

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.14426 of 2011
and
M.P.No.1 of 2011

S.Jayaprakash

.. 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 Laboratory Attendant with effect from 01.05.2001 and Laboratory Assistant with effect from 01.05.2006, 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 Laboratory Attendant with effect from 01.05.2001 and Laboratory Assistant with effect from 01.05.2006 respectively.

2. According to the petitioner, he was appointed to provide assistance in Anatomy Section in the second respondent society on contract basis from 14.06.1995 and thereafter he was engaged as peon on daily rated basis with effect from 01.05.1996. His services were regularized with effect from 01.05.1998. He has completed his probation on 11.02.2000. By the order dated 27.11.1998 he was permanently appointed as Sweeper. Though he was posted as Sweeper, he had been discharging the duties of Laboratory Attendant and also in assisting the Laboratory Staff in all respects.

3. While so, a seniority list was issued by the third respondent on 12.03.2007 and the petitioner was placed at serial No.12. The petitioner also belongs to Scheduled Caste and is also entitled to be considered under reserved vacancies. 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 Sweeper 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 Laboratory Attendant and further as Laboratory Assistant, when his juniors were promoted as Lower Division Clerk and Upper Division Clerk. Therefore he made a representation dated 07.10.2010 enclosing all the documents. The respondents did not consider the representation. The petitioner filed W.P.No.24838 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 Laboratory Attendant with effect from 28.12.2010 without any financial benefits. His representation for promotion as Laboratory Attendant and further as Laboratory Assistant 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 Laboratory Attendant and further as Laboratory Assistant. 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 W.P.No.24838 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 Sweeper. Based on the seniority list, the petitioner was considered for promotion to the post of Laboratory Attendant by the Departmental Promotion Committee convened on 20.12.2010. The Departmental Promotion Committee recommended his promotion to the post of Laboratory Attendant on regular basis and he has been promoted to the post of Laboratory Attendant with effect from 30.12.2010.

8.As per the revised Recruitment Rules for the post of Laboratory Assistant, the promotion can be made from the grade of Laboratory Attendant with eight years of regular service in the post of Laboratory Attendant. The petitioner become eligible for promotion to the post of Laboratory Assistant only from 30.12.2018, i.e., on completion of eight years of service in the grade of Laboratory Attendant. The revised Recruitment Rules came into force only from the date of issue, i.e., on 12.08.2010.

9.The promotion given to P.Anandanayagi, M.Ganesan and M.Anandy as Lower Division Clerk and subsequent promotion to M.Ganesan and M.Anandy 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 Laboratory Attendant and then to Laboratory Assistant retrospectively with all monetary benefits will not be acceded and prayed for dismissal of the Writ Petition.

10. 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.

11. From the materials placed on record it is seen that the petitioner was appointed to provide assistance in Anatomy Section on contract basis from 14.06.1995. His services were regularized on 01.05.1998 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.12, but he was not promoted to the post of Laboratory Assistant, while his juniors P. Anandanayagi, M. Ganesan and M. Anandy 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 was 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, the method of recruitment for the post of Laboratory Attendant is by direct recruitment. 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 and based on the option exercised and based on the seniority list, the petitioner was promoted as Laboratory Attendant on regular basis with effect from 30.12.2010. The services of the petitioner were regularized on 27.11.1998 with effect from 01.05.1998 and he completed his probation on 11.02.2000.

12. Considering the above facts, the petitioner was promoted as Laboratory Attendant on regular basis with effect from 30.12.2010, the said order is valid and legal. The petitioner had given representation for promoting him as Laboratory Attendant and further promotion as Laboratory Assistant from the date when his juniors were promoted. As per the Recruitment Rules to be promoted as Laboratory Assistant, a person must have worked for 8 years of regular service as Laboratory Attendant. The petitioner was appointed as Laboratory Attendant only on 30.12.2010. Hence he is not entitled to be promoted as Laboratory Assistant as he has not completed 8 years of regular service in the post of Laboratory Attendant. The respondents

have given cogent and valid reason for rejecting the representation of the petitioner.

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

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Union of India represented
Animal Husbandry Department,
Government of Union Territory of Puducherry,
Puducherry - 605 001.
2. The Chairman, Pondicherry Veterinary College Society,
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 69163.

W.P.No.14426 of 2011 and
M.P.No.1 of 2011

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

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