



W.A.(MD)Nos.1261 and 1262 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)Nos.1261 and 1262 of 2020
and
C.M.P.(MD)Nos.7198, 7199, 7396 of 2020
and 6214 of 2022

W.A(MD)No.1261 of 2020:

1.The State of Tamil Nadu,
represented by its Agricultural Production
Commissioner and Secretary to Government,
Agricultural Department,
Secretariat, Chennai – 600 009.

2.The Director of Agriculture,
Chepauk, Chennai – 600 005.

3.The Joint Director of Agriculture,
Melakanmoi Street,
Tallakulam,
Madurai – 625 002.

Vs.

... Appellants

T.Mary Irine Agnitta

... Respondent



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Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.16524 of 2017, dated 22.10.2019.

For Appellants	:Mr.J.Ashok Additional Government Pleader
For Respondent	:Mr.R.Aravind Raj

W.A(MD)No.1262 of 2020:

1.The State of Tamil Nadu,
represented by its Agricultural Production
Commissioner and Secretary to Government,
Agricultural Department,
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2.The Director of Agriculture,
Chepauk, Chennai – 600 005.

3.The Joint Director of Agriculture,
Melakanmoi Street,
Tallakulam,
Madurai – 625 002.

... Appellants

Vs.

1.T.Mary Irine Agnitta

2.A.Chitra,
Assistant Director of Agriculture,
Kattumannarkoil,
Cuddalore District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.17175 of 2017, dated 22.10.2019.



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For Appellants :Mr.J.Ashok
Additional Government Pleader
For R1 :Mr.R.Aravind Raj

COMMON JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The Writ Appeal in W.A(MD)No.1261 of 2020 is filed challenging the order passed in Writ Petition W.P.(MD)No.16524 of 2017, dated 22.10.2019. The Writ Appeal in W.A(MD)No.1262 of 2020 is filed challenging the order passed in Writ Petition W.P.(MD)No.17175 of 2017, dated 22.10.2019.

2.The prayer in the writ petition W.P.(MD)No. 16524 of 2017 is for issuance of a writ of Certiorarified Mandamus, to quash the order No.Pani.6/597 /2016, dated 02.06.2017, passed by the 3rd respondent and consequently, direct the 1st and 2nd respondents to include the name of the petitioner in the promotion panel for promotion to the post of Assistant Director of Agriculture



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as on 01.04.2016 (i.e. crucial date) at the place between Mrs.B.S.Chitra (TNPSC No.6/94-96) and Mrs.A.Chitra (TNPSC No.8/94-96) and promote the petitioner as Assistant Director of Agriculture with effect from the date of the promotion of petitioner's immediate junior Mrs.B.S.Chitra (TNPSC No. 8/94-96) and grant all the service and monetary benefits within a time limit to be fixed by this Court. The prayer in the writ petition W.P.(MD)No.17175 of 2017 is for issuance of a writ of Mandamus, to direct the 1st and 2nd respondents to include the name of the petitioner in the Promotion Panel for promotion to the post of G.O.(D).No.221 Assistant Director of Agriculture approved in Agriculture (Veni. 1), Department dated 05.09.2017 at the place between Mrs.B.S.Chitra (TNPSC No.6/94-96) and Mrs.A.Chitra (TNPSC No.8/94-96) and promote the petitioner as Assistant Director of Agriculture placing the petitioner's name at Sl.No.75(A) i.e. above the 4th respondent - immediate Junior Mrs.A.Chitra (Sl.No.76) in the promotion order No.Pa.A.Pa. 2/90387/2017-1, dated 07.09.2017 passed by the 2nd respondent and grant all the service and monetary benefits with effect from 07.09.2017 on par with 4th respondent Junior Mrs. A.Chitra (Sl/No. 76) within a time limit to be fixed by



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this Court.

