



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2017

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THE HON'BLE Mr. JUSTICE R.SURESH KUMAR

W.P. (MD) No.11639 of 2011

L.Nadarajan

... Petitioner

-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

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to calling for the records relating to the impugned order of the 1st respondent in Letter No.8450/AA1/2011-2 dated 03.08.2011 and quash the same as illegal and direct the 1st 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 13.07.2009 and consequently direct the 1st 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.R.Kannan

For Respondents : Mr.V.Muruganantham
Additional Government Pleader

O R D E R

The prayer in the writ petition is for a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st respondent in Letter No.8450/AA1/2011-2 dated 03.08.2011 and quash the same as illegal and direct the 1st 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 13.07.2009 and consequently direct

the 1st 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.

2. The case of the petitioner is that he joined in service as Deputy Agricultural Officer (Extension) on 24.10.1975 and his TNPSC seniority was 159/1976 for Agriculture (Extension) wing. The department of Agriculture is having two wings, namely, Extension Wing and Research (Chemistry) Wing. Thereafter, the services of the petitioner was regularised on 23.03.1977. Thereafter, on his own voluntary action, the petitioner had opted for shifting from Extension wing to Chemistry wing. Accordingly, he has been posted to Chemistry/Research wing on 30.06.1980. Subsequently, the Government, by taking a policy decision, has decided to merge functionally both the wings, namely, the Extension and Chemistry Wing into one for functional purposes and accordingly, the Government had issued a Government order in G.O.Ms.No.537, Agriculture Department, dated 24.12.2007. Though, as per the said G.O., two wings have got merged functionally as one, the said G.O., would say that however, the incumbents would continue to enjoy the very same seniority and promotional prospects that they were presently getting in agricultural department. In other words, though both the wings got merged functionally as one, the inter se seniority, as maintained by the incumbents working in both wings, have to be maintained intact and only based on which, further promotions would be considered.

3. Subsequently the Government issued another G.O., in G.O.Ms.No.163 Agriculture Department dated 09.04.2008, through which, the post of Joint Director of Agriculture (Research), Joint Director of Agriculture (Chemistry) Agricultural Chemist and Assistant Agricultural Chemists of Pesticides Testing Laboratory have been abolished. According to the petitioner, since both the wings have got merged, the said post, which were available in the Chemistry wing, got abolished and therefore, according to him, the only line of promotion is the regular Joint Director of Agriculture, Deputy Director of Agriculture etc., which is already available in the Extension wing alone.

4. While so, though the petitioner had been initially promoted to the post of Deputy Director, subsequently for further promotion to the post of Joint Director of Agriculture, a panel was prepared and was issued on 13.07.2009 by the respondent Department. Though the petitioner is having the TNPSC seniority of 159/1976, instead of including his name in the panel prepared for the promotion of Joint Director, his name had been omitted to be included in the said list dated 13.07.2009. Challenging the said non inclusion of his name fit for promotion to the post of Joint Director, the petitioner had approached this Court by filing writ petition along with two other similarly placed persons. In the



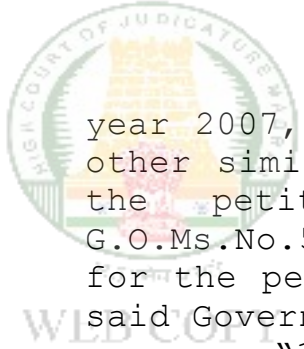
petitioner's writ petition in W.P.No.12805/2009 and in the connected writ petitions, an interim order was passed by this Court on the 21st day of December 2009, wherein, "an interim order to the effect that the promotion is subject to the final orders in the writ petition" was passed. Subsequently, the said writ petition along with the connected writ petition came to be finally decided on 28.04.2011, wherein, this Court passed the following order:

"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 to consider 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 directive issued by this Court, the petitioner had given a representation to the respondent Department that since the petitioner is senior, on the basis of the entry level seniority, as assigned by the TNPSC, at the time of selection, he should have been included in the panel fit for promotion to the post of Joint Director and accordingly, he requested that his name to be included and promotion to the post of Joint Director has to be given to him. The said representation submitted by the petitioner along with similar representation submitted by the two other persons had been commonly disposed of through the order of the first respondent dated 03.08.2011. In the said order, the request of the petitioner has been turned down, as against which, ie., the order dated 03.08.2011, the petitioner has come out with the present writ petition with the aforesaid prayer.

