

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.14424 of 2011

and

M.P.No.1 of 2011

G.Chandrasekaran

.. Petitioner

Vs.

1.The Union of India represented
By the Secretary to Government,
Animal Husbandry Department,
Government of Union Territory of Puducherry,
Puducherry - 605 001.

2.Pondicherry Veterinary College Society,
Represented by its Chairman,
Kurumbapet,
Puducherry - 605 009.

3.The Dean,
Rajiv Gandhi College of Veterinary & Animal Sciences,
Pondicherry Veterinary College Society,
Kurumbapet,
Puducherry - 605 009.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent relating to the impugned order dated 24.03.2011, bearing ref: No.C.11012/3/2010-11/E 1/RAGACOVAS/ and quash the same and consequently direct the respondents to promote the petitioner to the post of Storekeeper Grade-III with effect from 05.10.1999 and thereafter as Storekeeper Grade-II with effect from 05.10.2004, with all consequential service, monetary benefits and backwages.

For Petitioner :	Mr.N.U.Prasanna for M/s.Sai Bharath and Ilan
For RR 1 & 2 :	Mr.C.T.Ramesh Additional Government Pleader (Pondy)
For R3 :	Mr.Stalin Abhimanyu Standing Counsel

O R D E R

The petitioner has come out with the present Writ Petition challenging the rejection of his request for promotion as Storekeeper Grade-III and Storekeeper Grade-II with effect from 05.10.1999 and 04.10.2004 respectively.

2. According to the petitioner he was appointed as peon in the second respondent society on daily rated basis from 04.10.1994. His services were regularized with effect from 12.02.1998. He has completed his probation on 11.02.2000. By the order dated 20.02.1996 he was posted at stores and he was working up to the year 2000. Though he was posted as peon, he performed his duty only as a Store Keeper. Subsequently by the order dated 18.05.2000, he was posted to Library Section and he was performing the Library Assistant work and put in 8 years of service as Library Assistant.

3. While so, a seniority list was issued by the second respondent society on 06.03.2007 and petitioner was placed at serial No.5. His juniors P.Anandanayagi and M.Ganesan were promoted as Lower Division Clerk with effect from 07.09.2006 and subsequently M.Anandhi was also promoted. Further M.Ganesan and M.Anandhi were promoted as Upper Division Clerk with effect from 19.04.2010.

4. The post of peon is the feeder post for promotion to various other Group IV and Group III posts, such as Lower Division Clerk, Storekeeper Grade III, Laboratory Attendant, Farm Assistant, etc., The petitioner was fully qualified for promotion to the post of Storekeeper Grade-III and Grade-II, when his juniors were promoted as Lower Division Clerk and Upper Division Clerk and therefore he made a representation dated 07.10.2010 enclosing all the documents. The respondents did not consider the representation. He filed W.P.No.24841 of 2010 and this Court by the order dated 12.12.2010, disposed the Writ Petition by directing the respondents to consider the representation of the petitioner. After the order of this Court, the petitioner was promoted as Storekeeper Grade-III with effect from 28.12.2010 without any financial benefits. His representation for promotion as Storekeeper Grade-III and Grade-II from the date when his juniors were promoted was rejected by the impugned order.

5. The learned counsel appearing for the petitioner contended that even though the draft recruitment rules were framed in the year 2000, they were notified only in the year 2010. As per the

notified recruitment rules, the impugned order is liable to be set aside and the petitioner is entitled to be promoted as Storekeeper Grade-III and Grade-II. The promotion to the post of all categories were notified only in the year 2010, but promotion were granted with retrospective effect from the date when the persons become eligible. The case of the petitioner was not considered as he has filed a W.P.No.24841 of 2010. The action of the respondents not promoting the petitioner with retrospective effect is discriminatory and violation of Article 14 of Constitution of India. There was no criminal or disciplinary proceedings pending against the petitioner and there were vacancies available. There was no impediment for the petitioner being promoted when his juniors were promoted with effect from 07.09.2006 and 19.04.2010 and prayed for allowing the Writ Petition.

