



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**
W.P (MD) Nos.11638 & 11640 of 2011

and

M.P. (MD).Nos.1 and 1 of 2011

L.Sankararaaj ... Petitioner in W.P.No.11638/2011
M.Duraipandian ... Petitioner in W.P.No.11640/2011

Vs.

1. The Agricultural Production Commissioner
and Principal Secretary to Government
Agriculture Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Agriculture
Chepauk, Chennai-600 005 ... Respondents in both W.Ps.

Prayer in W.P. (MD).No11638 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Letter No.8450/AA1/2011-2 dated 03.08.2011 and quash the same as illegal and direct the first respondent herein to include the name of the petitioner in appropriate place in the panel for promotion to the post of Joint Director of Agriculture (Extension) for the year 2009 - 10 in Lr.No.PMS.1/72415/2009-1 dated 13.7.2009 and consequently, direct the first respondent to give notional promotion to the petitioner on par with the petitioner's juniors who were promoted on 31.12.2009 with all consequential service and monetary benefits within a time frame that may be stipulated by this Court.

Prayer in W.P. (MD).No.11640 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Letter No.8450/AA1/2011-2 dated 03.08.2011 and quash the same as illegal and direct the first respondent herein to include the name of the petitioner in appropriate place in the panel for promotion to the post of Joint Director of Agriculture (Extension) for the year 2009 -10 in Lr.No.PMS.1/72415/2009-1 dated 13.7.2009 and consequently, direct the first respondent to give notional promotion to the petitioner on par with the petitioner's juniors who were promoted on 08.12.2009 with all consequential service and monetary benefits within a time frame that may be stipulated by this Court.



For Petitioner : Mr.R.Kannan

For Respondents : Mr.V.Muruganadham, AGP

C O M M O N O R D E R

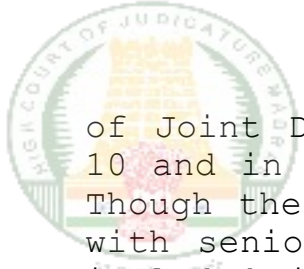
As the issues raised in these writ petitions are common, as the petitioners challenged the common impugned order issued by the first respondent through their letter dated 03.08.2011, these writ petitions are disposed of, through this common order.

2. The case of the petitioners can be culled out from the facts mentioned in the affidavit filed in support of W.P.(MD). No.11638 of 2011.

The petitioners had been appointed as Deputy Agricultural Officer (Extension) on 26.03.1976 and 30.10.1974 respectively. Their appointments had been made pursuant to the selection made through the Tamil Nadu Public Service Commission. Thereafter, their services were regularised. While so, during the year 1988, both these petitioners had given their willingness to switch over to the Chemistry Wing from their Extension Wing. Subsequently, in the year 2007, the Government has come forward with the policy decision to merge both the Chemistry Wing as well as the Extension Wing of the Agricultural Department on functional basis. The said policy decision is reflected in G.O.(Ms.)No.537 Agriculture (AA8) Department, dated 24.12.2007. After having merged both the Wings functionally, certain nomenclature of the post had been either restructured or abolished. However, according to the petitioners, one of the very important import of the G.O.(Ms.)No.537 is that though both the Wings had got merged, the seniority of the incumbents at the entry level posting shall be maintained and from that seniority, further posting by way of promotion had to be given.

3. While so, the petitioners since had entered into service in the year 1976 and 1974 respectively, their seniority based on that entry date have to be maintained even after the merger of the two wings and the G.O.(Ms.)No.537 had to be considered for further promotion to the post of Assistant Director, Deputy Director as well as Joint Director of Agriculture.

