



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.9969 of 2010

and

M.P. (MD) .No.1 of 2010

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A.Rangasamy

.. Petitioner

Vs.

1.Government of Tamil Nadu,
Represented by Secretary to Government,
Handlooms, Handicrafts, Textiles & Khadi Department,
Secretariat,
Chennai- 600 009.

2.The Director of Sericulture,
Salem.

3.V.Asokan
Superintendent,
Officer of the Assistant Director of Sericulture,
Salem.

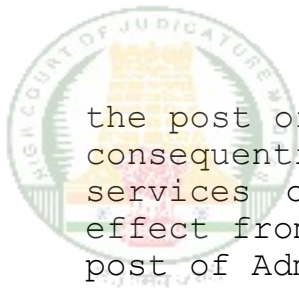
.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the order in Pro.No.31536/Pa.Aa.3/2007 dated 04.12.2008 of the second respondent to the limited extent of the date of effect of regularisation of service of the petitioner in the post of Superintendent is concerned alone, to quash the same and to issue consequential directions to the respondents 1 and 2 to regularise the services of the petitioner in the post of Superintendent w.e.f. 13.07.2006 and on that basis to include his name in the Panel for promotion as Administrative Officer for the year 2010-11 and promote him as such with retrospective effect from date of promotion of his immediate junior with consequential benefits and to grant such other relief.

For Petitioner	: Mr.M.Ravi
For Respondents	: Mr.P.Mahendran
	Additional Government Pleader
	for R1 and R2
	V.Meenakshi Sundaram
	For R3

ORDER

The relief sought for in the present writ petition is to call for the records of the order passed by the second respondent in proceedings dated 04.12.2008 to the limited extent of the date of effect of the regularisation of the services of the petitioner in



the post of Superintendent is concerned and quash the same and issue consequential direction to the respondents 1 and 2 to regularise the services of the petitioner in the post of Superintendent with effect from 13.07.2006 and accordingly promote the petitioner to the post of Administrative Officer in the panel of the year 2010-2011.

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2. The writ petitioner was appointed as Junior Assistant-cum-Typist in Sericulture Department on 10.03.1983 and promoted to the post of Assistant on 01.09.1986 and later on promoted as Superintendent on 06.06.2008. The petitioner states that he is fully qualified for promotion to the post of Administrative Officer and the feeder category for the said post is Superintendent. However, the grievance of the petitioner is that his junior was promoted to the post of Administrative Officer and his promotion was deferred on account of the fact that he joined as a Superintendent on 06.06.2008.

3. The petitioner was facing Disciplinary Proceedings on earlier occasion and there was a delay in granting promotion on account of the currency of punishment. Thus, the writ petitioner was promoted to the post of Superintendent only on 06.06.2008. The said promotion was not challenged during the relevant point of time. Contrarily, the present writ petition is filed seeking regularisation of the services in the post of Superintendent with effect from 13.07.2006. In this regard, the Government filed a counter setting out the entire reasons in paragraphs 7, 8, 9 and 10 which are all extracted hereunder:

" 7. Regarding the averments made in para 4 of the affidavit, it is submitted that, the seniority list of Assistants published by the 2nd respondent in Proc.No.36310/E3/98, dated 16.10.1999 and the petitioner's name had been placed at Serial No.40, and the 3rd respondent at Serial No.43. At the time of preparation of panel for the post of Superintendent, for the year 2006-07, the petitioner's name was considered for inclusion in the panel. But due to currency of punishments, his name was not included in the panel. The name of 3rd respondent was included in the above panel and he was joined as Superintendent on 13.07.2006 F.N. Therefore, the petitioner had appealed to Government and Government issued orders on his appeal vide its order No.25, HHT&K Department, dated 13.03.2008 and order No.51, HHT&K Department, dated 28.04.2008 and directing to include the petitioner's name in the panel for the year 2006-07 and promote him as Superintendent, since no punishment was pending against him on the crucial date, ie., 15.03.2006. As per above orders, the petitioner's name was included and the 3rd respondent's name was deleted in the revised panel for the year 2006-07 and the petitioner



was promoted as Superintendent, vide proc.No.20745/DSE3/2006-1, dated 31.05.2008 of 2nd respondent and he joined as Superintendent on 06.06.2008 F.N. The 3rd respondent was reverted as Assistant from the post of Superintendent with effect from 03.06.2008 and again promoted as Superintendent vide proc.No.2301/E3/2007, dated 19.06.2008 of 2nd respondent and he joined as Superintendent on 25.06.2008.

8.Regarding the averments made in para5 of the affidavit, it is submitted that though the revised panel for the post of Superintendent, for the year 2006-07 was issued in favour of the petitioner, the petitioner joined as Superintendent on 06.06.2008 only. As per Rule No.23(a)(i) of Tamil Nadu State and Subordinate Service Rules, his services were regularised with effect from 06.06.2008 F.N. The petitioner has requested to give retrospectiv effect to his promotion in the post of Superintendent with effect from 13.07.2006, on par with his junior (Seniority NO.43 in the cadre of Assistant), who joined duty as Superintendent on 13.07.2006 as provided in G.O.Ms.No.985, P&AR Department, dated 19.09.1981 and G.O.Ms.No.977, P&AR Department, dated 06.10.1986. In the above Government orders cited, Government have issued instructions, about the pay fixation of the Government employees, who were overlooked for promotion but subsequently promoted restoring their original seniority can be fixed with the pay of their immediate junior, who have already been acting in the promoted posts. Therefore as per the above Government orders cited the pay of the senior, who was overlooked for inclusion in the panel for promotion, may be fixed on par with his junior, from the date of assumption of charge in the higher position on par with the pay of his junior. The petitioner's representation dated 16.04.2010 (addressed to the 1st respondent) had already been forwarded for decision of the 1st respondent. Representation dated 05.06.2009 of the petitioner is under consideration.