3. The brief facts as stated in the affidavit filed along with the writ petitions are that the petitioners in the writ petitions had passed B.Sc. (Agri.) Course in the year 1993 and was appointed as Agricultural Extension Officer through TNPSC in the year 1994-1996. The petitioner joined duty at the office of the Assistant Director of Agriculture, Palladam, on 24.04.1995. Subsequently, she was transferred to various places. The petitioner submitted that she has received Madurai District Collector's Best Agricultural Officer certificate on 26.01.2011. The next avenue of promotion is the post of Assistant Director of Agriculture. While so, the second respondent issued a charge memo, dated 12.01.2011, to the petitioner and five other employees, who worked in the IAMWARM Project at Manamadurai, Sivagangai District, alleging misappropriation of Government money varying from Rs.50,000/- to Rs. 1,00,000/- in the year 2007 by selling the seeds and fertilizers to the private persons instead of giving to the farmers. The petitioner was charged to have misappropriated Rs.28,700/- and the petitioner submitted explanation and



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denied the charge. The respondents have appointed an enquiry officer and in the enquiry report, it was held that the charge was proved. The disciplinary proceedings ended in imposition of the punishment of stoppage of increment for one year with cumulative effect and recovery of Rs.4,100/- being the alleged loss, vide G.O(3D) No.24 Agriculture (VeNi-2) Department, dated 03.03.2015. The petitioner has challenged this punishment in a separate proceeding.

4. The contention of the petitioner is that the petitioner's annual periodical increment falls due on 1st April every year. The above said punishment of stoppage of increment was implemented from 01.04.2015 and was completed on 31.03.2016, vide order, dated 04.06.2015 and recovery of Rs. 4,100/- was also recovered from the salary in the month of June-2015. Hence, the petitioner contended that the petitioner became eligible to draw next increment on 01.04.2016 and also eligible to include the petitioner's name in the panel for promotion as on 01.04.2016 (i.e. Crucial date), based on the petitioner's seniority from 24.04.1995. While that being so, by referring to the



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order, dated 29.12.2015, passed by the second respondent, the third respondent issued order dated 09.02.2016, rectifying the pay anomaly of junior getting more pay than senior to many agricultural officers comparing the junior, namely S.Sornabharathi and notionally refixed the petitioner's salary on Rs.22,980/- (basic pay Rs.16,980/- + GP 6000/-) with effect from 01.01.2006 and Rs. 25,090/- with effect from 26.03.2006, on par with the petitioner's junior S.Sornabharathi with monetary effect from 01.12.2010 and consequently, further annual increments were sanctioned on 01.01.2007, 01.01.2008, 01.01.2009, 01.01.2010, 01.01.2011, 21.03.2012 (increment postponed due to suspension for 80 days), 01.01.2013 and 01.01.2014 and the stoppage of increment for one year was given effect from 01.01.2015 to 31.12.2015 and the same punishment was implemented for second time.

5. Thereafter on completion of punishment of stoppage of increment with cumulative effect on 31.12.2015, the next increment was due on 01.01.2016 and 01.01.2017 were sanctioned and the monetary benefits was paid from 01.12.2010. After completion of punishment, the petitioner is eligible



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to be included in the panel as on 01.04.2016. There are more than 90 vacancies in the cadre of Assistant Director of Agriculture, the 2nd respondent was preparing the panel for promotion as on 01.04.2016. The petitioner has completed more than 22 years of service as Agricultural Officer and the punishment period has been completed on 31.12.2015, the petitioner was expecting inclusion of his name in the panel for promotion as on 01.04.2016. However, it is to the shock of the petitioner that the 3rd respondent passed the order, dated 02.06.2017 and suo moto modified the punishment period and fixed the punishment period of stoppage of increment for one year afresh from 01.01.2016 to 31.12.2016. This order has been passed for the implementation of the same punishment for the third time, which is not sustainable in law under the principle of *res judicata*.

6. The contention of the petitioner is that the order, dated 02.06.2017, has been passed, after the lapse of one and a half years, after the completion of punishment on 31.03.2016 (first time) and 31.12.2015 (second time). Moreover, the impugned order was passed without issuing any notice or



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conducting any enquiry or giving any opportunity to the petitioner which is violative of principles of natural justice. The petitioner submitted a representation, dated 29.06.2017, to the 1st respondent with a request to include the petitioner's name in the Panel as on 01.04.2016 and the same was not considered.

