



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.17175, 16524, 18431 of 2017 and 5554 of 2018
and

W.M.P (MD) .Nos.13158, 13159, 13160, 13218, 13745 of 2017 and 845 and
5450 of 2018

T.Mary Irine Agnitta ...Petitioner in all the Writ Petitions

-Vs-

1.The State of Tamil Nadu, Rep. By its
Agricultural Production Commissioner
and Secretary to Government
Agricultural Department
Secretariat
Chennai 600 009

2.The Director of Agriculture
Chepauk
Chennai 600 005

3.The Joint Director of Agriculture
Melakanmoi Street
Tallakulam
Madurai 625 002

...Respondents 1 to 3 in all the
Writ Petitions

4.A.Chitra
Assistant Director of Agriculture
Kattumannarkoil
Cuddalore District

... 4th Respondent in W.P.Nos.17175,
18431 of 2017 and W.P(MD).No.5554 of 2018

PRAYER IN WP(MD) .No.17175 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st and 2nd respondents to include the name of the petitioner in the 'Promotion Panel for promotion to the post of Assistant Director of Agriculture approved in G.O.(D).No.221 Agriculture (Veni.1), Department dated 05.09.2017' at the place between Mrs.B.S.Chitra (TNPSC No.6/94-96) and Mrs.A.Chitra (TNPSC No.8/94-96) and promote the petitioner as Assistant Director of Agriculture placing the petitioner's name at Sl.No.75(A) ie. above the 4th respondent - immediate Junior Mrs.A.Chitra (Sl.No.76) in the promotion order No.Pa.A.Pa.2/90387/2017-1, dated 07.09.2017 passed by the 2nd respondent and grant all the service and monetary benefits with effect from 07.09.2017 on par with 4th respondent -Junior



Mrs.A.Chitra (Sl/No.76) within a time limit to be fixed by this Court.

PRAYER IN WP(MD).No.16524 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records relating to the order No.Pani.6/5977/2016, dated 02.06.2017, passed by the 3rd respondent and quash the same and consequently, direct the 1st and 2nd respondents to include the name of the petitioner in the 'Promotion Panel for promotion to the post of Assistant Director of Agriculture as on 01.04.2016 (ie. crucial date) at the place between Mrs.B.S.Chitra (TNPSC No.6/94-96) and Mrs.A.Chitra (TNPSC No.8/94-96) and promote the petitioner as Assistant Director of Agriculture with effect from the date of the promotion of petitioner's immediate junior Mrs.B.S.Chitra (TNPSC No.8/94-96) and grant all the service and monetary benefits within a time limit to be fixed by this Court.

PRAYER IN WP(MD).No.18431 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records relating to the Letter No.14760/AA1/2017-2, dated 05.09.2017 issued by the first respondent (the list of Agricultural Officers not recommended in the temporary panel to the post of Assistant Director of Agriculture (Extension) for the year 2016-2017 in so far as the inclusion of the petitioner's name at Sl.No.54 and quash the same and consequently, direct the 1st respondent to include the name of the petitioner in the 'Promotion Panel for promotion to the post of Assistant Director of Agriculture (Extension)' approved in G.O.(D).No.221 Agriculture (Veni.1), Department dated 05.09.2017' at the place between Mrs.B.S.Chitra (TNPSC No.6/94-96-Sl.No.75) and Mrs.A.Chitra (TNPSC No.8/94-96-Sl.No.76) ie. as Sl.No.75(A) and promote the petitioner as Assistant Director of Agriculture (Extension) by placing the petitioner above the 4th respondent - Mrs.A.Chitra (Sl.No.76) in the promotion order No.Pa.A.Pa.2/90387/2017-1, dated 07.09.2017 passed by the 2nd respondent and grant all the service and monetary benefits with effect from 07.09.2017 on par with 4th respondent - Mrs.A.Chitra (Sl.No.76) within a time limit to be fixed by this Court.

PRAYER IN WP(MD).No.5554 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 3 to include the name of the petitioner in the 'Panel of Agriculatural officers fit for promotion to the post of Assistant Director of Agriculture for the year 2017-2018 to be prepared as on 01.04.2017 (crucial date) and promote the petitioner as Assistant Director of Agriculture (without prejudice to the pending Writ Petitions filed by the petitioner in W.P(MD). No.16524 of 2017, 17175 of 2017 and W.P(MD).No.18431 of 2017).



