



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10016 of 2010

M.Suthakar Yesudian

...Petitioner

Versus

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

2. The Director of Horticulture and Plantation crops,
Agriculture Complex,
Chepauk, Chennai - 600 005.

...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the orders of the first respondent herein in Letter No.1364/(AA)/2010-3, dated 10.03.2010, quash the same and direct the first respondent herein to promote the petitioner as Joint Director of Horticulture after promoting him as Deputy Director of Horticulture without reference to the pendency of the disciplinary proceedings which were initiated in the year 2000.

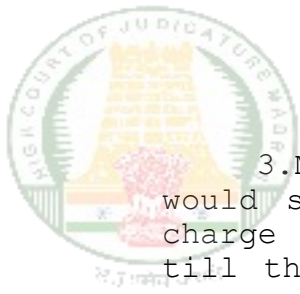
For Petitioner : Mr.S.V.Karthikeyan

For Respondents: Ms.E.Renganayaki,
Additional Government Pleader.

O R D E R

The petitioner, who was working as Assistant Director of Horticulture under the first and second respondents has filed the Writ Petition, challenging the order dated 10.03.2010 passed by the first respondent whereby the request of the petitioner to promote him to the post of Deputy Director of Horticulture with effect from the date of promotion of his Junior was turned down.

2.Heard Mr.S.V.Karthikeyan, learned counsel for the petitioner and Ms.E.Renganayaki, learned Additional Government Pleader appearing for the respondents.



3. Mr. S.V. Karthikeyan, learned counsel for the petitioner would submit that the petitioner was originally issued with a charge memorandum dated 24.10.2000. The same was kept pending till the date of his superannuation and only after the date of superannuation on 21.12.2012, by the Government order in G.O. (3D).No.210, the petitioner was exonerated of the charges and proceedings were dropped. In the meanwhile, yet another charge memorandum was issued to the petitioner on 27.11.2006 and by an order dated 04.02.2010, the punishment of censure was imposed against him. In the meanwhile, the petitioner's immediate Junior one Thiru. G. Mohan has been promoted as Deputy Director of Horticulture, vide G.O.Rt.No.155, Agriculture (AA7) Department, dated 09.05.2006. Therefore, the petitioner is entitled to be promoted as Deputy Director of Horticulture with effect from the said date. However, in the order impugned in the Writ Petition, the first respondent erroneously took into consideration the second charge memorandum dated 27.11.2006, and the punishment of censure imposed and denied the promotion. He would submit that even though it is a matter of fact that the first charge memorandum was pending as on date passing of the impugned order subsequently after passing of the impugned order and filing the Writ Petition by the above mentioned G.O.No.210, dated 21.10.2012, he was exonerated on the charges. Once, he was exonerated from the charge as a natural corollary, his case which was overlooked on 09.05.2006 for the factum of the pendency of the charge memorandum, dated 24.10.2000, has to be remedied and undone and he is entitled to be promoted from the date of promotion of his Junior viz., Thiru.G. Mohan.

4. Per contra, the learned Additional Government Pleader, appearing for the respondents would submit that as on the date of passing of the impugned order, the said charge memorandum was pending, therefore, no exception could be taken to the reasons contained in the impugned order, because, even if the second charge memorandum dated 27.11.2006 is not to be considered, still the previous charge memorandum was pending.

5. I have considered the rival submissions made on behalf of both sides and perused the materials of the case.

6. As far as the impugned order is concerned, it denied the claim for promotion of the petitioner, based on the charge memorandum dated 27.11.2006 and consequential punishment of censure. However, now, as per the written instructions produced by the learned Additional Government Pleader, it is very clear that the petitioner's Junior Thiru. G. Mohan was promoted as Deputy Director of Horticulture by G.O.Rt.No.155, on 09.05.2006 itself. Therefore, as on date when the petitioner's Junior was considered and the petitioner's case was overlooked, the second charge memorandum was not at all issued. By virtue of the Judgment of the Hon'ble Supreme Court of India, in Union of



India etc, Vs. K.V. Janakiraman etc¹, the petitioner's promotion can be passed over/kept in sealed cover only if the departmental proceedings initiated by way of charge memorandum. Only the earlier charge memorandum dated 24.10.2000 which was pending as on date of promotion of the petitioner's Junior can be put against him. Though the respondents were right in passing over the case of the petitioner and overlooking him, because of the said charge memorandum was pending, but, once subsequently by order dated 29.10.2012, the petitioner was exonerated on the said charge, the petitioner thereafter is entitled to be considered for promotion from the date of promotion of his Junior, by opening of the sealed cover if the respondents followed such procedure and even if it is not kept in the sealed cover and his case has to be considered and to be granted promotion with effect from the date of promotion of his Junior.

7. In view of my aforesaid findings and in view of the fact that the petitioner has superannuated from the service, I am inclined to allow the Writ Petition under the following terms:-

i) The impugned order of the first respondent dated 10.03.2010 is set aside;

ii) The respondents are directed to consider the case of the petitioner and to grant him notional promotion as Deputy Director of Horticulture with effect from 09.05.2006;

iii) The respondents are directed to re-fix the last drawn salary of the petitioner accordingly and calculate the retiral benefits and pension;

iv) The petitioner will be entitled to the arrears of retiral benefits and pension, however, without any interest;

v) The petitioner will not be entitled to the arrears of salary from 09.05.2006 i.e., the date of notional promotion and till the date of superannuation.

vi) The respondents are directed to carry out the above exercises within a period of three months from the date of receipt of a copy of this order.

vii) However, there shall be order as to costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

klt

1 1991 AIR 2010 : 1991 SCR (3) 790



To

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

2. The Director of Horticulture and Plantation crops,
Agriculture Complex,
Chepauk, Chennai - 600 005.

+1cc to Mr.S.V.Karthikeyan, Advocate, S.R.No.27712

+1cc to the Government Pleader, S.R.No.28386

W.P.No.10016 of 2010

VBM(CO)
RGA(06/05/2022)