4. While so, subsequently, pursuant to the G.O.(Ms.)No.537, further G.O.(Ms.)No.163, Agriculture (AP 5) Department, dated 09.04.2008 also was issued. Wherein, certain posts such as Joint Director of Agricultural (Research), Joint Director of Agriculture (Chemistry), Agricultural Chemists and Assistant Agricultural Chemists and Pesticides Testing Laboratories have been abolished. Based on these two Government Orders, subsequent drawal of panel for promotion to the next higher category were drawn and promotion had been given. However, by proceedings dated 13.07.2009, the respondent Department drawn a panel for the promotion to the post



of Joint Director of Agriculture (Extension) for the year 2009 - 10 and in that panel, 50 eligible persons' names have been found. Though the petitioners are having the TNPSC entry level seniority with seniority numbers 148/76 and 149/76, the names had not been included in the said panel for promotion to the post of Joint Director. Questioning the panel, the petitioners herein had approached this Court by filing Writ Petition in W.P.(MD).No.12807 of 2009 and 12806 of 2009, wherein this Court though initially granted an interim order, that promotion made subsequent to the said panel, which was impugned therein, could be subject to the final orders to be passed in the writ petition. Subsequently, by an order dated 28.04.2011, this Court passed a common order in those two writ petitions along with the another writ petition ie., W.P.(MD).No.12805 of 2009, wherein, the following order has been passed.

"6. Considering the Limited request sought for, the petitioners shall make their representations along with the latest judgments of this court as well as the Supreme Court seeking for their right placement in the panel within a period of one week from the date of receipt of a copy of this order and on such representations, the first respondent is directed to consider the representation along with the judgments and pass appropriate orders on merits and in accordance with law. In view of the fact that the petitioner in W.P (MD). No.12805 of 2009 is going to retire on 31.05.2011, the first respondent is directed the case of the said petitioner, preferably, on or before 31.05.2011 and in respect of other two petitioners, the first respondent is directed to consider their case and pass appropriate orders within a period of three months from the date of receipt of a copy of this order."

5. Pursuant to the said order passed by this Court, the petitioners had made a request to the respondent Department, with all relevant documents claiming that they are seniors to consider their seniority in the entry level post through the TNPSC selection as they should have been included in the panel fit for promotion to the post of Joint Director for the year 2009 - 2010 and accordingly, they should be given promotion on par with their juniors who have already been promoted. The said request made by the petitioners having been considered by the respondents, ultimately, has been rejected through the order dated 03.08.2011 and the said order is impugned herein. Challenging the same, which is a common order in respect of both the writ petitions, the present writ petitions have been filed .

<https://hcservices.ecourts.gov.in/hcservices/>
6. Heard the learned counsel for the petitioners and the learned Additional Government Pleader for the respondents.



7. The learned counsel appearing for the petitioners would submit that though initially these petitioners, after having been selected through the TNPSC, had been posted in the Chemistry Wing or Research Wing of the Agricultural Department, subsequently, by virtue of the functional merger taken place on the basis of G.O. (MS).No.537 dated 24.12.2007, within the meaning of paragraphs 10 and 11 of the said Government order, the seniority enjoyed by the petitioners ought not to have been disturbed. In this regard, the learned counsel for the petitioners would heavily rely upon paragraphs 10 and 11 of the said G.O.(Ms).No.537 which reads thus:

"The two wings of Agriculture viz. Extension and Research (Chemistry) are currently functioning separately under separate service rules. Rotating of staff between the two wings will enhance the technical and managerial capacity of the staff. Moreover, the qualification for both the cadres is same (i.e) B.Sc.(Agri.). Therefore these two wings will be merged so that in future, there will be only one cadre for managing both extension and research functions. Provisions will be made to ensure that the merger does not affect the seniority promotional prospects and service conditions of each cadre. Similarly, the staff going to Horticulture, Seeds Certification and Marketing from Agriculture will continue to enjoy the same seniority and promotional prospects that they are presently getting in Agriculture Department."

"The existing staff strength in the category of Assistant Director of Agriculture (ADA) / Assistant Director of Horticulture (ADH) in all the Directorates put together is 378. It is increased to 887 for the four Directorates under restructuring. The additional requirement of 509 posts of Assistant Directors (887 - 378 = 509) will be met by upgrading equal number of posts from the existing 2475 posts of Agricultural Officers / Agricultural Officer (Research) taken together and by following common seniority based on the date of their regularization in the entry level posts as a one time measure."

