

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07-09-2017

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.21631 of 2011

J.Murali

.. Petitioner

Versus

1. The Commissioner of Agriculture,
Chepauk, Chennai-5.

2. The Joint Director of Agriculture,
Tiruvavarur.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records of the second respondent herein issued in his proceedings No.A2/7268/2011 dated 24.08.2011 ordering cancellation of Section Grade of Pay as Assistant/Special Grade of pay as Assistant and ordering recovery of Rs.96,421/- and quash the same.

For Petitioner : Mr.Ravishanmugam

For Respondents : Mr.T.M.Pappiah, Spl.GP

ORDER

The present writ petitions have been filed, seeking for the following relief:

"To issue Writ of Certiorari, to call for the records of the second respondent herein issued in his proceedings No.A2/7268/2011 dated 24.08.2011 ordering cancellation of Section Grade of Pay as Assistant/Special Grade of pay as Assistant and ordering recovery of Rs.96,421/- and quash the same."

2. According to the petitioner, he was appointed as Junior Assistant on 5.11.1984 on compassionate grounds in Agriculture Department. Subsequently, on 19.1.1987, he was regularly appointed in the same post after obtaining concurrence from the Tamil Nadu Public Service Commission with effect from 5.11.1984. Thereafter, he was promoted to the post of Assistant on 9.3.1989 on regular basis.

3. The petitioner joined the post of Assistant on 16.3.1989. On completion of 10 years of service in the post of Assistant, the petitioner became eligible for grant of Selection Grade on 16.3.1999. Therefore, he was rightly granted the Selection Grade pay as Assistant with effect from 16.3.1999 vide orders passed by the second respondent dated 30.3.1999. Subsequently, an order was issued on 5.4.1999 fixing the petitioner's pay in the selection grade. The petitioner had completed 20 years of service as Assistant without any break on 16.2.2009 and therefore, he became eligible for grant of Special Grade in the post of Assistant. The second respondent once again passed order granting Special Grade to the petitioner with effect from 16.3.2009 by orders dated 12.1.2010. Thereafter, an order was issued on 11.02.2010 placing the petitioner under the Special Grade pay as Assistant including increments with effect from 16.3.2009.

4. In the meanwhile, the first respondent had issued general instructions dated 18.7.2011, directing the authorities to refix the Selection/Special Grade of pay for all appointees in view of the revised seniority among the Assistants as a consequence of a decision of the learned Tamil Nadu Administrative Tribunal as well as the Hon'ble Supreme Court of India. In pursuance of the general instructions, the second respondent issued order dated 24.8.2011, cancelling the Selection Grade and Special Grade which were granted to the petitioner and also ordered for recovery of a sum of Rs.96,421/-. The said order is put to challenge in this Writ Petition.

5. Mr. Ravi Shanmugam, learned counsel appearing for the petitioner would contend that the impugned order was passed on 24.8.2011 without any prior notice or providing an opportunity to the petitioner and therefore, on the ground of non-compliance of principles of natural justice, the impugned order is liable to be set aside. In support of his contention, the learned counsel would rely upon a decision of the Hon'ble Supreme Court reported in (1994) 2 SCC 521, 2006(11) SCC 709 and 2009 (3) SCC 475, wherein, the Hon'ble Supreme Court held that the recovery or refixation of pay cannot be done without notice or opportunity.

6. The learned counsel would further submit that the basis of the cancellation of Selection and Special Grades granted to the petitioner with effect from 16.3.1999 and 16.3.2009 respectively was because of the decision of the learned Tamil Nadu Administrative Tribunal in which, the Tribunal had directed the Departments to grant higher seniority to certain other persons who were appointed as Assistant vis-a-vis seniority fixed in respect of the petitioners therein and other similarly placed compassionate appointees. The issue was taken up before

the Hon'ble Supreme Court in Civil Appeal Nos.9417-9418 of 1995 and while disposing of the same, the Hon'ble Supreme Court has 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."

7. Therefore, the learned counsel would submit that the petitioner who was promoted as Assistant on 16.3.1989 did not suffer any reversion at all and therefore, by virtue of his completion of 10 years in 1989 and 20 years in 2009, he was rightly granted both Selection and Special Grades by the orders of the second respondent earlier as stated supra.

8. The learned counsel would further submit that the question of seniority may not have bearing on the grant of selection and special grades 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 any of the employee concerned.

9. Lastly, the learned counsel for the petitioner would also draw the attention of this Court to an order passed in W.P.No.11932 of 2011 dated 13.07.2017, wherein, this Court in similar circumstances, has allowed the Writ Petition filed by the employee concerned. This Court dealt with the issue that was raised in the said Writ Petition which is identical to the present one. Therefore, he would impress upon this Court that in view of the decision of the Hon'ble Supreme Court (cited supra) and also the decision of this Court, the Writ Petition may be allowed in favour of the petitioner.