7. In the meanwhile, the 3rd respondent has issued another communication, dated 16.08.2017, wherein the Audit Objection, dated 28.04.2017, raised by the Assistant Director, Audit Department, Madurai, against the order, dated 09.02.2016, for rectification of pay anomaly of junior getting more pay than senior and re-fixation of the petitioner's pay on par with junior from 01.01.2006 as incorrect and directed to recover the excess payment of Rs.4,52,458/- from the petitioner. The petitioner contended that because of this order the increment sanctioned as on 1st January every year on par with my junior becomes null and void and hence, the implementation of the punishment from 01.01.2015 to 31.12.2015 also becomes null and void. The contention of the petitioner is that the punishment originally implemented from 01.04.2015 to



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31.03.2016 in the order, dated 02.06.2015 passed by the 3rd respondent is correct and consequently, the petitioner contended that the petitioner's name should be included in the promotion panel as on 01.04.2016. The petitioner alleged that the order, dated 02.06.2017, passed by the 3rd respondent to implement the punishment period from 01.01.2016 to 31.12.2016 is null and void. Therefore, the petitioner's name should be included in the panel of promotion to the post of Assistant Director of Agriculture as on 01.04.2016. Aggrieved over the order, dated 02.06.2017, the present writ petition is filed. Since the petitioner's representation, dated 29.06.2017, was not considered, the petitioner had filed another writ petition in W.P.(MD)No.17175 of 2017.

8. The 3rd respondent has filed a counter affidavit in both the writ petitions. The respondents submitted that malpractice in a mass effect was identified by the authorities in implementing a special scheme called 'IAMWARM' during the year of 2007-2008, which was resulted in misappropriation of scheme fund. Hence disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules was



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initiated by issuing charge memo, dated 12.01.2011. After enquiry punishment of stoppage of increment with cumulative effect for 1 year and recovery of Rs. 4100/- from the petitioner's salary was imposed.

9.The petitioner's annual increment falls during the month of April of every year. In pursuant to the final orders of the 1st respondent, dated 03.03.2015, in order to give effect to the order, the 3rd respondent passed a consequential order, dated 04.06.2015 and ordered recovery of a sum of Rs. 4100/- and the stoppage of increment was also proposing to give effect from 01.04.2015 to 31.03.2016. The respondents denied the contention of the petitioner that the authority issued sou moto action took steps to revise the salary of the seniors on par with juniors. The real fact would be the petitioner herself approached the 2nd respondent submitted representation, dated 17.06.2015, whereby she voluntarily expressed her grievance of seeking for revision of her salary on par with her junior by name Mrs.Sornabharathi was processed and effected only on the grievance representation of the petitioner dated 17.06.2015. After considering the petitioner's grievance, the petitioner's



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salary was notionally revised by comparing with the said Mrs.Sornabharathi with effect from the date of 01.01.2006. Subsequently, as a usual practice on every first day of the respective year, the salaries of the petitioner had been re-fixed and revised from 01.01.2006 to 01.01.2017, but monetary benefit was given effect from 01.12.2010. In order to execute the revision of salary in favour of the petitioner, the one year punishment of stoppage of increment with cumulative effect was automatically jumped over from the period of 01.04.2015 - 31.03.2016 to 01.01.2016 - 31.12.2016 and it was nothing but an automatic process. The whole exercise was carried out only as per the requisition of the petitioner's representation, dated 17.06.2015. The respondents submitted that from 01.12.2010 to 01.01.2017 salary calculation was made on par with the junior and the total amount was properly paid to the petitioner. The respondents submitted that as per the earlier order of the respondents, the stoppage of increment was effected and completed on 31.12.2016. Subsequently, the upcoming increment was properly paid to the petitioner. Since the annual increments starts from the month of the April of current year and ended with March of the subsequent year, while implementing rectification