8. Quoting the conditions of the Government Order, the learned counsel for the petitioners would submit that the petitioners would continue to enjoy the same seniority and promotional prospects that they were presently getting in Agricultural Department and if that is the basis for considering promotion, even after the functional merger taken place, certainly the erstwhile seniority of the petitioners, which was maintained all along based on the entry level posting, ought to have been maintained. If that seniority had been maintained by the

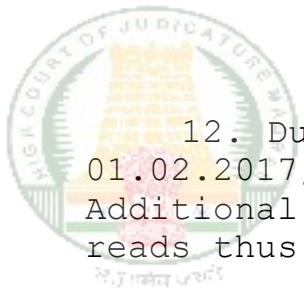


respondents, certainly the petitioners' name would have been included in the panel fit for promotion to the post of Joint Director for the year 2009-2010.

9. However, without considering the seniority of the petitioners, since the names of the petitioners have been omitted, the petitioners had approached this Court in the earlier round of litigation and since directions were issued to approach the respondents, the petitioners rightly approached the respondents and their plea now has been turned out, wherein, in the impugned order, the respondent has stated that even though the two Wings have been functionally merged, two separate seniority being maintained and therefore, the promotion have to be made only in respect of the seniority maintained in the particular Wing. In other words, the respondents, in the impugned order, stated that if promotion have to be given in Extension Wing, those who maintain the seniority in the Extension Wing alone would be considered, like that the promotion is to be given in Chemistry or Research Wing, the seniority being maintained by the incumbents in the Chemistry Wing, alone shall be considered.

10. If that criteria is followed, based on the seniority alone, promotion had been given and since the petitioners had not reached the seniority, they were not considered for the promotion to the post of Joint Director for the year 2009 - 2010 and therefore, the request was turned out and accordingly, it was rejected, the impugned order says. In this regard, the learned counsel for the petitioners would submit that once the G.O.(Ms) No.537 enables to maintain the common seniority among the incumbents hailing from both the Chemistry as well as the Extension Wing, the reason adduced now by the respondents, through the impugned order, for non-consideration of the candidature of the petitioners for promotion to the post of Joint Director in the year 2009 - 10 is, unjustifiable and unlawful.

11. Whenever two Departments or two Wings of a Department are got merged, the inter se seniority of the incumbents have to be maintained. After having merged two Wings, still to maintain a different seniority, would be a great injustice to the persons belonging to a particular Wing which would put them in disadvantageous position in promotional aspects. Therefore, in this regard, the learned counsel for the petitioners would submit that such a denial of giving credence to the seniority to be maintained for each of the incumbent, based on the entry level posting, cannot be accepted, as the same is unjustifiable, unlawful and violating the provisions of the Constitution especially under Article 14 as well as 16. Therefore, the learned counsel for the petitioners would submit that the impugned order



12. During the hearing of this case, this Court by order dated 01.02.2017, has given the following directions to the learned Additional Government Pleader for the respondents. The said order reads thus:

"Pursuant to the merger to two wings, namely, Extension Wing and Chemistry Wing of the Agriculture Department, by virtue of G.O.(Ms) No.537 Agriculture (AA 8) Department dated 24.12.2007, officials had taken a steps to fill up the post of Joint Director throughout the State during the year 2009. Since the petitioners names were not included in the panel of Deputy Directors, the issue of their non-inclusion has been raised in these Writ Petitions.

2. Hence, the respondents are directed to produce the files to show as to how many posts of Joint Director were earmarked for Chemistry Wing, likewise how many posts of Join Director earmarked for Extension Wing. Since the 11th paragraph of G.O (Ms) No.537 Agricultural (AA 8) Department dated 24.12.2007, states that the posts of Assistant Director of Agriculture and Assistant Director of Horticulture are to be filled up by pormotion from the cadre of Agricultural Officer / Horticultural Officer/ Agricultural Officer (Research) taken together and by following common seniority based on the date of their regularization in the entrey level posts as a one time measure, whether the same yard stick has been adopted for the promotion from Deputy Director to Joint Director, if so, how many posts of Joint Director were available between 2009-10 to 2010-11 and also to state whether the petitioners herein were considered for inclusion in the panel for the year 2009-10 either from Chemistry Wing or from the Extension Wing or by following the common seniority between both Wings Deputy Directors.