6. Heard both sides.

7. The learned counsel for the petitioner would submit that though the petitioner had entered into service as Deputy Officer (Extension) through the selection made by the TNPSC, subsequently, had been switched over to the Chemistry Wing in the year 1980 on his own request. Only, thereafter, in the



year 2007, ie., after long years of service of the petitioner and other similarly placed persons, who have been switched over like, the petitioner from Extension Wing to Chemistry Wing, G.O.Ms.No.537 dated 24.12.2007 was issued. The learned counsel for the petitioner has relied upon Paragraph Nos.10 and 11 of the said Government order, which reads thus:

"10) 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 (ie.,) 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.

11) 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)/ Horticultural Officers. The above posts will be filled up by promotion from the cadres of Agricultural Officer/ Horticultural Officer / 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. By relying upon the said aforesaid import of the said G.O.No.537, the learned counsel for the petitioner would submit that, even though both the Extension Wing as well as the Chemistry Wing got merged functionally, the *inter se* seniority hitherto maintained by each individual irrespective of the fact that, whether they belong to Chemistry Wing or Extension Wing, the same seniority has to be maintained and based on that only, promotional prospects of each such individual has to be decided. Therefore, in this regard, the learned counsel for the petitioner would submit that the petitioner since having the seniority of 159/1976, ~~has not been included above one S.Kiam Karam Dhas, as his seniority is 164/1976 in the panel dated 13.07.2009 prepared by the respondent Department fit for promotion to the post of Joint~~



Director.

9. In this regard, the learned counsel for the petitioner would also submit that in the subsequent G.O., ie, in G.O.No.163 dated 09.04.2008 as stated above, the post of Joint Director Agricultural Research etc. had been abolished. Since the post of Joint Director of Agriculture (Research) and Joint Director of Agricultural Chemists and Agricultural Chemists and Assistant Agricultural Chemists of Pesticides Testing Laboratories had been abolished by the Government Order, the only line of promotion for the Deputy Directors hailing from both wings, namely, Extension as well as Chemistry Wing, is towards the Joint Director of Agriculture (Extension) only. When that being so, when a panel was prepared for the promotion to the post of Joint Director of Agriculture (Extension), as per Paragraph Nos.10 and 11 of the G.O.No.537, the petitioner's name ought to have been included and the non inclusion, when it was questioned before this Court, it was directed that the petitioner can approach the respondents for redressal of his grievance. However, the request of the petitioner has been turned down through the impugned order of the first respondent.

10. In this regard, the learned counsel for the petitioner would also submit that the reason adduced by the first respondent through the impugned order that the seniority and service conditions of staff of the Research and Extension Wing for the purpose of promotional opportunities shall be continued in their respective existing cadre is not correct, because, as per paragraph No.10 of the G.O.No.537, the original erstwhile seniority at the entry level post of each incumbent, whether belong to Agriculture Extension Wing or Agriculture Chemistry Wing has to be maintained and therefore, after having the merger of both the wings, the question of maintaining two separate seniority lists for the two separate line of promotion would not arise at all and therefore, the non-inclusion of the petitioner's name in the panel fit for promotion for the year 2009 and 2010 is totally unjustifiable and therefore, the same has to be interfered with.

11. The learned counsel for the petitioner would also submit that since the petitioner had retired on superannuation on 31.05.2011, he had not at all been given promotion to the post of Joint Director of Agriculture, though he was eligible and entitled to claim the same. Since the number of his juniors were given promotions for the year 2009 and 2010, considering the initial entry level seniority, which alone has to be followed within the meaning of Paragraph No.10 of G.O.No.537, the denial of promotion to the petitioner is unjustifiable and therefore, he requests that interference of this Court is required in the impugned orders.

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12. Per contra, the learned Additional Government Pleader for the respondents, as per the direction issued by this Court, has

produced the relevant files with regard to the promotions given to the various persons in the Agriculture Department to the post of Joint Director for the year 2009-2010 and 2010-2011. The learned Additional Government Pleader for the respondents on the basis of the instructions given by the Director of Agriculture dated 13.02.2017 has submitted the following facts:-

"The effective promoted in the temporary panel to the post of Assistant Director of Agriculture for the year 2007-2008 will be regularized will be Extension wing and Research wing separately.

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	

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	

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."

13. The learned Additional Government Pleader would submit that insofar as the promotion to the post of Joint Director for the years 2009-2010 and 2010-2011 are concerned, two lines of promotions were given, one is for those, who worked in the Extension Wing as Deputy Director, promotion had been given by G.O.Ms.No.286 dated 08.12.2009 for 2009-2010 and G.O.Ms.No.190 Agriculture Department dated 31.08.2010 for the year 2010 - 2011. For 2009 - 2010, 33 persons were given promotion and for 2010-2011, 34 persons were given promotions. Like that, for Chemistry wing for the year 2009-2010, four persons were given promotion as Joint Director by G.O.Ms.No.37 Agriculture Department dated 26.02.2010 and three persons were given promotions through G.O.Ms.No.296 Agriculture AA1 Department dated 06.12.2010.