For Petitioner : Mr.A.Thirumurthy
(In all the Writ Petitions)
For R1 to R3 : Mr.S.Dhayalan
Government Advocate
(In all the Writ Petitions)

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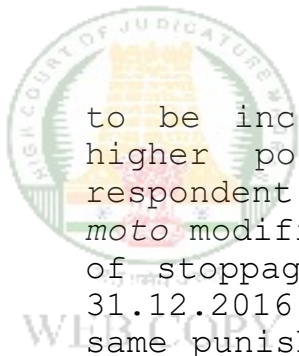
COMMON ORDER

Since the issues involved in these Writ Petitions are inter-linked and the facts are one and the same, these Writ Petitions are heard together and disposed of by way of this common order.

2.The following facts are necessary for disposal of all the four Writ Petitions;

2.1.The petitioner has passed B.Sc(Agri.,) Course in the year 1993 and was appointed as Agricultural Extension Officer in the Agricultural Department on merit through the Tamil Nadu Public Service Commission (TNPSCNo.7/94-96). She joined duty at the office of the Assistant Director of Agriculture, Palladam, Coimbaore District, on 24.04.1995. Subsequently, she was transferred to Sivagangai District in the year 1998. While she was working in Sivagangai District, the second respondent has issued a charge memo bearing Charge Memo No.VCS.1/48140/08, dated 12.01.2011, to the petitioner and five other employees, who worked in the IAMWARM Project at Manamadurai, Sivagangai District, alleging misappropriation of Government money. After enquiry, the disciplinary proceedings ended in the imposition of the punishment of ' Stoppage of increment for one year with cumulative effect' and 'recovery of Rs.4,100/-' being the alleged loss, in the G.O(3D) No.24 Agriculture (VeNi-2) Department, dated 03.03.2015. The above punishment was implemented from 01.04.2015 to 31.03.2016 and a sum of Rs.4,100/- was also recovered from the salary of the petitioner for the month of June-2015 as per order passed by the third respondent in Order No.Pani.1/3919/2015, dated 04.06.2015. The punishment of stoppage of increment was implemented from 01.04.2015 and was completed on 31.03.2016. The petitioner became eligible to be promoted as Assistant Director of Agriculture as on 01.04.2016 (crucial date). Therefore, the petitioner is liable to be promoted to the next higher post of Assistant Director of Agriculture as on 01.04.2016.

3.The third respondent by order dated 09.02.2016, rectified the pay anomaly of the petitioner on par with her Junior S.Sornabharathi. The petitioner was granted annual increments on 01.01.2007 to 01.01.2014, 01.01.2016 and 01.01.2017. The punishment of stoppage of increment with cumulative effect was again came into effect from 01.01.2015 to 31.12.2015. The said punishment was imposed for the second time. Even though the petitioner is entitled



to be included in the panel prepared on 01.04.2016 to the next higher post of Assistant Director of Agriculture, the third respondent by his Order No.Pani.6/5977/2016, dated 02.06.2017, suo moto modified the punishment period and fixed the 'punishment period of stoppage of increment for one year' afresh from 01.01.2016 to 31.12.2016. This order has been passed for implementation of the same punishment for third time. The order dated 02.06.2017 has been issued after a lapse of 1 ½ years, after completion of punishment period on 31.12.2015/ 31.03.2016, without issuing any notice or conducting enquiry or giving any opportunity to the petitioner to defend herself, following the principle of natural justice. The third respondent deliberately deprived the petitioner's right to get her name included in the panel for promotion as Assistant Director of Agriculture as on 01.04.2016. (crucial date) and also promotion to the post of Assistant Director of Agriculture based on the promotion panel as on 01.04.2016 and promoted Junior of the petitioner. The action of the third respondent is in violation of principles of natural justice. The third respondent with an intention to deprive the petitioner's right to get her name included in the panel for promotion, has wantonly and deliberately issued the order on 02.06.2017 with an intention to promote the Juniors of the petitioner.

4.The petitioner has given a representation, dated 29.06.2017 to the first respondent to include her name in the panel for promotion to the post of Assistant Director of Agriculture. The first respondent has not considered the said representation. The third respondent issued the communication, dated 16.08.2017 for rectification of pay anomaly of "Junior getting more pay than Senior" and refixation of the petitioner's pay on par with her junior from 01.01.2006 as incorrect and directed to recover the excess payment of Rs.4,52,458/- from the petitioner. Hence, the increment sanctioned as on 1st January every year on par with her junior becomes null and void and hence, the implementation of the punishment from 01.01.2015 to 31.12.2015 also becomes null and void.

