

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.06.2017

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition No.8984 of 2016  
and  
W.M.P. Nos.7983, 7984 & 10268 of 2016

W.Vincent Manoharan ... Petitioner

vs.

1.The Agricultural  
Production Commissioner  
& the Secretary to Government,  
Agriculture (AAI) Department,  
Fort St. George,  
Chennai 600 009.

2. The Director of Agriculture,  
Chepauk,  
Chennai 600 005.

3. K.Mayilvahanan ... Respondents

Writ Petition filed under Article 226 of the Constitution  
of India for the issuance of writ of certiorarified  
mandamus as stated therein.

For Petitioner : Mr.K.Rajkumar

For R1 & R2 : Mr.K.Rajendra Prasad,  
Government Advocate.

For R3 : No Appearance

O R D E R

The petitioner herein seeks for the issuance of a  
writ of certiorarified mandamus to call for the records  
relating to G.O.(D) No.28, Agriculture (Ve.Nee 1)  
Department, dated 01.02.2016, issued by the Agriculture  
Production Commissioner and Secretary to the Government,

the first respondent herein, quash the same and direct the respondents/Department to promote the petitioner notionally either with effect from the date on which the panel was prepared or from the date on which the third respondent was given re-employment with all consequential attendant, service and monetary benefits to the petitioner and disburse in his favour the entire arrears within a time-limit that may be fixed by the Court.

2. Mr.K.Rajkumar, learned counsel appearing for the petitioner, submitted that the petitioner, a Graduate in Agriculture, after being appointed as Agriculture Officer in the Agriculture Department on 08.03.1983 and subsequently promoted to the post of Assistant Director of Horticulture on re-organization of the Agriculture Department, was placed in the seniority list of Agriculture Officers published by the TNPSC at the rank of 81/81, showing his immediate Senior as one Mr.P.Venugopal. While so, after getting promotion as Deputy Director of Agriculture (State Schemes) at Coimbatore on 10.01.2013, he was waiting for the next avenue of promotion for the post of Joint Director of Agriculture, which belongs to Class-I Service in the Tamil Nadu Agricultural Extension Service and, for the said post, the mode of appointment is by way of promotion from among the holders of the post of Deputy Director of Agriculture (Extension) and the crucial date of consideration of qualification is 1<sup>st</sup> April of every year and the appointing authority for the post of Joint Director of Agriculture is the Government. According to the learned counsel, the petitioner is fully qualified for promotion to the post of Joint Director of Agriculture. When the matter stood thus, the Government of Tamil Nadu prepared a panel of Deputy Director of Agriculture (Extension) for regular promotion to the post of Joint Director of Agriculture for the year 2015-16 with reference to the crucial date 01.04.2015, included 22 eligible persons and approved the said list vide G.O. (Ms) No.17, Agriculture (AA1) Department, dated 11.01.2016, wherein, the petitioner's Senior Mr.P.Venugopal was included at Serial Number 15 and the petitioner at Serial No.16.

2-A. Adding further, it is submitted that when the persons included at Serial Nos.10, 12 and 17 were not having requisite qualification of two year service in the post of Deputy Director of Agriculture (Extension) on the crucial date, namely, 01.04.2016, surprisingly they were granted relaxation and consequently their names were also included in the said panel. In that background, it is submitted that when there were 16 vacancies on the date of

preparation of panel in the Department of Agriculture and persons upto Serial No.15 were promoted as Joint Director of Agriculture, the petitioner, who was at rank No.16 in the panel of Deputy Director fit for promotion to the post of Joint Director of Agriculture, alone was not given promotion. In spite of the fact that he was due for retirement on 31.03.2016, the respondents overlooked the crucial fact that unless he was promoted, he would not be getting a higher rate of pension, thereby, the legitimate expectation of the petitioner would get defeated. This apart, one Mr.K.Mayilvahanan/Respondent No.3 herein, while working as Joint Director of Agriculture at Thiruvavarur, on reaching the age of superannuation on 03.01.2016, moved the Government for extension/re-employment for a period of one year and such claim was unfortunately recommended by the Director of Agriculture/R2 against the 16<sup>th</sup> Vacancy which was meant for the petitioner for the post of Joint Director of Agriculture. When the petitioner is the eligible candidate against the said 16<sup>th</sup> vacancy, arbitrarily and unfairly and with mala fide intention, re-employment sought by R-3 was readily granted.