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of pay anomaly, the petitioner's annual increment was bound to be modified as on 1st January of every year. Accordingly, the petitioner's annual increments had been duly fixed and paid as on 1st January. Hence, the authorities were unable to implement the punishment as mentioned in the earlier orders for giving effect from 01.04.2015 to 31.03.2016. The reason being the petitioner's revision of salary was fixed and paid to the petitioner on par with the petitioner's junior, namely, Sornabharathi, by fixing the crucial date as 1st January of every year. Especially, as on 01.01.2015 and 01.01.2016, the petitioner's salary was revised and paid. Since the intermediate period falls within the punishment period the authorities were constrained to modify the period of punishments. Because of this reason, the petitioner's name was not able to be included in the panel as on 01.04.2016. Therefore, the respondents had prayed to dismiss the writ petition.

10. The learned Single Judge has considered the claim of the petitioner and allowed the writ petitions and has held the respondents have admitted in the counter affidavit that the actual increment falls due on 1st April



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of every year. The punishment of stoppage of increment by an order, dated 03.03.2015, was implemented and given effect from 01.04.2015 to 31.03.2016. After having implemented the said punishment during the said period, the respondents are not entitled to revise the date of punishment from 01.01.2015 to 31.12.2015 and subsequently, from 01.01.2006 to 31.12.2016. The respondents have not given any notice to the petitioner and have not given any opportunity to submit her objection for modifying the date of implementation of the punishment on two occasions. The reasons given by the respondents for refixing the date of punishment is not valid and is not acceptable. Having implemented, the punishment from 01.04.2015 to 31.03.2016, the respondents are not entitled to again implement the punishment or modify the date of punishment twice. Hence, the impugned order was quashed.



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11. The learned Single Judge further held that the petitioner is entitled to be promoted to the post of Assistant Director of Agriculture from the date when her immediate junior A.Chitra, the 4th respondent was promoted and the petitioner is entitled to all monetary benefits. Aggrieved over the same, the respondents in the writ petition have preferred the present writ appeals.

12. Heard Mr.J.Ashok, the Learned Additional Government Pleader appearing for the appellants and Mr.R.Aravind Raj, the Learned Counsel appearing for the respondents and perused the records.

13. The contention that was raised by the appellants is that the writ petitioner's pay was revised only based on the writ petitioner's representation dated 17.06.2015. This Court is not able to appreciate the contention raised by the appellants that it is because of the representation of writ petitioner the salary was revised and consequently the period of punishment was modified twice. Even if the writ petitioner had submitted the representation, dated 17.06.2015, to revise the salary, the appellant ought to have considered the



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same after implementing the punishment and after the period of punishment is over. As rightly held by the learned Single Judge, the punishment was implemented and given effect from 01.04.2015 to 31.03.2016 and after implementation the appellants cannot revise the date of punishment from 01.01.2015 to 31.12.2015 and subsequently from 01.01.2016 to 31.12.2016. Moreover, the appellants have not granted any opportunity to the writ petitioner to submit her objections for modifying the date of implementing the punishment on two occasions. The reason given by the appellants for refixing the date is not valid and not acceptable.

14. Under Section 7 (1) Annexure XI Part A paragraph II, Serial No. 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, “Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, shall take effect from the date on which the said punishment order is served to the member of the service concerned and the name of the such member shall not be considered for inclusion in the approved list until the said punishment is over. In the present



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case, the impugned punishment order, dated 03.03.2015 and rightly the appellants have given effect to the punishment from 01.04.2015 to 31.03.2016. Therefore, this Court is of the considered opinion that the order passed by the appellants is against the service rules as well as against principles of natural justice. The learned Single Judge has rightly quashed the impugned order. There is no merit in the present writ appeals.

15.Hence, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]

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Index : Yes / No

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To

- 1.Agricultural Production Commissioner
and Secretary to Government,
State of Tamil Nadu,
Agricultural Department,
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- 2.The Director of Agriculture,
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