3. All these details set out above have to be produced through written instruction along with relevant documents and files. For compliance of the order post the matter on 15.02.2017, immediately after 'for orders' caption."

13. Pursuant to the said directions given by this Court, as referred to above, the learned Additional Government Pleader appearing for the respondents, today has brought the relevant file and also has produced the written instructions issued by the Director of Agriculture, dated 13.02.2017.

14. As per the said written instructions, the Director of Agriculture has stated that during the year 2009 - 2010 as well as 2010 - 2011, two sets of promotions were given to the Joint Director post. One set of promotion was given as per G.O(Ms). No.286 dated 08.12.2009 and G.O.(Ms).No.190 dated 31.08.2010,

where 67 persons have been given promotion to the post of Joint Director in Extension Wing. Like that, other two sets of promotions had been given as per G.O.(Ms).No.37 dated 26.02.2010 and G.O.(Ms.)No.296, dated 06.12.2010. Promotions to the post of Joint Director had been given for seven persons in Research Wing.

15. Relying upon the said instructions given by the Director of Agriculture, the learned Additional Government Pleader appearing for the respondents also produced the relevant file contains the relevant Government Orders viz., G.O.(Ms.)No.296 dated 06.12.2010 as well as G.O.(Ms.)No.37 dated 26.02.2010, in which, the following promotions have been given:

G.O.Ms.No.296, Agriculture(AA.1) Department, dated 06.12.2010

1	G.Ramaraj	2010-2011 Joint Director of Agriculture (Research)
2	T.Mani	
3	L.Natarajan	

G.O.Ms.No.37, Agriculture(AA.1) Department, dated 26.02.2010

1	J.Sekar	2009-2010 Joint Director of Agriculture (Research)
2	V.Jeeva	
3	A.Ramaraja	
4	P.Muthusamy	

As per G.O.Ms.No.286, Agriculture (AA.1) Department, dated 08.12.2009 33 Nos. Joint Director of Agriculture (Extension) for 2009-2010 panel.

As per G.O.Ms.No.190, Agriculture (AA.1) Department, dated 31.08.2010 34 Nos. Joint Director of Agriculture (Extension) for 2010-2011 panel."

16. So, by virtue of the said G.O., separate promotions had been given on regular basis for the post of Joint Director of Agriculture, Research and Chemistry Wing, both for the year 2009 - 2010 and 2010 - 2011. Since these two petitioners had not reached the zone of consideration, as per their seniority for consideration of inclusion in the said panel for promotion to the post of Joint Director, Regular Chemistry Wing have not been considered for promotion for 2009 - 2010 and 2010 - 2011. Both the petitioners retired from service on 28.02.2011 as Deputy Director of Agriculture, Chemistry Wing and they had not been given promotion for the post of Joint Director. Accordingly, they were not entitled to get any promotion to the post of Joint Director, the learned AGP submits.

17. This Court considered the rival submissions submitted by both sides.

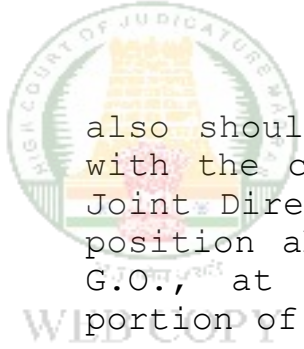


18. Insofar as the claim of the petitioners is concerned that initially though they had been appointed in the Extension Wing of the Agriculture Department, subsequently, in the year 1998, on their own voluntary option, they opted to go over for the Extension Wing. Originally, they had been selected for the Extension Wing. Subsequently, on their own voluntary action, they had switched over to Chemistry / Research Wing. Once, they switch over to the Chemistry / Research Wing. Assuming that the erstwhile seniority at the entry level has to be maintained, the seniority in the Chemistry / Research Wing alone has to be maintained and in this regard, wherever the petitioners have to be fit in, depending upon their inter se seniority, taking into consideration of their entry level alone have to be maintained.

