

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23825 of 2016 and
W.M.P. Nos.20443, 20444 of 2016

A.Marimuthu

.. Petitioner

-vs-

1.Commissioner of Agriculture,
Chepauk, Chennai-600 005.

2.Commissioner of Horticulture,
Chepauk, Chennai-600 005.

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records leading to the issue of proceedings bearing No.GE.S2/83872/2013 dated 28.06.2016 on the file of the first respondent herein and quash the same in so far as the transfer of the petitioner (Sl.No.14) is concerned and direct the respondents 1 & 2 to accept the option exercised by the petitioner dated 10.01.2013 and 02.12.2013 expressing his willingness to remain in the Horticulture Department and absorb him permanently in the Horticulture Department.

For Petitioner :: Mr.K.Sridhar

For Respondents :: Mrs.P.Rajalakshmi,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the impugned proceedings No.GE.S2/83872/2013 dated 28.06.2016 passed by the first respondent and seeking a direction to the respondents to accept the option exercised by him on 10.01.2013 and 02.12.2013 expressing his willingness to remain in the Horticulture Department.

2.When the matter is taken up for hearing, Mr.K.Sridhar, learned counsel appearing for the petitioner submitted that the issue raised in this writ petition is no longer res integra

since the same has been decided by order dated 27.04.2017 passed by this Court in W.P. Nos.1174 to 1176 of 2017.

3.Learned Additional Government Pleader appearing for the respondents agreed to the said factum.

4.In this context, it is necessary to extract relevant portion which reads as under:

'8. But, I do not find any merit thereon, for two reasons. First of all, the petitioners have given their option to continue in the Horticulture Department. Secondly, the form issued by the respondents clearly mentions that the seniority ranking given by the TNPSC should be protected as per the terms and conditions envisaged in G.O.Ms.No.537 Agriculture (AAE) Department dated 24.12.2007 and in accordance with the judgment of the Hon'ble High Court of Madras dated 19.12.2012 in W.P.Nos.19901, 25894, 29016 of 2008 and W.P.Nos.12025 and 13298 of 2012. Therefore, when the petitioners have filled in the option form served by the respondents, it is not open to the respondents to say that they have exercised their option to continue in Horticulture Department without a condition that their ranking assigned by the TNPSC should be protected.

9. Secondly, this Court, in a reported judgment in S.Mayandi and others v. State of Tamil Nadu and others [2013 (1) MLJ 919], in paragraph-67 therein have clarified that while preparing the impugned seniority list, the seniority as assigned by the Tamil Nadu Public Service Commission is taken as the basis and such course was also accepted by this Court. This is for the reason that Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules also supports the case of the department. On this score, this Court, in the said judgment, has held that there is no infirmity in paragraph-11 of G.O.Ms.No.537 dated 24.12.2007 and also in G.O.Ms.No.548, dated 28.12.2007. Finally, paragraphs 12 and 17 of G.O.Ms.No.537 having been upheld, the petitioners, who were deployed to Horticulture Department, after exercising their option to continue in the Horticulture Department, are to enjoy the seniority assigned by the TNPSC.

10. In a similar order passed by me in W.P.(MD). Nos.3794 of 2014, etc., dated 21.09.2015 (C.Kannan v. State of Tamil Nadu and others), by recording the submission made by the learned Additional Advocate General therein that persons, who have already exercised their options to remain in the Horticulture

Department, are already continuing in that Department, I have allowed the claim of the petitioners therein to continue their services in the Horticulture Department.

11. Thus, for the reasons stated above, the impugned order repatriating them to the parent department is wholly unjustified. Accordingly, for the reasons mentioned above, the same is set aside and the writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.'

5. In the light of the above, the impugned order is set aside and the writ petition stands allowed. No costs. Consequently, connected W.M.Ps are closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

vga

To

1. Commissioner of Agriculture,
Chepauk, Chennai-600 005.

2. Commissioner of Horticulture,
Chepauk, Chennai-600 005.

+1cc to Mr.K.Sridhar, Advocate SR.No.78170

+1cc to Government Pleader SR.No.78277

W.P.No.23825 of 2016

GMY (27/11/2018)

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