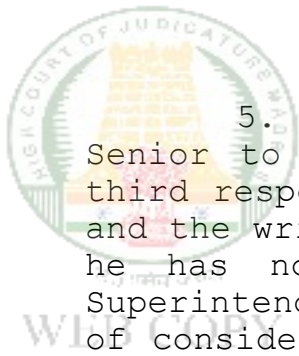
9. Regarding the averments made in para 6 of the affidavit, it is submitted that, the petitioner has joined in the post of Superintendent on 6.6.2008 F.N. Because of shortfall in qualifying service, the petitioner's name was not included in the panel for the post of Administrative Officer for the year 2010-11. Under Rule 5 (iii) of the Ad-hoc Rules prescribed in G.O.Ms.No.258, HHT&K Department, dated 6.8.1990,



minimum of 3 years of service is required in the post of Superintendent for promotion to the post of Administrative Officer. Government have already clarified in its letter No:33430/Per-S/89-1, dated 25.4.1989(P&AR Department) that one should fulfil all the conditions necessary to qualify for promotion, as if it were a regular promotion, in respect of their seniority. Even though the petitioner is senior in the cadre of Assistant than the 3rd respondent, ie., Thiru.V.Asokan, the petitioner did not complete the 3 years of service in the post of Superintendent required for promotion to the post of Administrative Officer and his name was not included in the panel.

10.Regarding the averments made in para 7 of the affidavit, it is submitted that, the appeal dated 5.7.2010 of the petitioner received by the 2nd respondent was examined and a reply has been sent to him vide letter NO.13156/E1/10-1 dated 24.7.2010 of 2nd respondent, stating that his request for inclusion of his name in the panel for the post of Administrative Officer for the year 2010-11 cannot be complied with, as he has not completed the qualifying service in the post of Superintendent required for promotion, as per Ad-hoc Rules prescribed in G.O.Ms.No.258, HHT&K Department, dated 6.8.1990."

4. The above contentions of the Government reveals that the writ petitioner was promoted to the post of Superintendent in the panel of the year 2006-2007. It is further categorically stated that the Seniority List of Assistants were published by the second respondent in proceeding dated 16.10.1999 and the petitioner was placed in Sl.No.40. The third respondent was in Sl.No.43. Thus, the third respondent in the post of Assistant was junior to the writ petitioner. However, at the time of preparation of panel for the post of Superintendent for the year 2006-2007, the petitioner's name was considered for inclusion, but due to the currency of punishment during the relevant time, his name was not included in the panel. The name of the third respondent was included in the said panel and the third respondent joined as Superintendent on 13.07.2006. However, the writ petitioner was promoted to the post of Superintendent only on 06.06.2008. Thus, in the post of Superintendent, the third respondent became senior. The name of the writ petitioner was deferred in the panel of the year 2006-2007 for promotion to the post of Superintendent on account of the currency of punishment. The writ petitioner was unable to establish that the punishment was set aside or he was exonerated from the charges. Thus, his name was rightly deferred in the panel of the year 2006-2007. Subsequently, he was considered in the next year panel and was promoted to the post of Superintendent in the year 2008.



5. In view of the fact that the third respondent became Senior to the writ petitioner in the post of Superintendent, the third respondent was promoted to the post of Administrative Officer and the writ petitioner was not promoted on account of the fact that he has not completed three years of service in the post of Superintendent, which is a requisite qualification for the purpose of considering his name for inclusion in the panel. This being the factum established, the retrospective regularisation of services in the post of Superintendent cannot be granted as the writ petitioner was suffering currency of punishment during the relevant point of time and his promotion in the post of Superintendent was rightly deferred and the third respondent became Senior to the writ petitioner in the post of Superintendent.

6. Accordingly, the writ petitioner has not established any acceptable ground for the purpose of granting the relief as such sought for in the present writ petition. Thus, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

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/ /2020

Sub Assistant Registrar(CS)

PJL
To

1. The Secretary to Government,
Government of Tamil Nadu,
Handlooms, Handicrafts, Textiles & Khadi Department,
Secretariat, Chennai- 600 009.

2.The Director of Sericulture,
Salem.

3.Superintendent,
Officer of the Assistant Director of Sericulture,
Salem.

+1 CC to M/s.SPL GP (SR-19595[F] dated 09/10/2020)

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-19668[F] dated 09/10/2020

W.P. (MD)No.9969 of 2010
08.10.2020

SRK(CO)
KB(29.10.2020) 5P 6C

<https://hcservices.ecourts.gov.in/hcservices/>