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W.P(MD)No.15376 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.01.2020
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.15376 of 2014

and

M.P (MD)No.1 of 2014

V.Govindasamy

... Petitioner

vs.

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

2)The Director,
Agricultural Marketing and Agri Business,
Guindy,
Chennai-600 032.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 08.04.2014 issued in the reference Letter No.30023/VeVi.1/2013-6 and quash the same and direct the respondent to promote the petitioner as Secretary Market Committee with effect from the year 2011-2012.

For Petitioner	: Mr.Veera Kathiravan, Senior Counsel for Mr.K.Muthumalai
For Respondents	: Mr.S.Dhayalan Government Advocate

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 08.04.2014, issued in the reference Letter No.30023/VeVi.1/2013-6 and quash the same and direct the respondents to promote the petitioner as Secretary of the Market Committee with effect from the year 2011-2012.

2.The case of the petitioner is that he joined the service as Supervisor in the Regulated Market, Thuraiyur, Trichy, on 19.06.1987. Later, he was promoted and posted as Superintendent. The post of Superintendent is the feeder category to the post of Secretary of the Market Committee. The seniority followed for the said post is a state-wide seniority, in which, the petitioner stands at serial No.58 for the year 2006-2007. However, Thiru.S.Arumugarajan, who had become Superintendent only in the year

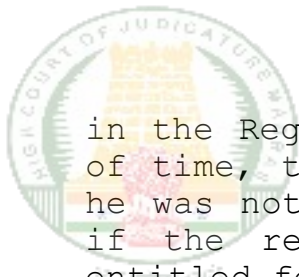


2007-2008 followed by M.Ravi in the year 2008-2009 and Suresh Babu in the year 2010-2011, were promoted as Secretary of the Market Committee. The qualification for appointment to the post of Secretary of the Market Committee, is that a person must have worked in any one or more of the posts of Superintendent of Markets, Inspector of Licensed Premises and Manager in the Tamil Nadu Agricultural Marketing Subordinate Service for a period of not less than five years and should have passed the tests namely, Government Technical Examination in Agriculture in Higher Grade, Account Test for Executive Officers or Account Test for Subordinate Officers, Part I and Part II and Departmental test for Agricultural Marketing Department and should have also successfully completed the Market Secretaries Training Course conducted by the Government of India, Ministry of Rural Reconstruction, Directorate of Marketing and Inspection.

3.As far as the petitioner is concerned, apart from the seniority, he had passed the Account Test for Executive Officer in 1988 as per clause 4(iii)(b) of G.O.Ms.No.476, Agriculture (AM.III) Department, dated 05.07.1989 and completed the Market Secretaries Training Course for 3 months from 01.08.2012 to 31.10.2012 as per Clause 4(iv) of G.O.Ms.No.476. So, it is clear that the petitioner was fully qualified to be considered for promotion to the post of Secretary of the Market Committee on 31.10.2012.

4.It is the further case of the petitioner that the respondents have issued G.O.Ms.No.187, dated 30.08.2010 and relaxed Rule 4 Annexure-II of the Service Rules to four persons namely, M.Nagarajan, V.N.Muthuramalingam, V.Sekar and S.Jeyalakshmi and posted them as Secretary of the Market Committee, even though they had not undergone the training at Hyderabad. Likewise, the Government have issued G.O.No.292, dated 21.12.2012 relaxing Rule 4 Annexure-II of the Service Rules in favour of three persons namely, R.Sureshbabu, M.Ravi and S.Arumugarajan, who had not completed 5 years of service as Superintendent in the regulated market. The Government have also issued G.O.Ms.No.106, dated 03.03.2016 and relaxed Rule 4 Annexure-II of the Service Rules to one R.Devendran who had not completed 5 years of service as Superintendent in the Regulated Market.

5.The grievance of the petitioner is that when for all the above persons, Government Orders have been issued relaxing either the prescription of 5 years of experience or the training course prescribed in the Service Rules, he alone was treated discriminately stating that since he had not completed three months training, he was not considered for promotion. Admittedly, as on 30.10.2012, the petitioner was eligible for the post of Secretary of the Marketing Committee by completing the training at Hyderabad from 01.08.2012 to 31.10.2012, but G.O.Ms.No.292 was issued on 21.12.2012 relaxing the rule prescribing completion of 5 years of service as Superintendent



in the Regulated Market in favour of three persons. At that point of time, the petitioner was fully eligible for the above post, but he was not considered. Therefore, the petitioner would claim that if the respondents have relaxed the rules, he would have been entitled for promotion.