14. From the submissions made by the learned Additional Government Pleader, an interesting point has also been disclosed. As per G.O.Ms.No.296 Agriculture (AA1) Department dated 06.12.2010, three persons were given promotions as Joint Director of Agriculture (Research) for the year 2010-2011. Out of the three persons, the third person is none other than the petitioner



herein. The relevant portion of the said G.O., 296 is reproduced hereunder for better appreciation of the issue:

"Agriculture (AAI) Department

G.O.Ms.No.296

Dated: 06.12.2010

Read:

1. Government Lt.(Ms)No.151, dated: 13.07.2010.

2. From the Commissioner of Agriculture
Lr.No.PMS1/96685/2010, dated 29.09.2010.

ORDER:

The Government have approved the Estimate of Vacancy to the post of Joint Director of Agriculture (Research) (Chemistry Wing), for the year 2010-2011 as 3 (Three) vide Government letter first read above.

2. The Government approve the following names of Agricultural Chemists / Deputy Directors of Agriculture (Chemistry Wing) for regular appointment by promotion to the post of Joint Director of Agriculture (Research) (Chemistry Wing), in the Tamil Nadu Agricultural Service for the year 2010-2011, in the order of preference indicated below:-

Sl.No.	Name of the Officers (Tvl.)
1	G.Ramaraj
2	T.Mani
3	L.Natarajan

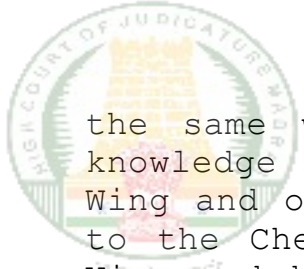
3. The Commissioner of Agriculture is requested to communicate the panel approved by the Government in para 2 above by Registered post to the officers concerned.

(By Order of the Governor)"

15. By submitting the said documents before this Court, the learned Additional Government Pleader would submit that as per the seniority in the Chemistry Wing, since the petitioner had to be considered for promotion for the year 2010-2011, he had been rightly considered and he has been given promotion by G.O.No.296 dated 06.12.2010. Since the petitioner's grievance, in fact, has been redressed and as per his due seniority, he had been considered for promotion to the post of Joint Director of Agriculture Department in Chemistry wing for the year 2010-2011, there can be no further grievance for the petitioner, he contended.

16. This Court has considered the said submissions.

17. In fact, the petitioner, though had come into service in the Extension Wing, subsequently, in the year 1980, as per his option, he had been drifted away from Extension Wing to Chemistry Wing. At that time, both the wings were functioned separately and



the same was not merged. Therefore, the petitioner had every knowledge that separate seniority would be maintained for each Wing and once the petitioner is switched over from Extension Wing to the Chemistry Wing, then, he lose his seniority in Extension Wing and he has to maintain the seniority only in the Chemistry Wing. Thereafter, he worked as such, till the merger taken place in the year 2007 by virtue of G.O.No.537. Though the G.O.No.537, at paragraph No.10 has stated that the incumbents would continue to enjoy the same seniority and promotional prospects that they are presently getting in Agriculture Department, that position has subsequently been clarified in the counter affidavit filed by the respondents. At paragraph No.9 of the counter affidavit filed by the respondents, the abolition of posts such as Additional Director of Agriculture Research, Joint Director of Agriculture Chemists had also been clarified. The relevant portion of the clarification, as has been given in the counter affidavit at paragraph No.9 is as follows:

"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 Chemistry/Extension Wing for the purpose of promotional opportunities shall be continued in the respective existing cadre". Further with regard to G.O.Ms.No.163, Agriculture (AP.V) Department dated 09.04.2008, 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 (ie. 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 cadre. The petitioner herein belongs to Chemistry cadre. Hence as per the seniority in Chemistry cadre, his name has been considered for



promotion to the vacant post originally sanctioned for Chemistry Wing."