10. Per contra, learned Special Government Pleader would contend that the reason set forth in the impugned order dated 24.8.2011 is valid and the petitioner is not entitled to be granted selection grade and special grade with effect from 16.3.1999 and 16.3.2009 respectively. According to him, after re-fixation of seniority, the petitioner is entitled to count his services as Assistant only from 1989 and not earlier and the counting of regular service alone would be taken into consideration for the purpose of grant of both selection and special grade as the case may be.

11. This Court has considered the rival submissions of the learned counsel appearing for the parties and also perused the pleadings and materials placed on record.

12. It is admitted fact that in view of continuing the petitioner and other similarly placed persons as Assistant without being reverted, the petitioner had acquired a right to count his service since no reversion was taken place in between, although the seniority was re-fixed to his detriment subsequently. In fact, the Hon'ble Supreme Court while disposing of the Civil Appeal Nos.9417-9418 of 1995, had taken into consideration the fact that there was no likelihood of reversion or any employee in view of re-fixation of the seniority. The very disposal of the Civil Appeals was only on the basis of the said fact and therefore, the service of the petitioner in the interregnum between 1989 and 1999 cannot be ignored or neglected for the purpose of counting of service in respect of selection and special grades as the case may be.

13. In such circumstances, the impugned order passed by the second respondent dated 24.8.2011, cannot be countenanced both in law and on facts. Therefore, the petitioner is rightly entitled to be placed in Selection Grade on 16.3.1999 on completion of 10 years of service and further, entitled to be placed in Special Grade on completion of 20 years as on 16.3.2009.

14. In view of the above narrative and discussion, this Court has no hesitation in setting aside the impugned order dated 24.8.2011.

15. Accordingly, the Writ Petition is allowed and there shall be a consequential direction to the second respondent to grant Selection Grade to the petitioner by restoring the order dated 30.3.2009 and thereafter, grant Special Grade by restoring the order dated 12.1.2010, 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. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

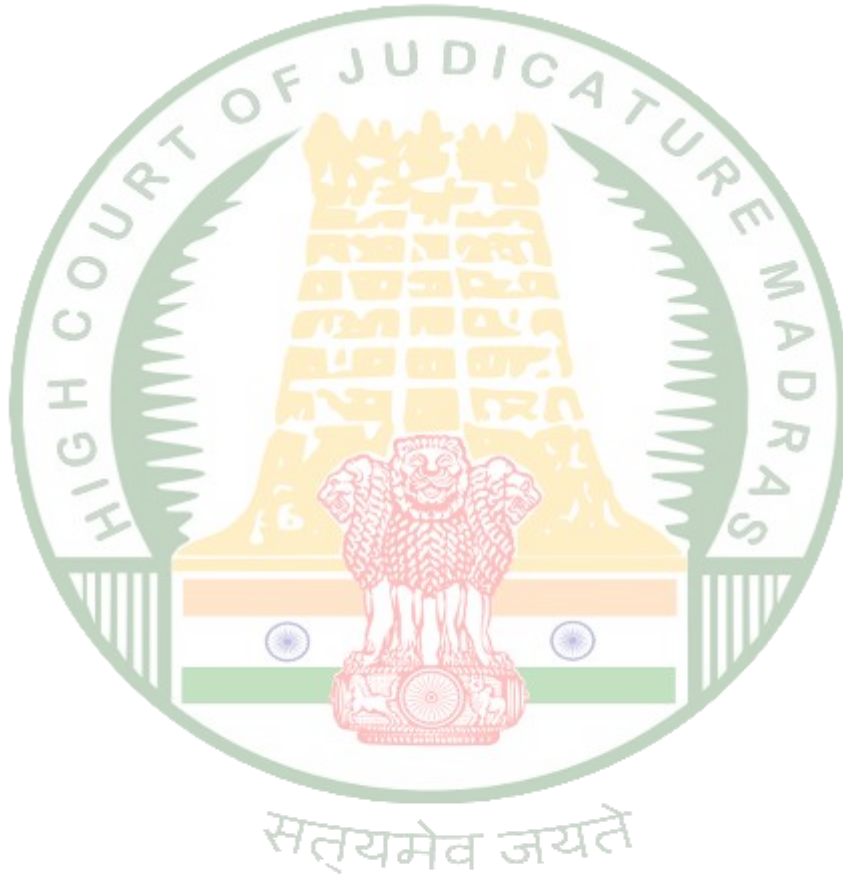
1. The Commissioner of Agriculture,
Chepauk, Chennai-5.

2. The Joint Director of Agriculture,
Tiruvarur.

+lcc to Mr.Savi Shanmugam, Advocate in sr.no.65220
+lcc to T.M.Pappiah, Special GP in sr.no.65414

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