5.Pending W.P(MD).No.16524 of 2017, the petitioner filed W.P (MD).No.17175 of 2017 for issuance of Writ of Mandamus, directing the 1st and 2nd respondents to include the name of the petitioner in the Panel for Promotion to the post of Assistant Director of Agriculture approved in G.O.(D).No.221 Agriculture (Veni.1), Department dated 05.09.2017' at the place between Mrs.B.S.Chitra (TNPSC No.6/94-96) and Mrs.A.Chitra (TNPSC No.8/94-96) and promote the petitioner as Assistant Director of Agriculture placing the petitioner's name at Sl.No.75(A) ie. above the 4th respondent - immediate Junior Mrs.A.Chitra (Sl.No.76) in the promotion order No.Pa.A.Pa.2/90387/2017-1, dated 07.09.2017, passed by the 2nd respondent and grant all the service and monetary benefits with effect from 07.09.2017 on par with 4th respondent -Junior Mrs.A.Chitra (Sl/No.76).



6. When the above two Writ Petitions are pending, the third respondent published the panel for promotion on 05.09.2017, consisting persons to be promoted as Assistant Director of Agriculture. The petitioner's name was not included in the panel. Hence, the petitioner filed W.P(MD).No.18431 of 2017 to call for the records relating to the Letter No.14760/AA1/2017-2, dated 05.09.2017 issued by the first respondent and quash the same and consequently, direct the 1st respondent to include the name of the petitioner in the Panel for Promotion to the post of Assistant Director of Agriculture and grant all the service and monetary benefits with effect from 07.09.2017 on par with 4th respondent - Mrs.A.Chitra (Sl.No.76) within a time limit to be fixed by this Court. The petitioner filed W.P(MD).No.5554 of 2018 referring the above facts and prayed for a direction to include her name in the panel for promotion to the post of Assistant Director of Agriculture.

7. The learned counsel for the petitioner submitted that the petitioner has challenged the order of the third respondent, dated 02.06.2017 in W.P(MD).No.16524 of 2017. According to the petitioner, the impugned order of the third respondent, dated 02.06.2017, is arbitrary and illegal. The learned counsel further contended that the punishment imposed on the petitioner was over and the same was completed from 01.04.2015 to 31.03.2016. Subsequent implementation of the punishment from 01.01.2015 to 31.12.2015 and from 01.01.2016 to 31.12.2016 is null and void and illegal. The learned counsel for the petitioner further submitted that this Court by order dated 01.09.2017 in W.M.P(MD).No.1315 of 2017 in W.P(MD).No.16524 of 2017, granted interim direction, directing the respondents to keep one post of Assistant Director of Agriculture vacant, for the petitioner. Hence, he prayed to allow these Writ Petitions.

8. The learned Government Advocate appearing for the respondents 1 to 3 contended that after having duly followed all the procedures, final order was passed by the first respondent against the petitioner vide G.O.(3D).No.24 Agriculture (Veni.2) Department, dated 03.03.2015, by imposing punishment to the effect of stoppage of increment for one year from 01.04.2015 to 31.03.2016 and a sum of Rs.4,100/- was recovered from the June month salary of the petitioner.

9. The contention of the petitioner is that the third respondent by order dated 02.06.2017, *suo motu* refixed the petitioner's salary on par with her Junior Mrs.Sornabharathi, is not correct.

10. On the other hand, the learned Government Advocate contended that the salary was refixed at the request of the petitioner. Her Junior was granted increment on first January of every year. In view of the above, the period of punishment of stoppage of increment from 01.04.2015 to 31.03.2016 was automatically changed to the period of 01.01.2016 to 31.12.2016.



When the panel for promotion to the post of Assistant Director of Agriculture was prepared for the year 2016, the punishment was imposed from 01.01.2016 to 31.12.2016 was in force. Therefore, the petitioner is not entitled to be included in the said panel.

11.The learned Government Advocate further contended that the third respondent by his impugned order dated 02.06.2017, modified the period of punishment with effect from 01.01.2016 to 31.12.2016 based on the re-fixation of salary of the petitioner on par with her Junior by considering the representation of the petitioner, dated 17.06.2015. The order dated 02.06.2017 is valid and legal.

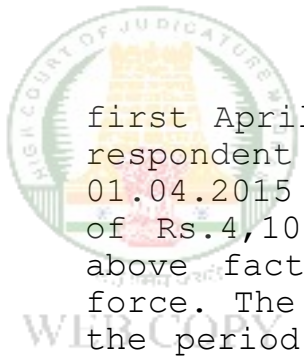
12.As far as W.P(MD).No.17175 of 2017 is concerned, the petitioner is not entitled for the relief sought for in the petition, as the period of punishment was not over as on 01.04.2016. As far as W.P(MD).No.18431 of 2017 is concerned, the petitioner is not entitled to be included in the panel for the year 2016, published on 05.09.2017, as she is not eligible to be promoted, since already the punishment period was imposed. As far as W.P(MD).No.5554 of 2018 is concerned, already the panel was prepared and 149 eligible Agricultural Officers for promotion to the post of Assistant Director of Agriculture were already promoted and 54 Agricultural Officers are awaiting for the promotion order. Only after 54 Agricultural Officers are promoted, again, new panel will be prepared. The petitioner gave representation, dated 06.06.2017, to the third respondent, requesting to settle and repay the total excess amount paid to her in a single payment and further, requested the Authority for inclusion of her name in the promotion panel, dated 01.04.2016 and the same was referred to the first respondent and the first respondent by letter, dated 14.07.2017, has clarified that there is no provision in the rule to cancel pay anomaly proceedings already issued and effected. Hence, he prayed for dismissal of these Writ Petitions.