2-B. Emphatically asserting the right of the petitioner to get promotion for the post of Joint Director of Agriculture, learned counsel for the petitioner would point out that the Government had issued a letter in Ms.No.82 P&AR Department, dated 30.03.1994, instructing for avoidance of re-employment without particulars of dearth of hands by making it clear that it would be considered in rare cases subject to various particulars such as -

- i)examination of personal files for about five consecutive years;
- ii)details of punishments;
- iii)details of vigilance enquiries;

iv)details of commendations received by the officer for his work during the last five years, etc.

While so, the impugned order, which is totally contrary to the aforesaid instructions of the Government, is illegal and void and hence, the same is liable to be set aside.

2-C. Adding further, learned counsel for the petitioner would submit that the impugned order nowhere mentions that there are dearth of hands in the Department on the date of re-employment of the third respondent. Moreover, when there are number of juniors awaiting promotion to the post of Joint Director of Agriculture and the petitioner is admittedly the next individual in the

Panel awaiting promotion, the action of the Department in sidelining him to favour the third respondent is not only illegal and unreasonable but also would amount to denial of the legitimate claim of the petitioner based on his inclusion in the panel of Deputy Director of Agriculture fit for promotion to the post of Joint Director of Agriculture. According to the learned counsel, the impugned action is nothing but fraud in the matter of appointment/promotion. Learned counsel would advert to an instance where this Hon'ble Court, while dealing with a similar kind of re-employment order issued to an Officer in the Health Department for a period of one year through a Government Order similar to the one passed in the present case by exercising the powers conferred under F.R.56(1)(a), held that the extension granted is not sustainable in law for the reason that it is not the case of the Government that there was dearth of qualified officers on the date of granting re-employment, therefore, adopting the same arbitrary action in the present case is liable to be interfered with.

2-D. Again, he would repeat that when the petitioner, who was at Serial No.16, is fully qualified for promotion to the post of Joint Director of Agriculture, relaxation in respect of service granted to one Mr.S.Karuppusamy and Mr.C.Rajendran and the promotions given to them clearly exhibits arbitrary exercise of power. According to him, had the Government considered the qualified individuals like the petitioner first, the aforesaid two persons would not have got promotions to the post of Joint Director of Agriculture; as such, it is yet another illegality committed by Respondent Nos.1 and 2. Besides that, when the promotion panel for the post of Joint Director of Agriculture was considered on the basis of crucial date namely 01.04.2015 as per G.O.Ms.No.17, Agriculture (AA1) Department, dated 11.01.2016, without implementing the said G.O. by appointing the qualified persons to the promotion post, the impugned re-employment is wholly unjustified and unacceptable and hence, this is a clear case for interference by this Court, he pleaded.

3. Per contra, Mr.Rajendra Prasad, learned counsel appearing for Respondent Nos.1 and 2 would submit that the prime contention projected on behalf the petitioner that M/s.S.Karuppusamy and C.Rajendran were wrongly promoted overlooking the petitioner is wholly untenable for the reason that the names of those two individuals were included in the panel for the post of Deputy Director of Agriculture (Extension) for the year 2010-11 at Serial Nos.8 and 10 respectively, vide G.O.Ms.No.123, Agriculture