18. According to the respondents, though both wings have got merged functionally by virtue of G.O.No.537, each wing seniority has been maintained all along separately. Only on that basis of separate seniority, promotions were given for both Wings, that is how, the petitioner has also get promotion up to the level of Deputy Director. During the year 2009-2010, the process of giving promotion to the further cadre of Joint Director of Agriculture was undertaken, two separate line of promotion had been given, depending upon the vacancies for each of the wing. For the year 2009-2010, 33 persons were given promotion as Joint Director in the Extension Wing and only four persons have been given such promotion in the Chemistry Wing and that itself would show that the promotional avenue is very low in Chemistry Wing comparing to Extension Wing. The same would continue in the year 2010-2011 also, where 33 persons were given promotions in the Extension wing, wherein, only three persons were given in the Research Wing. Even though the petitioner, originally selected in the Extension Wing has, either for better prospects or for the reasons best known to him switched over to Research Wing by his own voluntary action on giving option. The maintaining of separate line of seniority between Extension Wing and Research Wing has not been modified or changed by virtue of the merger taken place functionally between both the Wings.

19. According to the respondents, the dichotomy of the Department between the two wings, namely, Extension and Research Wing had been maintained all along and only on that basis, separate seniorities were maintained and promotions were given.

20. At any cost, since the petitioner has attained seniority even in the Research Wing, atleast in the year 2010-2011, he was rightly included in the panel to be promoted to the post of Joint Director and in fact, promotion has been given to him by virtue of G.O.No.296 dated 06.12.2010 as extracted above.

21. Though such a promotion has been given through the said Government order, the learned counsel for the petitioner would assert that no such promotion, in fact, has been given to the petitioner till the petitioner retired on superannuation from service on 31.05.2011.

22. Since the petitioner has been promoted as per G.O.No.296 dated 06.12.2010, however, the learned Additional Government Pleader would submit that as per Government letter dated 13.07.2009, as referred in G.O.No.296, three vacancies to the Joint Director of Agriculture Research Chemistry wing was approved by the Government. In the three approved vacancies, three names of Deputy Directors also have been approved for giving



promotions, out of the three names, the petitioner's name is also found place at S.No.3. Though such approval having been made by the Government, as on 06.12.2010, the actual promotion order has not been given to the petitioner, since before such promotion order is issued, the petitioner retired on 31.05.2011.

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23. All these factors would disclose that the petitioner, since attained seniority in the Deputy Director level in the Chemistry Wing alone which has been considered for promotion to the post of Joint Director of Agriculture Research (Chemistry Wing) for the year 2010-2011. It is also a fact that three vacancies for the said post for the said year 2010-2011 also had been approved by the Government. Since vacancies were available as approved by the Government and three names to fill up the said three vacancies also had been approved by the Government through the G.O.No.296 dated 06.12.2010, this Court finds that there shall be no further impediment for the respondents to extend the benefit of giving such promotion to the petitioner, since he was about to retire at that time as on the date of his superannuation on 31.05.2011.

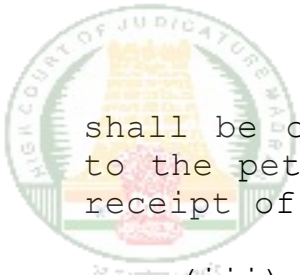
24. However, the fact remains that till the petitioner attains superannuation, he had not been given actual promotion pursuant to G.O.Ms.No.296. Had he been given promotion pursuant to G.O.Ms.No.296, the petitioner would have worked as Joint Director of Agriculture Research (Chemistry Wing) atleast for few months before he attained superannuation. Therefore, there is some force in the plea now raised by the petitioner that atleast as per the seniority in the Chemistry wing, since his name has been considered for promotion and also approved by the Government, through the said Government order, the benefit of giving such promotion atleast notional to be given to the petitioner for financial and other benefits. Therefore, this Court is of the considered view that by virtue of G.O.Ms.No.296 dated 06.12.2010, the petitioner shall be entitled to claim promotion to the post of Joint Director of Agriculture Research Chemistry wing for the year 2010-2011.

25. In the result, the following orders are passed in this writ petition:

(i) That the respondents shall give notional promotion to the petitioner to the post of Joint Director of Agriculture Department (Research) (Chemistry Wing) for the year 2010-2011 with effect from 06.12.2010, the date on which, G.O.Ms.No.296 Agriculture Department was issued, by which, the name of the petitioner was approved for the purpose of promotion to the three vacancies estimated for that year, as approved by the Government through their letter dated 13.07.2009.

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(ii) On such notional promotion being given to the petitioner, from 06.12.2010, the service benefits including monetary benefits



shall be calculated and the arrears to that effect shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The aforesaid compliance shall also be done within a period of the said eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/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.

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.8971

+1cc to M/s.R.R.KANNAN Advocate in SR. No.8702

RR

JS/KP/SAR.3/13.6.2017/11P-5C

W.P. (MD) No.11639 of 2011
and M.P.No.1 of 2011
16.02.2017