



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.A(MD)No.1064 of 2018
and C.M.P.(MD) No. 7436 of 2018

1. The Agricultural Production Commissioner,
and Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai - 600 005.

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

... Appellants/Respondents

Vs.

L.Nadarajan

... Respondent/ Writ Petitioner

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 16.02.2017 made in W.P.(MD) No.11639 of 2011.

Prayer in WP(MD).No. 11639/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, 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.

For Appellants	: Mr.A.K.Baskara Pandian Special Government Pleader
For Respondent	: Mr.R.R.Kannan

J U D G M E N T

(Judgment of this Court was delivered by M.M. SUNDRESH, J.)

This Writ Appeal has been filed against the order of the learned Single Judge of this Court dated 16.02.2017 made in W.P.(MD) No.11639 of 2011.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The learned Single Judge, by placing reliance on



G.O.Ms.No.296 Agricultural Department, dated 06.02.2010, has issued the following directions:

(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, Agricultural 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.

(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."

3.The learned Special Government Pleader appearing for the appellants would submit that the Government Order passed in G.O.Ms.No.296, Agricultural Department, dated 06.12.2010 has not been given effect to on merely appraising the estimated vacancies to the post of the Joint Director of Agriculture Department (Research) (Chemistry Wing) for the year 2010 -2011. Thus having not worked in the promoted post at the time of superannuation, the respondent is not entitled for the benefit. Therefore, the order of the learned Single Judge requires interference.

4. The learned counsel for the respondent/writ petitioner would submit that the aforesaid Government Order makes two things clear. Firstly, it speaks about promotion. Secondly, promotion has to be given in the vacancies created. Therefore, there is no difficulty in appreciating the fact on merits. The respondent is entitled for promotion. Vacancies were also available. That is the reason why the order of promotion was made. It was not given effect to due to the delay on the part of the appellants. The retirement age is a natural process. When the same benefit has been extended to two other similarly placed officers along with the respondent, the same cannot be denied to the respondent/writ petitioner on the ground that the effect was not given at the time of superannuation and therefore, the order of the learned Single Judge does not warrant interference by this Court.

5. We have heard the submission made on either side and perused the materials available on record.



6. Existence of the Government Order passed in G.O.Ms. NO.296, Agricultural Department, dated 06.12.2010 is not in dispute. This Government Order notifies the vacancies and promotion. Therefore, on the date of the Government Order vacancies are available and that is the reason why the order of promotion was made. For the other two persons, promotions have been made since it was not given effect to belatedly. Unfortunately, the respondent reached the age of superannuation at that time and the delay was caused by the appellants. The respondent cannot be made to face consequences when he was found to be eligible. That is the reason why the Government Order was passed.

7. However, we find that the respondent did not work in the promoted post since it was not given effect to due to the administrative reason though there are vacancies. Therefore, the direction of the learned Single Judge to that extent requires interference as an employee cannot seek salary to the post, in which, he has not worked. However, this will not take away his right to draw pension based upon the promotion to be reckoned from the date on which the other two persons G.Ramaraj and T.Mani were promoted.

8. In such view of the matter, we modify the order of the learned Single Judge by holding that the respondent/writ petitioner is not entitled for salary for the promotion post from the date of the Government Order till the date of his superannuation. However, he will be treated as the promoted person to which two other persons namely G.Ramaraj and T.Mani were promoted. Based upon the same, his promotion will have to be re-worked by treating him as promoted to the post of Joint Director.

9. This Writ Appeal stands disposed of accordingly. It is needless to state that the appellants shall give effect to the order within a period of 12 weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected C.M.P(MD) No.7436 of 2018 is closed.

Sd/
Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar(CS-III)

+1cc to M/s.Special Government Pleader,SR.No. 78819
+1cc to Mr.R.R.Kannan, Advocate, SR.No.78665

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and
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CM