(AA.1) Department, dated 12.08.2011. It is stated that, after approval of the Panel, when their names were considered for promotion, it was found that there were pendency of disciplinary proceedings initiated against them under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. In view thereof, they were not given postings on promotion. Subsequently, the disciplinary proceedings against them were dropped vide G.O.(3D) No.212, Agriculture (AA7) Department, dated 13.11.2014 and G.O.(3D) No.197, Agriculture (AA8) Department, dated 10.10.2014 respectively. That shows, these two persons were fully eligible for promotion to the post of Deputy Director of Agriculture as per seniority on par with juniors. Accordingly, they were promoted as Deputy Director of Agriculture notionally with due seniority with effect from the date of promotion of their immediate juniors; whereas, the name of the petitioner was not included in the panel for the year 2010-11 since disciplinary proceedings under Rule-17(b) of the Rules was pending against him. While so, only after dropping of the said disciplinary proceedings vide G.O.(3D) No.164, Agriculture Department, dated 04.08.2011, his name was included in the panel at Sl.No.19(a) vide G.O.(D) No.205, Agriculture (AA1) Department, dated 15.10.2012 and he was promoted as Deputy Director of Agriculture. Further, based on the seniority in the post of Deputy Director of Agriculture (Extension), the names of M/s.S.Karuppusamy and C.Rajendran were included in the regular panel of Joint Director of Agriculture (Extension) for the year 2015-2016 along with their Junior, ie., the petitioner and it was also approved vide G.O.Ms.No.17, Agriculture (AA1) Department, dated 11.01.2016 and they were promoted as Joint Director of Agriculture (Extension) vide G.O.(Rt.) No.27, Agriculture (AA1) Department, dated 29.01.2016 and G.O.(Rt.) No.67, Agriculture (AA1) Department, dated 29.02.2016 respectively.

3-A. With regard to the contention of the petitioner that respondents-1 and 2 gave promotion to all the 15 candidates shown in G.O. Ms. No.17, Agriculture (AA1) Department, dated 11.01.2016, learned Government Advocate would submit that, at the time of approval of Panel of Joint Director of Agriculture (Extension) for the year 2015-16, only 8 vacancies were found existing, but, after the approval of the panel on 11.01.2016, 5 more vacancies arose due to retirement at the end of January, 2016, among which, 2 vacancies arose due to promotion and retirement of two Officers - M/s.D.S.Irish Sekar/Sl.No.4 and S.Karuppusamy/Sl.No.10. Hence, by issuing G.O.(D) No.46, Agriculture (AA1) Department, dated 22.02.2016, 5

vacancies in the post of Joint Director have been filled up by promotion, however, due to medical leave availed by one Mr.A.Rathinasabapathy, Joint Director of Agriculture, Villupuram, the said post held by him was shown as vacant. The said vacancy had to be kept vacant for re-posting Mr.Rathinasabapathy on his return from leave. In the meanwhile, before the retirement of the third respondent, the Farmers in the Delta Region addressed representations to the Government, seeking continuance of the third respondent in the Delta Region as he has vast experience in the field and also exemplary track- record. The Government, by taking note of the excellent service rendered by R-3 in the Delta Region and appreciating the fact that the Farmers are very much satisfied with his ground work, granted the benefit of re-employment. According to the learned Government Advocate, the re-employment granted to the third respondent is absolutely in the over-all interest of the Farmers and hence, the allegation of the petitioner that the case of R-3 for re-employment was considered extraneously is nothing but a mere allegation and hence, the ultimate prayer in the writ petition may have to be turned down, he pleaded.

4. Intervening at this juncture, learned counsel for the petitioner would state that, after filling up of 15 vacancies in the post of Joint Director of Agriculture, the 16<sup>th</sup> person being the petitioner, he should have been given promotion in the place of re-employment given to the 3<sup>rd</sup> respondent or at least against the vacancy fell due to the medical leave available by Mr.A.Rathinasabapathi. That having not been done, great prejudice has been caused to him.

5. W.M.P. No.10268 of 2016 has been filed by the Department to vacate the interim stay order, dated 10.03.2016, passed in WMP No.7984 of 2016 and no one appears for R-3 in spite of service of notice.