6.The respondents have not filed counter affidavit.

7.Mr.Stalin Abhimanyu, learned Standing Counsel appearing for the third respondent contended that the petitioner's service was regularized only in the year 1998. The recruitment rules were notified only in the year 2010. The petitioner was working in Co-operative stores only as a peon and not as a Storekeeper. There was no post of Storekeeper Grade-III, Grade-II and Grade-I, till the recruitment rules were notified. Even though the rules were framed for the post of Grade-II, there was no post of Store Keeper Grade-II. Only 6 post of Store Keeper Grade-III were created.

8.The petitioner opted for the post of Store Keeper Grade-III and not to the post of Laboratory Assistant as stated in his representation. The petitioner was considered for promotion to the post of Storekeeper Grade-III by the Departmental Promotion Committee convened on 20.12.2010. The Departmental Promotion Committee recommended his promotion to the post of Storekeeper Grade-III on regular basis and he has been promoted to the post of Storekeeper Grade-III with effect from 30.12.2010.

9.As per the revised Recruitment Rules for the post of Storekeeper Grade-II, the promotion can be made from the grade of Storekeeper Grade-III with eight years of regular service in the post of Storekeeper Grade-III. The petitioner become eligible for promotion to the post of Storekeeper Grade-II only from 30.12.2018, i.e., on completion of eight years of regular service in the grade of Storekeeper Grade-III. The revised Recruitment Rules came into force only from the date of issue,

i.e., on 12.08.2010.

10.The promotion given to P.Anandanayagi, M.Ganesan and M.Anandhi as Lower Division Clerk and subsequent promotion to M.Ganesan and M.Anandhi as Upper Division Clerk were in accordance with the then Recruitment Rules for the post of Lower Division Clerk and Upper Division Clerk. In view of the above, the request of the petitioner for promotion to the post of Storekeeper Grade-III and Grade-II retrospectively with all monetary benefits will not be acceded and prayed for dismissal of the Writ Petition.

11.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader (Pondy) appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the third respondent and perused the entire materials on record.

12.From the materials placed on record it is seen that the petitioner was appointed as Peon on daily wage basis on 04.10.1994. His services was regularized on 12.02.1998 and he completed his probation on 11.02.2000. The learned counsel appearing for the petitioner contended that in the seniority list, the petitioner was in serial No.5, but he was not promoted to the post of Store Keeper Grade-III, while his juniors P.Anandanayagi, M.Ganesan and M.Anandhi were promoted with effect from 07.09.2006. The learned counsel appearing for the petitioner has not furnished any details about the date of appointment of those persons and also whether they were appointed on daily wage basis or regular basis and when they completed their probation. When the petitioner alleges that his juniors were promoted with effect from 07.09.2006 and he denied promotion, he has not initiated any proceedings seeking his promotion when his juniors were promoted and subsequently given another promotion. The learned counsel appearing for the third respondent referred to the impugned order wherein it has been stated that before Recruitment Rules were notified in the year 2010, there was no post of Storekeeper Grade-III, Grade-II and Grade-I. Only 6 posts of Storekeeper Grade-III were created. In order to create promotional avenues to the existing employees in the cadre of Peon, Sweeper and Watchman, Recruitment Rules were revised as per the recommendation of the Departmental Promotion Committee. As per the recommendation of the Departmental Promotion Committee, the post of Storekeeper was restructured as Storekeeper Grade-III, Grade-II and Grade-I and Recruitment Rules were notified. From the impugned order it is seen that till the Recruitment Rules were notified, there was no post of

Storekeeper Grade-III, Grade-II and Grade-I. The petitioner was working as Peon in the stores. He was not working as Storekeeper and the petitioner had opted to work as Storekeeper and as per the Recruitment Rules, he was appointed as Storekeeper Grade-III, when 6 posts of Storekeeper Grade-III were created. The services of the petitioner was regularized on 17.12.1998 with effect from 12.02.1998 and he completed his probation on 11.02.2000.