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6.The petitioner would state that at least, he is entitled for promotion from 21.12.2012, the date on which, G.O.Ms.No.292 was issued. Therefore, he filed writ petition in W.P(MD)No.14724 of 2013 and it was stated by the respondents that the petitioner has to file appeal and hence, the petitioner withdrew the said writ petition and accordingly, this Court by order dated 03.09.2013 dismissed the writ petition as withdrawn granting liberty to file appropriate writ petition in respect of continuity of promotion. Accordingly, the petitioner filed appeal dated 21.02.2014 which was rejected by the 1st respondent by impugned order dated 08.04.2014, rejecting the petitioner's claim for promotion to the post of Secretary of the Market committee, against which, this writ petition has been filed.

7.Learned Senior Counsel appearing for the petitioner would submit that when the petitioner was fully qualified and possessed all the qualification on 21.12.2012, his juniors who were not fully qualified, were promoted vide G.O.Ms.No.292 by relaxing 5 years of service as Superintendent in the regulated market and therefore, the learned Senior Counsel would state that the petitioner ought to have been given promotion from the date his immediate juniors were promoted by relaxing the rules or at least from the date when he completed the training. He would further state that considering the prima facie case made out by the petitioner, this Court by order dated 16.09.2014 has passed an interim order stating that any promotion made during the currency of the writ petition, would be subject to further orders to be passed in the writ petition. It is also submitted that on 31.07.2015, the petitioner attained the age of superannuation and even thereafter, on 03.03.2016, the Government by G.O.Ms.No.106, dated 03.03.2016 relaxed the rules prescribing completion of 5 years of service as Superintendent in the Regulated Market in respect of one R.Devendran and granted promotion. Thus, the learned Senior Counsel would pray for notional promotion by setting aside the impugned order.

8.The respondents have filed counter affidavit. Learned Government Advocate appearing for the respondents would state that the petitioner must have successfully completed the Market Secretaries Training Course conducted by the Government of India on the crucial date namely, 1st April of every year, for getting promotion as Market Secretary. When the willingness was called for from the petitioner for undergoing Market Secretary Training at Hyderabad from 01.08.2009 to 31.10.2009, the petitioner was not willing citing his family circumstances and again when willingness



13.Considering the circumstances of the case, this Court by order dated 16.09.2014, has granted interim order stating that any promotion would be subject to the result of the writ petition. It is not disputed that the petitioner on completion of three months training on 31.10.2010, became fully qualified for promotion. It is stated that the petitioner retired from service on 31.07.2015 and even thereafter, relaxation has been given to one R.Devendran who had not completed 5 years of service as Superintendent. Thus, it is clear that relaxation has been given at the whims and fancies of the respondents and therefore, the petitioner is entitled for promotion atleast from 21.12.2012, the day on which his junior was promoted by giving relaxation.

14.In the light of the above discussion, I am inclined to interfere with the impugned order. Accordingly, the order dated 08.04.2014 issued in the reference Letter No.30023/VeVi.1/2013-6, is set aside and since the petitioner retired from service, the respondents are directed to promote the petitioner as Secretary of the Market Committee notionally with effect from 21.12.2012, the day on which his junior R.Sureshbabu was promoted and re-fix the petitioner's pension in the post of Secretary of the Market Committee and pay all the benefits arising thereon and to settle the retirement benefits as if the petitioner retired as Secretary of the Market Committee and pay all the pensionary benefits, arrears of pension in the post of Secretary of the Market Committee with effect from 31.07.2015 within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl side)

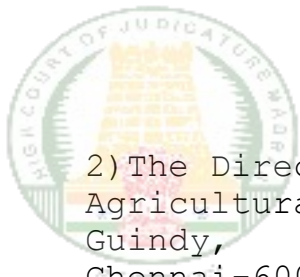
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/ /2020

Sub Assistant Registrar(CS)

To

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



2)The Director,
Agricultural Marketing and Agri Business,
Guindy,
Chennai-600 032.

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+1 CC to SPL GP (SR-2835[F] dated 24/01/2020)

+1 CC to Mr.K.MUTHUMALAI, Advocate (SR-2660[F] dated 23/01/2020)

ORDER MADE IN
W.P (MD) No.15376 of 2014
DATED : 23.01.2020

VB (24.02.2020) 6P 5C