

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.11108 of 2012 & 3888 of 2015

P.V.Mannarmanan

.. Petitioner in both cases

Versus

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Agriculture Department,
Fort St. George,
Chennai-600 009. ... 1st respondent in W.P. No.11108 of 2012

1.The State of Tamil Nadu,
rep. by its Commissioner for
Agriculture Production and
Principal Secretary to Government,
Agriculture Department,
Fort St. George,
Chennai-600 009. ... 1st respondent in W.P. No.3888 of 2015

2.The Chief Engineer,
Agriculture Engineering Department,
Nandanam, Chennai-600 035. ... 2nd respondent in both cases

Prayer in W.P. No.11108 of 2012: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records of the first respondent of letter No.5012/AA3/03-26 dated 8.7.11 and quash the same and direct the respondent to treat the petitioner as having been regularised in service with effect from 22.02.1979 in accordance with the G.O. Ms.No.503 dated 24.11.1999 and grant all consequential benefits such as periodical increments, selection grade and special grade etc.

Prayer in W.P. No.3888 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records relating in Government Letter No.12414/Vene.3/2013-5 dated 11.04.2014 on the file of the first respondent quash the said letter and direct the first respondent to grant the petitioner herein the consequential benefits of relaxation of rule 9(a)(ii) namely moving the petitioner to selection grade, special grade and sanction the periodical increments to which the petitioner is

entitled to from the date of his first appointment in dated 22.02.1979.

For Petitioner in both cases : Mrs.Rita Chandrasekaran for
Mr.V.Mohan

For Respondents in both cases : Mrs.P.Rajalakshmi,
Additional Government Pleader

COMMON ORDER

The writ petitions have been filed challenging the letter Nos.5012/AA3/03-26 and 12414/Vene.3/2013-5 dated 08.07.2011 and 11.04.2014 issued by the first respondent and seeking a direction to the respondents to treat the petitioner as having been regularised in service with effect from 22.02.1979 in accordance with the G.O. Ms. No.503 dated 24.11.1999 and grant all consequential benefits.

2.Mrs.Rita Chandrasekaran, the learned counsel appearing for the petitioner would submit that the petitioner was appointed as Geological Assistant (Agriculture Engineering) in the department of Agriculture by Proceedings dated 09.02.1979 issued by the Director of Agriculture and joined the service on 22.02.1979 at the office of Executive Engineer (A.E.), Vellore. While so, subsequent to the representation of the Tamil Nadu Agriculture Engineering Geologists Association regarding regularisation of temporary Geological Assistants, the Government of Tamil Nadu considered the same by virtue of their services over the period of ten years and accordingly, the Government sent proposal to the Tamil Nadu Public Service Commission for its concurrence. Pursuant to the same, the Tamil Nadu Public Service Commission given its concurrence for regularisation of the temporary Geological Assistants and accordingly, the Government of Tamil Nadu regularised the service of the petitioner vide G.O. Ms. No.227 dated 30.03.1989 Agriculture (AE.III) Department. As the petitioner became fully qualified by passing all the requisite examinations, the Chief Engineer (Agriculture Engineering) made his recommendation by letter dated 08.02.2003 to the Secretary of Agriculture Department seeking relaxing Rule 9(a) (ii) of Special Rule of Tamil Nadu Agriculture Subordinate Services in favour of the petitioner to avail all the service benefits of the selection and special grade employees. Despite the same and representation given by the petitioner for granting selection grade and special grade with all benefits including increments, was rejected by the the first respondent on the ground that he has not passed the departmental tests within five years from the date of confirmation.

According to the learned counsel for the petitioner, when the petitioner was appointed on temporary basis as Geological

Assistant on 22.02.1979 and regularised with effect from 30.03.1989 and retired on attaining the age of superannuation on 31.08.2012, the petitioner is eligible for selection grade, special grade and other attendant benefits. Denial of the same on the basis that he has not passed departmental examinations within five years from the date of initial regularisation, dated 30.03.1989 is totally arbitrary and illegal. During the pendency of the above W.P. No.11108 of 2012, the respondents have passed orders in G.O. (Per) No.187 Agriculture (AA3) Department dated 31.08.2012. Although the said G.O. passed relaxing Tamil Nadu Agriculture Engineering Subordinate Service Special Rules under Rule 9(a)(ii) is in favour of the petitioner, the first respondent issued the above impugned letter dated 11.04.2014 on the ground that the relaxation of Rule 9(a)(ii) itself is a concession shown to the petitioner and therefore, he is not eligible to the consequential benefits, contrary to law and without any application of mind.