13.The petitioner in reply, filed a rejoinder affidavit and denied all the averments in the counter affidavit and contentions of the learned Government Advocate.

14.Heard Mr.A.Thirumurthy, learned counsel appearing for the petitioner and Mr.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 to 3.

15.From the materials on records, it is seen that for certain misconducts, the disciplinary proceedings were initiated against the petitioner and after conclusion of the disciplinary proceedings, the petitioner was imposed the punishment of stoppage of increment from 01.04.2015 to 31.03.2016 and recovered a sum of Rs.4,100/- from the salary of the petitioner for the month of June 2015.

16.It is an admitted case of the petitioner as well as the respondents that the increment payable to the petitioner comes on



first April of every year. In view of the said position, the third respondent implemented the punishment of stoppage of increment from 01.04.2015 to 31.03.2016. The third respondent also recovered a sum of Rs.4,100/- from June month salary of the petitioner. From the above facts, as on 01.04.2016, there was no punishment was in force. The punishment imposed on the petitioner was implemented and the period of punishment was over on 31.03.2016. According to the petitioner, the third respondent *suo motu* revised her pay, by his proceedings dated 09.02.2016.

17. On the other hand, it is the case of the third respondent that the salary of the petitioner's pay was revised only based on the representation of the petitioner, dated 17.06.2015. Whether the salary of the petitioner was revised on her representation, dated 17.06.2015 or *suo motu* revised is not an issue in the above Writ Petitions. She has not challenged the said order. The respondents contended that in view of the such revision, the increments payable to the petitioner became due on first January of every year on par with her Junior.

18. The respondents have not explained as to why the increment was given to Junior of the petitioner on first January of every year, while the other employees of the third respondent are granted increment on first April of every year. Further, the respondents have admitted in the counter affidavit that the annual increment of the petitioner falls due on first April of every year. The punishment of stoppage of increment by order, dated 03.03.2015, was implemented and given effect from 01.04.2015 to 31.03.2016. After having implemented the said punishment during the said period, the respondents are not entitled to revise the date of punishment from 01.01.2015 to 31.12.2015 and subsequently, from 01.01.2016 to 31.12.2016. The respondents have not given any notice to the petitioner and has not given any opportunity to the petitioner to submit her objection for modifying the date of implementing the punishment on two occasions. The reason given by the respondent for refixing the date of punishment is not valid and is not acceptable. Having implemented the punishment of stoppage of increment from 01.04.2015 to 31.03.2016, the respondents are not entitled to again implement the punishment or modify the date of punishment twice. Hence, the order of the third respondent, dated 02.06.2017, is arbitrary and illegal and it is liable to be set aside. Accordingly, it is set aside and **W.P(MD).No.16524 of 2017** is allowed as prayed for. No costs.

19. The petitioner is entitled to be promoted to the post of Assistant Director of Agriculture, from the date when her immediate Junior, A.Chitra, 4th respondent was promoted and the petitioner is entitled to all the monitory benefits. This Court by order dated 01.09.2017 made in W.M.P(MD).No.13159 of 2017 in W.P(MD).No.16524 of 2017 granted interim direction, directing the respondents to keep



one post of Assistant Director of Agriculture vacant for the petitioner. Therefore, there will not be any impediment for the respondents to promote the petitioner to the post of Assistant Director of Agriculture. In view of the above facts and circumstances of the case, W.P(MD).No.17175 of 2017 is allowed. No costs.

20. In view of the order passed in W.P(MD).Nos.16524 and 17175 of 2017, no further order is necessary in W.P(MD).No.18431 of 2017 and W.P(MD).No.5554 of 2018. Hence, the said Writ petitions are closed. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

msa

To

1. The Agricultural Production Commissioner
and Secretary to Government
State of Tamil Nadu
Agricultural Department
Secretariat
Chennai 600 009

2. The Director of Agriculture
Chepauk
Chennai 600 005

3. The Joint Director of Agriculture
Melakanmoi Street
Tallakulam
Madurai 625 002

+2 CC to Mr.A.THIRUMURTHY, Advocate (SR-93488[F] dated 22/10/2019)
+1.CC. To Spl.Govt.Pleader , Advocate in SR No.94070

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