6. This Court, after considering the rival submissions advanced on either side and perusing the papers available, is not inclined to endorse the submissions of the learned counsel for the petitioner; for, admittedly, the factum of Mr.A.Rathinasabapathy going on medical leave cannot give any claim for the petitioner to raise a plea to fit him in that vacancy since, as rightly stated, the said post was to be kept vacant for re-posting him on his return from leave.

7. Regarding the other segment of submissions over the re-employment given in favour of the third respondent,

it could be seen that the third respondent was working for about 10 long years in the Delta Region. The farmers of that Region made representations to the Government seeking his continuance stating that, with his vast experience, he rendered great services by helping the Farmers. The Government, in their assessment, appreciated the good track-record of serving the Farmers in the Region for nearly about a decade, and decided to accede to the request in the over-all interest of the Farmers and for development of agricultural operations in the Area. Since the reasons given in the impugned G.O. spell out clearly that the continuance of R-3 as Joint Director of Agriculture in the Delta Region is required in the interest of the Farmers, the ultimate decision of the Government for re-employing him cannot now be cross-checked by this Court sitting under Article 226 of the Constitution of India.

In this view of the matter, this Court finds no reason at all to interfere with the impugned G.O. Accordingly, the Writ Petition fails and it is dismissed. No costs. Connected Miscellaneous Petitions stand closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

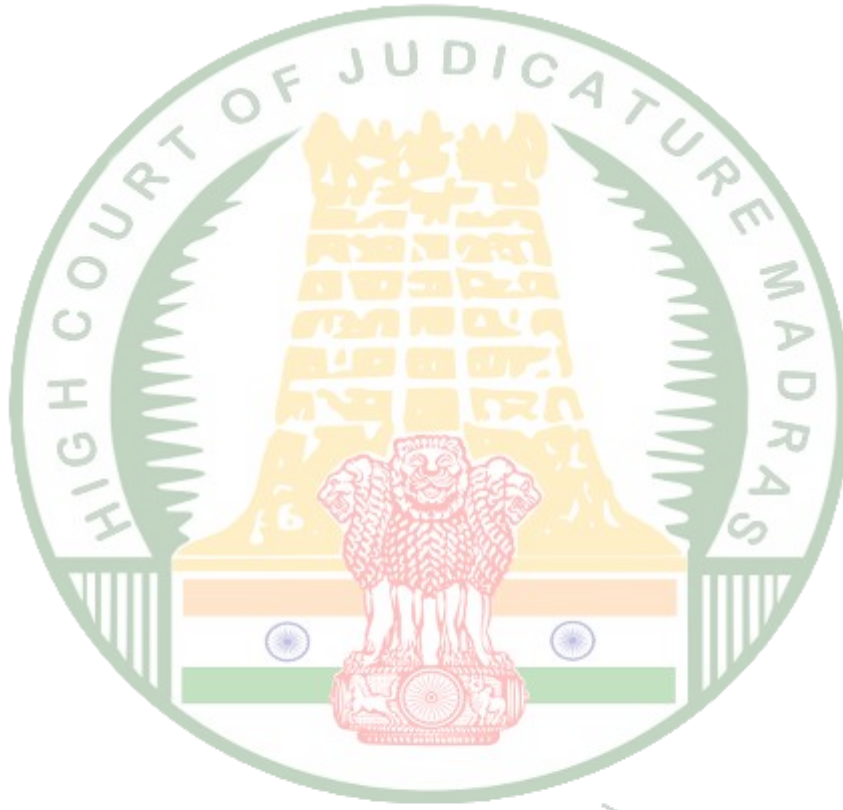
To

1. The Agricultural Production Commissioner  
& the Secretary to Government, Agriculture (AAI)  
Department, Fort St. George, Chennai 600 009.

2. The Director of Agriculture,  
Chepauk, Chennai 600 005.

W.P. No.8984/16 & Connected WMPs.

RRK(04/12/2017)



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