



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD)No.1163 of 2020

M.Ganesan

... Petitioner

Vs.

1.The Agricultural Production Commissioner and
Principal Secretary to Government ,
Department of Agriculture,
Secretariat, Chennai-600 009.

2.The Accountant General (Accounts & Entitlement),
No.361, Anna Salai,
Teynampet, Chennai-600 018.

3.The Director of Agriculture,
Ezhilagam, Chepauk,
Chennai-600 005.

4.The Deputy Director of Horticulture,
Collectorate Complex,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, to direct the third and fourth respondents i.e., the Director of Agriculture, Chennai and the Deputy Director of Horticulture, Dindigul to get ratification of the Government for fixing the petitioner's pay on par with his junior as per proceedings No.A1/1752/15 dated 04.12.2018 of the Deputy Director of Horticulture, Dindigul and to resubmit the proposals to the Accountant General, Chennai within a specified time frame and on receipt of the revised proposals, the Accountant General, Chennai shall arrange to disburse the revised pensionary benefits, within a specified time frame, that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For R-1, R-3 and R-4 : Mr.M.Jeyakumar,
Additional Government Pleader

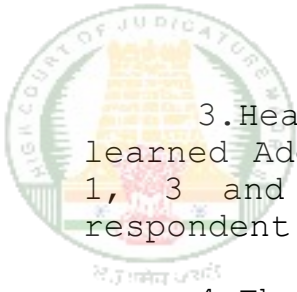
For R-2 : Mr.P.Gunasekaran



O R D E R

The petitioner seeks a writ of mandamus to direct the third and fourth respondents i.e., the Director of Agriculture, Chennai and the Deputy Director of Horticulture, Dindigul to get ratification of the Government for fixing the petitioner's pay on par with his junior as per proceedings No.A1/1752/15 dated 04.12.2018 of the Deputy Director of Horticulture, Dindigul and to resubmit the proposals to the Accountant General, Chennai within a specified time frame and on receipt of the revised proposals, the Accountant General, Chennai shall arrange to disburse the revised pensionary benefits, within a specified time frame.

2.The case of the petitioner is that he was lastly serving as Deputy Horticulture Officer under the control of the Deputy Director of Horticulture, Dindigul and allowed to retire peacefully on 28.02.2013 on attaining the age of superannuation. Regarding the anomaly of junior getting more pay than seniors crept in the petitioner's case on 01.01.2010 in the post of Deputy Horticulture Officer in the revised scale of pay, the Government in letter No.3062/AA4(2)/2014-5, dated 11.12.2014, clearly accepted that due to restructuring at the department, the seniors were directly promoted as Deputy Horticultural Officers, which is purely on administrative grounds and therefore, the higher quantum of pay benefits accrued by the juniors cannot be denied to the seniors merely on the ground that there is no provision in the Fundamental Rule to rectify this anomaly. The Government also issued orders that there is no objection to refix the pay of seniors in this case in the pay scale of Rs.18,000/-+ Grade pay of Rs.4,700/- with effect from 01.01.2010 and gave direction to the Director of Agriculture, Chennai to rectify the anomalies at his level for the post of Deputy Horticultural Officer under the ambit of Rule 5(2) of Tamil Nadu Revised Scales of Pay Rules, 2009 and such cases need not be referred to Government since the Director of Agriculture, Chennai is the appointing authority to the above said post. Based on the above said orders of the Government, the Director of Agriculture, Chennai in his proceedings in செ.மு.ஆ.எண்.வேஅப1/148245/2015 நாள் 20.07.2018 has refixed the petitioner's scale of pay and directed the Deputy Director of Horticulture, Dindigul to send revised pension proposals to the Accountant General, Chennai. Accordingly, the Deputy Director of Horticulture, Dindigul has also sent revised pension proposals to the Accountant General, Chennai. But the Accountant General, Chennai in his letter No.P07/1/10722907/ADK dated 02.12.2019, returned the proposals stating that after retirement, Government alone is the competent authority for ordering stepping up of pay of senior on par with junior and that the head of the department is not competent to pass such an order. Hence, this writ petition is filed.



3. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1, 3 and 4 and the learned counsel appearing for the fourth respondent and perused the materials available on record.

4. The fact that the petitioner's pay was refixed on par with the juniors as per the order of the 4th respondent dated 04.12.2018, is not in dispute. The grievance of the petitioner is that the second respondent had returned the pension proposals on the ground that the refixation has to be approved by the Government. The said return has been made on 02.12.2019.

5. In view of the same, there will be a direction to the respondents 3 and 4 to comply with the returns by getting ratification from the Government for fixing the petitioner's pay on par with the juniors as per the proceedings of the 4th respondent, dated 04.12.2018, and represent the proposals within a period of twelve weeks from the date of receipt of a copy of this order. On receipt of the proposals, the second respondent shall disburse the pensionary benefits, if the proposals are in order, within a period of eight weeks there from.

6. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar (CS)

smn

To

1. The Agricultural Production Commissioner and
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Department of Agriculture,
Secretariat, Chennai-600 009.

2. The Accountant General (Accounts & Entitlement),
No.361, Anna Salai,
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3. The Director of Agriculture,
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Chennai-600 005.



4.The Deputy Director of Horticulture,
Collectorate Complex,
Dindigul.

+1 CC to M/s.SPL GP (SR-2828[F] dated 24/01/2020)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-3022[F] dated 24/01/2020)

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-2297[F] dated 22/01/2020)

**ORDER MADE IN
W.P. (MD)No.1163 of 2020
22.01.2020**

JMN(14.02.2020) 4P : 8C