

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30922 of 2013

M.Muthukumar

... Petitioner

Vs.

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

2.The Additional Director of
Agriculture, (Personnel)
Chepauk,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Anna Nagar,
Tirunelveli.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the 2nd respondent in proceeding Ka.Pa.Ni.2/153557/2012 dated 24.10.2013 and quash the same and consequently direct the respondents to allow the petitioner to continue in the promotional post of Assistant Seed Officer with all service benefits.

For Petitioner : Mr.R.Prem Narayan

For Respondent : Mr.S.Thangavel
Special Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the second respondent in proceedings Ka.Pa.Ni.2/153557/2012, dated 24.10.2013 and to quash the same and to consequently direct the respondents to allow the petitioner to continue in the promotional post of Assistant Seed Officer with all service benefits.

2.The case of the petitioner is that the petitioner was appointed as Assistant Agriculture Officer during August 1989. The petitioner was due for promotion to the post of Assistant Seed Officer in the panel of the year 2009 and his name was included in the panel. The petitioner submitted his application relinquishing his promotion to the post of Assistant Seed Officer and the first respondent accepted his application and issued orders in proceedings dated 24.10.2009 stating that his promotion will be relinquished for three years from 18.08.2009.

3.It is the further case of the petitioner that after completion of three years, the petitioner's name was included in the panel for promotion and the petitioner was promoted to the post of Assistant Seed Officer vide proceedings dated 24.06.2013. While being so, to the petitioner's shock and surprise, the impugned order was passed by the second respondent stating that the petitioner's name was removed from the promotion panel and the pay granted to the petitioner was also to be recovered. Aggrieved by the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner would submit that without issuing any show cause notice and without giving any opportunity to the petitioner, the impugned order came to be passed. Hence, it is in clear violation of principles of natural justice.

5.The learned counsel appearing for the petitioner would further submit that the petitioner submitted his application relinquishing his promotion to the post of Assistant Seed Officer and the first respondent accepted his application and issued orders in proceedings dated 24.10.2009 stating that his promotion will be relinquished for

three years from 18.08.2009 and after completion of the said three years period only the petitioner's name was included in the panel for promotion and the petitioner was promoted to the post of Assistant Seed Officer vide proceedings dated 24.06.2013. However, without considering all these aspects the impugned order came to be passed, which is un-sustainable.

6.The learned counsel appearing for the petitioner would further submit that vide order dated 14.11.2013, this Court has granted an order of interim stay. Thereafter, during the pendency of this writ petition, the petitioner was given further promotion as Deputy Agriculture Officer.

7.The learned Special Government Pleader would submit that the petitioner submitted his application relinquishing his promotion to the post of Assistant Seed Officer on 18.08.2009

and the same was accepted by the appointing Authority. He would further submit that as per the guidelines and instructions given in G.O.Ms.No.173, Personnel and Administrative Reforms (Personnel-S) Department, dated 15.03.1988, the temporarily relinquishment come into effect from the date of offer by the employee if the same has been accepted by the appropriate Authority.

8.The learned Special Government Pleader would further submit that the petitioner's relinquishment for promotion expired only on 17.08.2012, however, the crucial date for the panel is on 01.04.2012. Hence, the petitioner's name was erroneously included in the panel for promotion to the post of Assistant Seed Officer.

9.The learned Special Government Pleader would further submit that as per G.O.Ms.No.1435, Public (Service-A) Department, dated 19.08.1964, an order or notification of promotion or appointment of a Government servant in an officiating capacity to a higher post should be cancelled as soon as it is brought to the notice of the appointing Authority that such a promotion or appointment has resulted from an actual error and the Government servant concerned should immediately on such cancellation be brought to the position he would have held but for the incorrect order of promotion or appointment.

10.The learned Special Government Pleader would further submit that in the present case, there is no need to issue show cause notice to the petitioner and the petitioner was rightly reverted to the post of Assistant Agriculture Officer since the petitioner's relinquishment for promotion expired only on 17.08.2012, whereas, the crucial date for the panel for promotion is on 01.04.2012.

11.The short issue involved in the present case is whether relinquishment come into effect from the date of offer by the employee or after the acceptance letter given by the respondents.

12.As per the guidelines and instructions given in G.O.Ms.No.173, Personnel and Administrative Reforms (Personnel-S) Department, dated 15.03.1988, the temporarily relinquishment come into effect from the date of offer by the employee if the same has been accepted by the appropriate Authority.

13.In the present case, the petitioner's relinquishment for promotion came into effect from the date of offer by the petitioner i.e., on 18.08.2009 and it expired on 17.08.2012, however, the crucial date for the panel for the promotional post is on 01.04.2012.

14.Perusal of records disclose that the petitioner's name was erroneously included in the panel for promotion to the post of Assistant Seed Officer. As per G.O.Ms.No.1435, Public (Service-A) Department, dated 19.08.1964, an order or notification of promotion or appointment of a Government servant in an officiating capacity to a higher post should be cancelled as soon as it is brought to the notice of the appointing Authority that such a promotion or appointment has resulted from an actual error and the Government servant concerned should immediately on such cancellation be brought to the position he would have held but for the incorrect order of promotion or appointment. Therefore, the petitioner was rightly reverted to the post of Assistant Agriculture Officer. Hence, this writ petition is a mis-conceived one.

15.The writ petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

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

2.The Additional Director of
Agriculture, (Personnel)
Chepauk,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Anna Nagar,
Tirunelveli.

+1cc to Mr.R.Prem Narayan, Advocate SR.No.25703

+1cc to Government Pleader SR.No.25871

W.P.No.30922 of 2013

VS (CO)
GMY (28/08/2020)