19. After the merger taken place by way of functional merger of two wings, by virtue of G.O.(Ms.)No.537, whether the petitioners' have got any right to claim the seniority over and above the other persons or other counterparts working in Extension Wing, is to be looked into. Though in this regard, the learned counsel appearing for the petitioners heavily relied upon paragraphs - 10 and 11 of the said G.O.(Ms).No.537 and argued that they would continue to enjoy the same seniority and promotional prospective that they were getting in Agricultural Department and therefore, whatever the original seniority maintained for the petitioners, based on their entry level posting has to be maintained and if the same had been maintained, certainly, the petitioners would have been placed in the appropriate place.

20. In this regard, the learned counsel argues that the petitioners should have been placed in the panel fit for promotion for the post of Joint Director for the year 2009 - 2010 dated 13.07.2009 at Serial Nos.16 and 18, because of their original seniority given by TNPSC. This argument cannot be countenanced for the simple reason that the original seniority they lost immediately on their switch over to Chemistry Wing from the Extension Wing by their own voluntary option. Once, they switch over to Chemistry and Research Wing whatever be the inter-se seniority, the petitioner can maintain from among the persons working in the Chemistry and Research Wing, for which alone they would be entitled.

21. In this regard, the learned counsel for the petitioners would also make submissions that subsequent to the merger made through G.O.(Ms)No.537, another G.O(Ms).No.163 dated 09.04.2008 was issued whereby, several posts such as joint Director of Agricultural Research, Joint Director of Agricultural Chemistry etc., had been abolished. Therefore, the question of promotion separately to the Wing of Research and Chemistry could not arise at all. If those posts had been abolished, then these petitioners



also should have been considered for the regular promotion along with the candidates working in the Extension Wing to the post of Joint Director. In this regard, the respondent has clarified the position about the import of wordings used in Para-3 of the said G.O., at para-9 of their counter affidavit and the relevant portion of the said counter would reads thus:

"9. With regard to averments made in paragraph 10 of the affidavit it is submitted that, after orders were issued in G.O. Ms. No.537, Agriculture (AA.8) Department, dated 24.12.2007 functionally merging the Extension and Chemistry wings the nomenclature of the posts viz. Joint Director of Agriculture (Extension), Joint Director of Agriculture (Chemistry), Agricultural Chemist and Deputy Director of Agriculture (Extension), Assistant Agricultural Chemist, Assistant Director of Agriculture (Extension), Agricultural Officer (Chemistry), Agricultural Officer (Extension) has been dispensed with, and these categories of posts have been commonly termed as Joint Director of Agriculture / Deputy Director of Agriculture / Assistant Director of Agriculture / Agricultural Officer. Only the nomenclature of the posts have been changed. The original posts sanctioned for Extension Wing and Chemistry Wing have not been abolished. They are in existence. For the existing staff currently functioning separately under separate service rules, a decision has been taken to merge them functionally so that their seniority, promotional prospects and service conditions in their respective cadre is not affected. It has been specifically stated in G.O. Ms.No.537, Agriculture (AA-8) Department, dated 24.12.2007 that the seniority and service conditions of staff of the Research/Extension Wing for the purpose of promotional opportunities G.O Ms.No.163, Agriculture (AP.V) Department, dated 9.4.2008 it is submitted that it has been erroneously mentioned that the post of Additional Director of Agriculture (Research) Joint Director of Agriculture (Research) Agricultural Chemist and Assistant Agricultural Chemist of Pesticides Testing Laboratory post have been abolished. It is submitted that only the nomenclature of the posts of Additional Director of Agriculture (Research) Joint Director of Agriculture (Research) Agricultural Chemist and Assistant Agricultural Chemist of Pesticides Testing Laboratory have been abolished as per G.O.Ms.No.537 Agriculture (AA-8) Department, dated 24.12.2007. As per orders issued in G.O. Ms.No.537, Agriculture (AA8) Department, dated 24.12.2007 the two wings (I.e.Extension and Chemistry have only been functionally merged the seniority and service conditions of staff of the Chemistry/Extension Wing for the purpose of promotional opportunities have to be continued in the respective existing cadre. The



