

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.662 of 2012
and
M.P.No.3 of 2012

Dr.R.Madhavan

.. Petitioner

Vs.

1. The Government of Tamilnadu
rep.by the secretary Agriculture Department
fort st.George, Chennai-600 009.

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

3.The Joint Director of Agriculture,
Bhagayam, Thorappadi,
Vellore - 632 002.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to Government Order in G.O.Ms.No.237, Agriculture (AA.1) Department, dated 08.12.2011, passed by the first respondent and the consequential order of the second respondent in his proceedings Endt.No.PMS.2/109662/2010-1 dated 12.12.2011, to quash the same and consequently direct the respondents to include the name of the petitioner in an appropriate place in the temporary promotion panel List for the post of Assistant Director of Agriculture (Chemistry Wing), for the year 2010-11 and to promote the petitioner as Assistant Director of Agriculture (Chemistry Wing).

For Petitioner : Mr.V.Chandrakanthan

For Respondents: Mrs.R.Janaki
(Additional Government Pleader)

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to call for the records relating to Government Order in G.O.Ms.No.237, Agriculture (AA.1) Department, dated 08.12.2011, passed by the first respondent and

the consequential order of the second respondent in his proceedings Endt.No.PMS.2/109662/2010-1 dated 12.12.2011, to quash the same and consequently direct the respondents to include the name of the petitioner in an appropriate place in the temporary promotion panel List for the post of Assistant Director of Agriculture (Chemistry Wing), for the year 2010-11 and to promote the petitioner as Assistant Director of Agriculture (Chemistry Wing).

2. According to the petitioner, he was appointed on 10.09.1989 as Agricultural Officer (Research / now Chemistry) in the Research Wing of Tamil Nadu Agriculture Department. After serving in various department, he was posted at Soil Survey and Land Use Organization, Vellore from 22.12.2006. The next avenue of promotion is the post of Assistant Director of Agriculture. The seniority list for the post of Agricultural Officers was drawn during the year 2008 and the petitioner was at Serial No.80 in the seniority list. During the year 2008-2009, the persons up to Serial No.78 were promoted for the post of Assistant Director of Agriculture. After such promotion, the petitioner was next in the seniority list to be promoted as Assistant Director of Agriculture. While so, two persons have been placed above the petitioner in the seniority list, who were from outside without any relevant qualification. Further, three more persons were also included in the panel list from outside. Those persons were included for the benefit of their own as well as certain higher authorities.

3. A disciplinary proceedings was initiated against the petitioner during the year 2006 under Rule 17(a) of the Tamilnadu Subordinate Services (Disciplinary & Appeal) Rules. The punishment of stoppage of increment for two years without cumulative effect was imposed on the petitioner for the period from 19.02.2007 to 18.02.2009. On appeal, the punishment was reduced to stoppage of increment for one year from 01.10.2007 to 30.09.2008. The petitioner filed further appeal to the second respondent on 13.02.2009 and the same was pending at the time of filing of the Writ Petition and subsequently it was dismissed. The period of punishment was over as on 30.09.2008 and there is no legal impediment for the petitioner being considered for the promotion for the post of Assistant Director of Agriculture. While so, the first respondent by impugned G.O.Ms.No.237, Agriculture (AA.1) Department, dated 08.12.2011, approved the list of 70 persons for temporary promotion for the post of Assistant Chemist/Assistant Director of Agriculture (Chemist Wing) for the year 2010-2011. Based on the same, the second respondent issued temporary promotion panel list on 22.12.2011. The petitioner's name was not included in the said list. The petitioner is the first person for being considered for promotion as per seniority list dated 01.01.2002 of the post of

Agricultural Officers (Chemistry). The temporary panel list was prepared without following due process of law and the seniority list of Agricultural Officers. The respondents have willfully omitted the petitioner's name in the seniority list and the same is unsustainable and liable to be set aside based on the above averments and for the same, the petitioner has come out with the present Writ Petition.

4.The Additional Secretary to Government, Agriculture Department filed counter statement on behalf of the respondents. The respondents contended that 5 persons mentioned by the petitioner along with 6 were included in the seniority list as per the orders of this Court in W.P.Nos.17496 to 17505 of 2006, W.P.Nos.29965 of 2006 to 29990 of 2006 and 29819 of 2006. Altogether 17 Agricultural Officers from the Extension Wing had been reallocated to the Chemistry Wing as per the proceedings of the second respondent dated 29.01.2007 and 15.06.2007. Based on the same, the seniority is fixed by the proceedings dated 06.10.2007. The respondents in the counter affidavit have stated that the petitioner suffered a punishment of stoppage of increment for one year with effect from 01.10.2007 to 30.09.2008. The same is within the period of five years prior to crucial date. As per the amendment made to rule 4 (a) of General Rules for Tamil Nadu State and Subordinate Services by G.O.Ms.No.22, Personal and Administrative Reforms (S) Department, dated 24.02.2014, a person who has suffered a punishment (other than Censure) within a period of five years prior to crucial date of panel shall not be considered for inclusion in the approved list. In view of the same, the petitioner's name was not included in the approval list and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the entire materials on record.