Taking support from the order dated 16.02.2007 passed by this Court in W.P. No.21516 of 2006, the learned counsel for the petitioner would submit that when in a similar circumstance one Mr.Chandrasekaran, who was not able to complete the Departmental Tests within a period of five years from the date of entry into the service as contemplated under Rule 9(a)(ii) of the Special Rules, was granted all the benefits, the same benefits shall be extended to the petitioner as well.

3.Reiterating the averments made in the counter affidavit filed by the first respondent, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner was appointed on 22.02.1979 temporarily through Employment Exchange. Based on the concurrence of the Tamil Nadu Public Service Commission, his services were regularised vide G.O. No.227 Agriculture (AA3) Department dated 30.03.1989 with effect from 30.03.1989. Subsequent to the regularisation, instructions were given to the petitioner by the second respondent to pass the departmental examinations within a period of five years with effect from 30.03.1989, namely, the date of regularisation. According to the learned Additional Government Pleader, as the petitioner has not passed the prescribed tests within the specified time, he has to be terminated from the service for non-fulfillment of conditions laid down, but the same has not been done. Thereafter, the Tamil Nadu Public Service Commission has accorded permission to regularise the services of the petitioner from the date of initial appointment i.e. from 22.02.1979 and therefore, his services

were regularised from the date of his initial appointment vide G.O. No.503 Agriculture (AA.3) Department dated 24.11.1999 on sympathetic grounds.

Learned Additional Government Pleader would further submit that subsequently, the petitioner filed W.P. No.6962 of 2011 praying to relax the Rule 9(a)(ii) of the Special Rules for the Tamil Nadu Agricultural Subordinate Services Rules and to provide pending monetary benefits by not terminating him from service. This Court, by order dated 22.03.2011 has directed the petitioner to send a copy of his representation dated 02.10.2008 within a period of two weeks and also directed the first respondent to consider the said representation within a period of three months. Pursuant to the same, the Government vide letter dated 08.07.2011, rejected the claim of the petitioner for relaxing the above rule for belated passing of departmental examinations and also for providing pending monetary benefits after relaxation. Subsequently, based on the proposals of the second respondent, the first respondent vide G.O. Ms. No.187, Agriculture (AA3) Department dated 31.08.2012 has relaxed the rule 9(a)(ii) of the Special Rules for the belated passing of prescribed tests and thereafter, the petitioner was also permitted to retire on 31.08.2012.

According to the learned Additional Government Pleader, as the services of the petitioner were regularised with effect from the date of initial appointment, namely from 22.02.1979 vide the above G.O.503 and the above rule 9(a)(ii) of the Special Rules was also relaxed with regard to belated passing of the departmental examinations, the second respondent has requested clarifications from the Government regarding granting selection and special grade vide letter dated 06.06.2013. However, the Government vide letter dated 11.04.2014 informed that the petitioner has to be terminated from Government Service as per the above stated rules, but without termination and in obedience to the interim orders of this Court dated 16.08.2012, the above said rules was relaxed in favour of the petitioner and therefore, the petitioner cannot be provided with benefits of selection and special grades as on 14.06.1989 and 15.06.1999 respectively, as relaxation of rule 9(a)(ii) for belated passing of departmental examination i.e. after 18 years and 3 months which itself is a great concession shown sympathetically on the petitioner.

I fully agree with the reply given by the Additional Government Pleader. Admittedly, the petitioner has not passed the departmental examination within a period prescribed, namely, within a period of five years and he was also allowed to continue in service. Although the above rule 9(a)(ii) of the Special Rules for the Tamil Nadu Agricultural Subordinate Services Rules was relaxed in favour of the petitioner with regard to belated passing of the departmental examinations, he

has passed the departmental examination only after 18 years and 3 months and therefore, this Court is of the view that the petitioner is not entitled to get the benefit of Special and Selection Grades as the Selection grade and Special grade should be given only to those candidates, who have completed ten and twenty years of service respectively after passing the test in the same post. This point has not been considered in the above said case relied on by the learned counsel for the petitioner. Therefore, this Court is not inclined to entertain the petitions and the same are dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
The State of Tamil Nadu,
Agriculture Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner for
Agriculture Production and
Principal Secretary to Government, State of Tamil Nadu
Agriculture Department,
Fort St. George,
Chennai-600 009.

3.The Chief Engineer,
Agriculture Engineering Department,
Nandanam, Chennai-600 035.

+4cc to Mr.R.Devasenar, Advocate sr.no.8007
+1cc to The Government Pleader sr.8762

Writ Petition Nos.11108 of 2012 & 3888 of 2015

gjii(co)
nr 28/02/2019