

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.11.2020**

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.15001 of 2013

P.Chandrasekaran

... Petitioner

Vs

1. The Agricultural Production Commissioner
and Secretary to the Government,
Agriculture Department (AA1),
Fort St. George,
Chennai – 600 009.

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

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records relating to the 1st respondent proceedings made in letter (MS) No.208, dated 10.11.2011 to quash the same and consequently direct the respondents to revise and re-fix the pay of Rs.17,800/- with effect from 1.4.2002 and other consequential fixation and arrears thereto, including revision of pension and other pensionary benefits.

For Petitioner : Mr.S.Sivakumar
for M/s.Thanjai P.N.Chezhan

For Respondents : Mr.A.N.Thambidurai
Spl. Govt. Pleader

ORDER

Petitioner has come up with this Writ Petition seeking to quash the order dated 10.11.2011 passed by the 1st Respondent in Letter (MS) No.208, and for a consequential direction to the Respondents to revise and re-fix the pay of Rs.17,800/- with effect from 01.04.2002 and other consequential fixation and arrears thereto, including revision of pension and other pensionary benefits.

2. According to the Petitioner, he was appointed as Agricultural Officer on 17.09.1970 in the Agriculture Department under Tamil Nadu Agricultural Extension Service by Tamil Nadu State Public Service Commission. He was deputed to Tamil Nadu Co-operative Oil Seeds Federation Board (shortly called as TANCOF) as Project Officer. While so, he was selected on merits by way of direct recruitment as Deputy General Manager (DGM) and he joined duty in the said post on 17.11.1989, which is equivalent to the cadre of Additional Director of Agriculture.

3. Later, the Government transferred the Petitioner back to the Department of Agriculture as Deputy General Manager in the cadre of Additional Director of Agriculture and he joined in the Department of Agriculture on 01.04.2002 with pay protection. He was holding four posts of Additional Director of Agriculture for a period of four years till 31.03.2006, and reached the age of superannuation on 31.03.2006.

4. As a mistake occurred in pay fixation, the Petitioner addressed to the Government as regards rectification of pay, to which, the Government, in its Letter dated 16.10.2003, issued orders fixing the pay in the post of Deputy General Manager, through G.O.Ms.No.142, dated 04.06.2002. As a mistake had crept in pay fixation, the Petitioner incurred a loss to the tune of Rs.4,000/- per month. On the basis of the Petitioner's request, the 1st Respondent directed fixation of Petitioner's pay with effect from 04.06.2002, with other admissible allowances. However, the Petitioner's claim was rejected vide letter dated 04.04.2006. Challenging the same, the Petitioner filed W.P.No.10061 of 2008 and this Court, by an order dated 13.06.2011, set aside the same and remitted the matter to the 1st Respondent to take a decision afresh, based on the proposals sent by the 2nd Respondent in regard to the appropriate pay fixation as had been proposed.

5. It is the case of the Petitioner that, the 1st Respondent, without taking into account the observation made in the order passed by this Court in W.P.No.10061 of 2008 and also without reference to the proposal to the effect that, the Petitioner is entitled for appropriate fixation as sought for by him, has chosen to reject his claim vide Letter dated 10.11.2011. Aggrieved by the same, the Petitioner has come up with the present Writ Petition.

6. Learned counsel for the Petitioner submitted that, the last drawn pay of the Petitioner was Rs.18,600/- at the time of transfer. He argued that, the Petitioner's pay had been failed to be protected, despite the Government holding that, the Petitioner and other staff are of permanent cadre. In any event, according to the learned counsel, failure to consider the same has resulted in infraction of the protection enshrined under Fundamental Rules. Hence, the impugned order is *non est* in law.

7. On the other hand, learned Special Government Pleader submitted that, the post of Deputy General Manager in TANCOP is equivalent to the cadre of Additional Director of Agriculture in the Department of Agriculture. Based on the information given by the Petitioner that, he was drawing the basic pay of Rs.17,800/- as on 03.06.2002, the then Commissioner of Agriculture sent a proposal to the Government to fix his pay in the post of Additional Director of Agriculture as Rs.17,800/- in the pay scale of Rs.15,000-400-18,600/-. The proposal was rejected by the Government and his basic pay was fixed at Rs.15,000/- at the minimum scale of pay of Rs.15,000-400-18,600/- with effect from 04.06.2002 vide Government. Letter No.95, Agriculture (AA1), dated 04.04.2006. Hence, according to the learned counsel, the claim of the Petitioner is unsustainable.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is seen that, the Petitioner was initially appointed as Agricultural Officer on 17.09.1970 in the Agriculture Department under Tamil Nadu Agricultural Extension Service and thereafter, he was deputed to TANCOF as Project Officer. In the said Department, he was recruited on merits as Deputy General Manager (DGM) and he joined duty in the said post on 17.11.1989, which is equivalent to the cadre of Additional Director of Agriculture. It is the stand of the Respondents that, the employees of TANCOF should have been retrenched subsequent to its winding up and that, they are not eligible for absorption in Government Departments. However, it is seen that, the Government has taken a sympathetic view and orders were issued in G.O.Ms.No.142, Agriculture (OS) Department, dated 04.06.2002, that, the staff of TANCOF inclusive of the Petitioner herein, be absorbed in the Department of Agriculture and be treated as Government servants w.e.f. 01.04.2002 and pay protection has also to be given to them.

10. When there is a specific Government Order vide G.O.Ms.No.142, Agriculture (OS) Department, dated 04.06.2002, ordering absorption of the Petitioner herein in the Department of Agriculture w.e.f. 01.04.2002 with pay protection, **the impugned order dated 10.11.2011 passed by the 1st Respondent is liable to be set aside and it is accordingly quashed.**

Consequently, Respondents are directed to re-fix the Petitioner's basic pay at Rs.17,800/- with effect from 01.04.2002 and pay the arrears of the same, including pensionary benefits, within a period of **twelve (12) weeks from the date of receipt of a copy of this order.**

The Writ Petition is allowed with the above direction. No costs.

30.11.2020

Index : Yes / No

Speaking Order : Yes / No

(vsi2/aeb)

To:

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and Secretary to the Government,
Agriculture Department (AA1),
Fort St. George,
Chennai – 600 009.
2. The Commissioner of Agriculture,
Chepauk,
Chennai – 600 005.

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M.DHANDAPANI, J.

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