petitioner belongs to Chemistry cadre as per the seniority in Chemistry cadre, his name has been considered for promotion to the vacant post originally sanctioned for Chemistry Wing. Hence no partisan attitude has been shown to the petitioner and the orders issued as per Government Lr. No.8450/AA.1/2011-2, Agriculture Department, dated 3.8.2011 rejecting his claim for promotion as Joint Director of Agriculture (Extension) is in order and there is no violation of the Articles of Constitution of India."

22. Therefore, a clarification has been given by the respondents to state that the wordings, that the post of Additional Director of Agricultural Research and Joint Director of Agricultural Research and Agricultural Chemistry had been abolished as has been mentioned in the G.O.(Ms)No.163, was erroneous and in fact, only the nomenclature of the post of Additional Director of Agricultural Research and Joint Director of Agricultural Research and Agricultural Chemistry had been abolished as per G.O.(Ms.)No.537.

23. When the learned counsel for the petitioners questioned the propriety of such a statement given by the Deputy Director of Government through the counter affidavit, giving a different interpretation to the import of G.O.(Ms.)No.163, this Court has given its anxious consideration on that aspect. If such an interpretation is not given then the two way promotions given, one separately for Extension Wing and another separately for Chemistry Wing, could not be possible. Here, the consistent stand maintained by the respondents is that separate line of promotions are given based on the seniority.

24. That is the reason why for the year 2009 - 2010, two different Government Orders were issued. One is that G.O.(Ms). No.286 dated 08.12.2009, whereby 33 persons belonging to Extension Wing had been given promotion as Joint Directors. Like that, through G.O.(Ms.)No.37, dated 26.02.2010, four persons belonging to Research Wing had been given promotion as Joint Director of Agriculture. Like that, for the year 2010 - 2011, again two separate G.Os. were issued. One G.O.(Ms).Number is 190, Agricultural Department dated 31.08.2010, whereby 34 persons had been given promotion in Extension Wing for the post of Joint Directors. Whereas, another G.O.(Ms.)No.296 of 2011 dated 06.12.2010 were issued, whereby three persons belonging to Research Wing had been given promotion to the post of Joint Director. Therefore, in view of these G.Os., having been issued, whereby number of persons, to the post of Joint Director, had been given promotion at various point of time and all these promotions were acted upon, no different interpretation than the one, as has been clarified at para No.9 of the counter affidavit filed by the respondents, can be given in respect of the import of Para-3 of



the G.O.(Ms)No.163. Therefore, such question raised on behalf of the petitioners through their counsel, is liable to be rejected and accordingly, the same is rejected.

25. Considering all these aspects, after noting the developments which has been consistently made right from the issuance of G.O.(Ms).No.537, whereby two Wings had been merged functionally, the petitioners had been considered for due promotion up to the level of Deputy Directors, the petitioners had also accepted the promotion and worked till their date of superannuation I.e., on 28.02.2011. Before the said superannuation, since the petitioners have not reached the seniority in the Chemistry Wing to get promotion to the post of Joint Director, they had not been included in the panel both for the year 2009 - 2010 as well as 2010 - 2011. Such non- inclusion of the petitioners' name in the said panel is on the basis of their seniority maintained in the Chemistry Wing alone and not by any other reason. Therefore, the plea raised by the petitioners in these writ petitions are answered against the petitioners and accordingly, this Court finds no infirmity in the impugned order and therefore, the same is sustainable. Accordingly, these writ petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1.The Agricultural Production Commissioner
and Principal Secretary to Government
Agriculture Department Secretariat
Chennai-600 009.

2.The Commissioner of Agriculture
Chepauk, Chennai-600 005

+2cc to M/S.R.Kannan, Advocate SR.No. 8701

+1cc to Special Government Pleader, SR.No. 8659 & 8660

W.P(MD)No.11638 & 11640 of 2011

15.02.2017

akv

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