13.Considering the above facts, the petitioner was promoted as Storekeeper Grade-III on 28.12.2010 when 6 posts of Storekeeper Grade-III were created, the said order is valid and legal. The petitioner had given representation for promoting him as Storekeeper Grade-III and further promotion as Storekeeper Grade-II from the date when his juniors were promoted. The petitioner had not made out any case for promotion as Storekeeper Grade-III with effect from 2006. As per the Recruitment Rules to be promoted as Storekeeper Grade-II, a person must have worked for 8 years of regular service as Storekeeper Grade-III. The petitioner was appointed as Storekeeper Grade-III only on 28.12.2010. Hence he is not entitled to be promoted as Storekeeper Grade-II as he has not completed 8 years of regular service in the post of Storekeeper Grade-III. The respondents have given cogent and valid reason for rejecting the representation of the petitioner.

14.For the above reason, this Writ Petitions is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To

- 1.The Union of India represented
By the Secretary to Government,
Animal Husbandry Department,
Government of Union Territory of Puducherry,
Puducherry - 605 001.

2.Pondicherry Veterinary College Society,
Represented by its Chairman,
Kurumbapet,
Puducherry - 605 009.

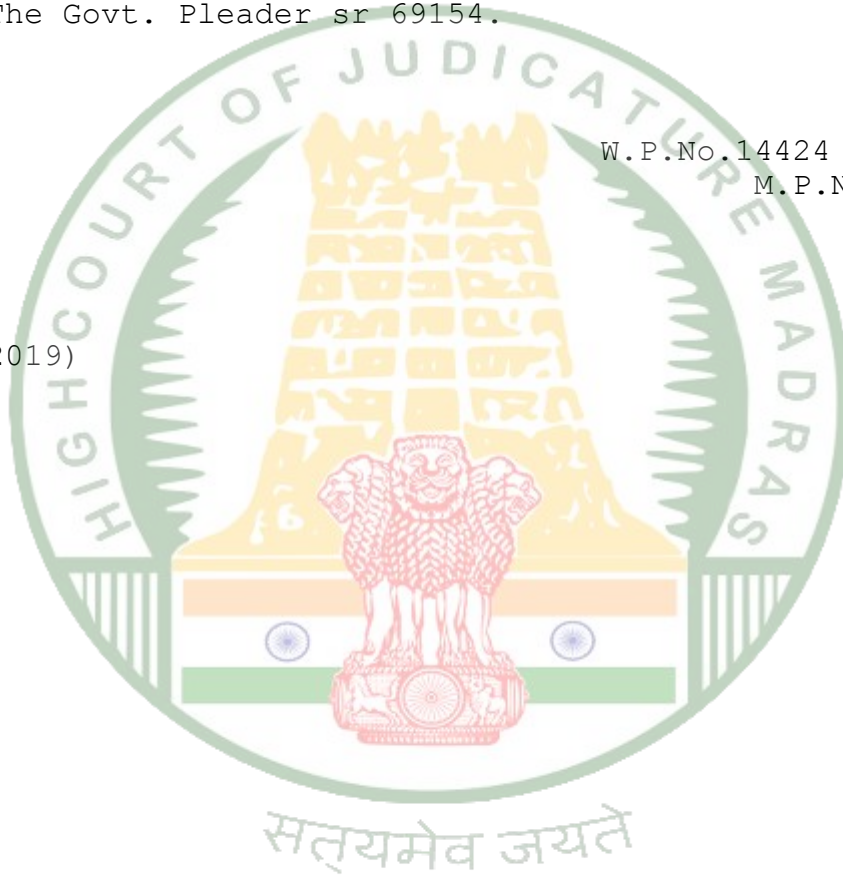
3.The Dean,
Rajiv Gandhi College of Veterinary & Animal Sciences,
Pondicherry Veterinary College Society,
Kurumbapet,
Puducherry - 605 009.

+1 CC to Mr.R. Saravanan, Advocate sr 69162.

+1 CC to The Govt. Pleader sr 69154.

W.P.No.14424 of 2011 and
M.P.No.1 of 2011

RSI (CO)
SP (25/10/2019)



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