cancel the order dated 16.04.2009. The cancellation order dated 14.05.2009 was put to challenge by the petitioner in W.P.No.4574 of 2010. This Court, while considering the writ petition, passed an order on 06.01.2011 and quashed the order of cancellation dated 14.05.2009 principally on the ground that no prior notice was issued to the petitioner before the impugned order was passed therein. Liberty was also given to the respondent to issue notice before seeking to cancel the order of selection grade dated 16.04.2009.

3. In pursuance of the order passed this Court in the above said writ proceedings, a show cause notice was issued to the petitioner on 14.02.2011 seeking to show cause as to why the selection grade granted to him should not be cancelled. In response to the show cause notice, the petitioner submitted a representation on 04.03.2011 stating that the cancellation was not valid in view of the basic fact that the petitioner had rendered 10 years of service as Assistant as on 19.01.1999 and 20 years of service as on 19.01.2009 and therefore, is entitled to be granted both selection and special grades in terms of Government of Tamil Nadu instructions and the orders issued on the subject matter.

WEB COPY

4.However, notwithstanding the explanation given by the petitioner, the respondent passed the impugned order dated 30.03.2011, once again cancelling the selection grade granted to the petitioner on 16.04.2009 and confirming the earlier order passed by the Additional Director of Agriculture dated 14.05.2009. The said order is impugned in the present writ petition.

5.Mr.Ravi Shanmugam, learned counsel appearing for the petitioner would strenuously contend that as per the impugned order of cancellation, the reason stated is that the petitioner had suffered loss of inter se seniority between the compassionate appointees and the persons recruited directly by the Tamil Nadu Public Service Commission and in view of loss of seniority, the period of service as Assistant has to be reckoned only from 22.10.1998 and not from 19.01.1989. Learned counsel would state that the issue of seniority had been the subject matter of proceedings before the Tamil Nadu Administrative Tribunal in O.A.Nos.247 and 248 of 1993 and the litigation had travelled up to the Supreme Court of India. While dealing with the issue of seniority as between the petitioner and others, the Supreme Court, while dismissing the appeals filed by the petitioner herein has clearly observed as follows:

"....The view taken by the Tribunal, therefore, appears to be correct. At any rate it is now made clear under the order which was challenged in the Tribunal that the appellants will be treated as having been temporarily promoted and there is no likelihood of their reversion. In this view of the matter no further direction would be given in that regard. Subject to these observations, these appeals stand dismissed."

6.Therefore, the learned counsel would contend that the promotion of the petitioner as Assistant did not suffer any reversion and therefore he had worked as Assistant continuously for a period of 10 years and on that basis alone, he is eligible to be granted the selection grade.

7.Mr.Ravi Shanmugam, learned counsel for the petitioner would further contend that the question of seniority may not have any bearing on the grant of selection grade or special grade as the case may be as the grant of selection grade or special grade has direct nexus only to the number of years of service to be put in by the employee concerned.

8.Per contra, learned Special Government Pleader would contend that the reason set forth in the impugned order dated 30.03.2011 is valid and the petitioner is not entitled to be granted selection grade on 19.01.1989 and further special grade in 2009 and he is entitled only for selection grade in 2008 reckoning the date of period of the petitioner working as Assistant from 22.10.1998. The said submission made on behalf of the learned Special Government Pleader appears to be a too feeble argument to be accepted by this Court. In view of the basic fact that the petitioner, who did not suffer any reversion all through his career had worked indeed as Assistant from 19.12.1989, is entitled to be paid the special grade and it was rightly done by the order passed by the Additional Director of Agriculture on 16.04.2009.

9.In such circumstances, the subsequent orders issued by the respondent on 14.05.2009 and 30.03.2011 cannot be countenanced both in law and on fact in view of the admitted position that the petitioner has worked as Assistant from 19.01.1989 and therefore, the petitioner is rightly entitled to be placed in selection grade on 19.01.1999 on completion of ten years of service and further entitled to be placed in the special grade on further completion of 10 more years of service on 19.01.2009.

10.In view of the above narrative of the discussion, this Court has no hesitation in setting aside the impugned order of cancellation of selection grade/special grade as per the entitlement of the petitioner. The writ petition is allowed and there shall be a direction to the respondent to grant selection grade to the petitioner by restoring the order passed on 16.04.2009 and thereafter grant special grade on completion of 20 years of service on 19.01.2009 with all consequential and attendant benefits. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. The writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

The Commissioner of Agriculture,
Chepauk, Chennai - 5.

+1 cc to M/s.Ravi Shanmugam Advocate sr 49187
+1 cc to Government Pleader sr 50165
+1 cc to Government pleader sr 49362

W.P.No.11932 of 2011

skv(co)
aa01/08/2017



WEB COPY