6.From the averments stated above, it is seen that the petitioner is possessing requisite qualification to be promoted as Assistant Agricultural Chemist/Assistant Director of Agriculture (Chemistry Wing) and he is within the zone of consideration to be included in the panel. According to the learned counsel appearing for the petitioner, the petitioner's name was not included in the approved panel for promotion for the above mentioned post for the period 2010-2011, without following due process and non-inclusion is arbitrary. On the other hand, the respondents in the counter affidavit have stated that the petitioner suffered punishment of stoppage of increment for one year with effect from 01.10.2007 to 30.09.2008, within the check period of five years and therefore his name was not included in the panel for promotion. The only reason for non-

inclusion of the petitioner's name in the panel for the year 2010-2011 is that he has suffered punishment within the check period of five years.

7.The issue whether the check period of five years is valid and legal and a person can be denied being included in the panel for promotion during the check period was considered by Full Bench of this Court in the judgment reported in 2011 (3) CTC 129 [The Deputy Inspector of Police, Thanjavur Range, Thanjavur and another Vs. V.Rani], wherein it has been held that the check period is illegal and impermissible under the statutory rules. The relevant portion in paragraph No.28 of the above judgment reads as follows:

"...28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."

8. In paragraph No.28.5 of the said judgment extracted above, the Full Bench of this Court categorically held that after the period of minor punishment is over, the person cannot be denied the right for being considered for promotion in the name of check period. The said judgment is squarely applicable to the facts of the present case as according to the respondents, the name of the petitioner was not included in the panel for promotion, as he has suffered punishment within the check period of five years.

9. For the above reason, the impugned Order is liable to be set aside and it is hereby set aside. The Writ Petition is allowed. The respondents are directed to consider the petitioner's name for promotion immediately after the period of punishment was completed, subject to his eligibility as per Law and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Secretary,
Agriculture Department,
The Government of Tamilnadu,
Fort St. George, Chennai - 600 009.

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

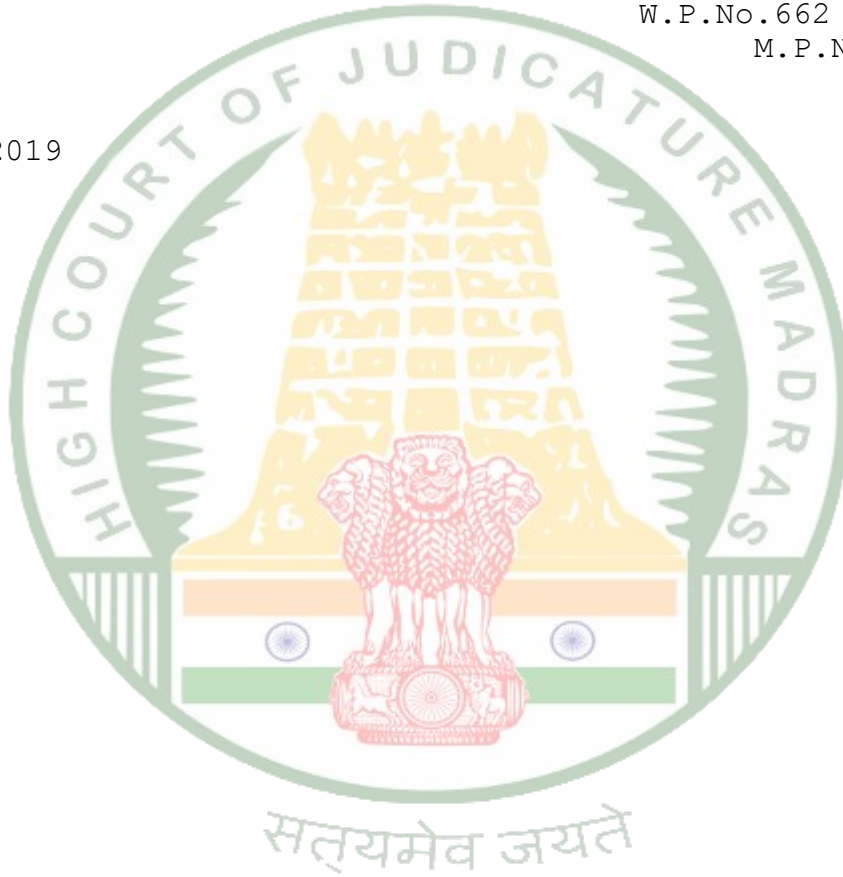
3.The Joint Director of Agriculture,
Bhagayam, Thorappadi,
Vellore - 632 002.

+1cc to Government Pleader sr.50155

+1cc to Mr.V.Chandrakanthan, Advocate sr.50015

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ssd(co)
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