

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.5352 of 2009

T.Vincent

.. Petitioner

vs.

1. The Secretary,
State of Tamil Nadu,
Rep. by Agriculture Production Commissioner
and Principal Secretary,
Agricultural Department, Fort St. George,
Chennai-600 009.
2. The Secretary to Government,
Department of Personnel and
Administrative Reforms,
Fort St. George,
Chennai-600 009.
3. The Director of Agriculture,
Chepauk,
Chennai-600 005.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the concerned records relating to the letter No.38709/vn-4/2007-1, dated 15.12.2008, passed by the 1st respondent herein and quash the same and consequently direct the 3rd respondent to fix petitioner's seniority in the grade Junior Assistant based on the date of his initial appointment i.e. 16.02.1970 and grant on consequential benefits like revision of seniority, revision of pay, promotion of higher grades and monitory and other service benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.G.K.Muthukumar, Spl. Govt. Pleader

O R D E R

I heard Mr.S.Sivakumar, the learned counsel for the Petitioner and Mr.G.K.Muthukumar, the learned Special Government Pleader for the Respondents.

2. The Petitioner was selected by the Tamil Nadu Public Service Commission [TNPSC] in the year 1969 and appointed as a Junior Assistant in the Agriculture Department on 16.02.1970. Upon successful completion of probation, he was promoted as an Assistant on 30.04.1977. It appears that he was reverted as a Junior Assistant on 30.04.1977, and he requested for a transfer to the Revenue Department. Based on such request, he was transferred to the Tanjore Revenue Unit on 02.05.1977. Thereafter, it appears that upon closure of check posts, he was ousted from service on 30.12.1977. Accordingly, he approached the TNPSC and was reinstated in the Agriculture Department on 17.05.1978 as a Junior Assistant. In light of the fact that his seniority was fixed only from the date on which he entered service in the Revenue Unit, i.e. on 02.05.1977, he submitted several representations to the Respondent to fix his seniority based on the date of his initial appointment, i.e. 16.02.1970. Eventually, by impugned order dated 15.12.2008, his representations were rejected and his request for re-fixation of seniority was held to be untenable. The present writ petition was filed in these facts and circumstances.

3. The learned counsel for the Petitioner relied largely on G.O.Ms.No.292, P&AR Department dated 02.04.1987 (G.O.Ms.No.292). He points out that, earlier, G.O.Ms.No.648, P&AR Department, dated 25.06.1985 (G.O.Ms.No.648), had been issued with regard to the re-fixation of seniority of persons who are transferred from one department of the Government to another for no fault of theirs on account of non-availability of posts in the parent department. In view of the lack of clarity in G.O.Ms.No.648, he submits that G.O.Ms.No.292 was issued. By referring to the last paragraph of G.O.Ms.No.292, he contends that this G.O. applies to all employees who are transferred from one department to another on account of non-availability of vacancies. In such event, their seniority is required to be fixed with reference to the date of joining the parent department in which they were originally working. According to the learned counsel, the Petitioner is entitled to the fixation of seniority from the date of his appointment in the Agriculture Department on the basis of G.O.Ms.No.292. In this connection, he also points out that a co-employee of the Petitioner in the Agriculture Department, namely, M.V.Rajamani, who was similarly shifted from one department to another was provided the benefit of fixation of seniority in accordance with G.O.Ms.No.292. Consequently, he

contends that the impugned order is liable to be interfered with inasmuch as the authority failed to apply G.O.Ms.No.292.

4. On the contrary, the learned Special Government Pleader submits that the benefit of G.O.Ms.No.292 would be available only to employees who are transferred from one department to another on account of non-availability of posts in the original department. By drawing reference to paragraph 5 of the affidavit in support of the writ petition, he contends that the admitted position is that the Petitioner requested for a transfer from the Agriculture Department to the Revenue Department. He also points out that such transfer had been granted after the TNPSC gave consent vide letter dated 30.09.1976 on condition that the Petitioner foregoes his seniority and the applicable transfer allowances. In these circumstances, he submits that the Petitioner is not entitled to the benefit of G.O.Ms.No.292. Instead, he points out that the seniority of the Petitioner was fixed based on the date of joining in the Revenue Department, namely, 02.05.1977, as per the directions and instructions in G.O.Ms.No.648 and G.O.Ms.No.292.

5. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

6. The admitted position, in this case, is that the Petitioner was originally appointed in the Agriculture Department on 16.02.1970. Upon request, he was transferred to the Revenue Department on 02.05.1977. Thus, it is evident that the Petitioner was not transferred from the Agriculture Department to the Revenue Department on account of the non-availability of the posts in the Agricultural Department. His subsequent reinstatement in the Agriculture Department appears to be on account of closure of the check post. According to the learned counsel for the Petitioner, he is, therefore, entitled to the fixation of seniority with reference to his date of original appointment in the Agriculture Department on 16.02.1970. Upon closely examining G.O.Ms.No.292, I am of the view that the said G.O. applies to cases wherein an employee is transferred from the one department to another on account of non-availability of vacancies and not to a case wherein a transfer is requested. As such, G.O.Ms.No.292 would not apply as regards the transfer of the Petitioner from the Agriculture Department to the Revenue Department. In the case at hand, the Government has categorically stated in unnumbered paragraph 5 of the counter affidavit that the Petitioner's seniority had been fixed from the date of joining in the Revenue Department, i.e. 02.05.1977. Therefore, even if G.O.Ms.No.292 is applied, the seniority of the Petitioner can only be fixed with reference to the date of his joining in the Revenue Department inasmuch as

that transfer was involuntary and was occasioned by non-availability of posts in the Revenue Department. This is precisely what was done in this case.

7. For the reasons stated above, I find that the Petitioner has failed to make out a case to quash the impugned order or for the grant of any relief. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

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State of Tamil Nadu,
Rep. by Agriculture Production Commissioner
and Principal Secretary,
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3. The Director of Agriculture,
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+1cc to The Government Pleader, SR40741

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