



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.22605 of 2015

and

M.P. (MD)No.1 of 2015

WEB COPY

P.Rajan,
Deputy Director of Horticulture,
Virudhunagar.

... Petitioner

vs.

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

2.The Director of Horticulture and Plantation Crops,
Chepauk, Chennai 600 005.

3.N. Ramanathan,
Deputy Director of Horticulture,
Dindigul.

... 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 2nd respondent in his letter in Lr.No.GES4/9597/2015, dated 07.09.2015 and to quash the same and consequently, to direct the 2nd respondent herein to re-fix the seniority of the petitioner based on the date of regularisation in the post of Horticulture Officer with effect from 17.11.1981 and place the petitioner above the juniors and promote the petitioner to the post of Joint Director in Horticulture Department.

For Petitioner : Mr.M.Muthugeethayan

For R1 and R2 : Mr.N.Ramesh Arumugam

Government Advocate (Civil side)

For R3 : No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent in his letter in Lr.No.GES4/9597/2015, dated 07.09.2015 and consequently, to direct the 2nd respondent herein to re-fix the seniority of the petitioner based on the date of regularization in the post of Horticulture Officer with effect from 17.11.1981 and place the petitioner above the juniors and promote the petitioner to the post of Joint Director in Horticulture Department.



2. The petitioner was originally appointed as Horticulture Officer by the Director of Horticulture and Plantation Crops on 02.11.1981, temporarily under Rule 10 (a) (1) of the General Rules. The Government issued G.O.Ms.No.1714, Agricultural Department, dated 05.09.1984, by granting the Special Rules for the Tamil Nadu Agricultural Sub-ordinate Service and included B.Sc., Horticulture as educational qualification to the post of Horticulture Officers in Rule 7. Thereafter, Tamil Nadu Public Service Commission called for applications during the year 1983-1984 for the post of Horticulture Officers. The petitioner was selected as Horticulture Officer in the year 1983-1984, by the proceedings, dated 18.07.1985, by invoking Rule 23 (a) (ii) General Rules for Tamil Nadu State and Sub-ordinate Service Rules. The petitioner submits that he ought to have retrospectively regularized from the date of initial appointment under 10(a)(i), ie., 17.11.1981.

3. The petitioner states that the seniority ought to have been considered from the initial appointment, since the petitioner is the senior most person from the above stated proceedings, dated 18.07.1985. The State Government issued G.O.Ms.No.274, Agricultural (AAI) Department, dated 01.06.1995, to the effect that 179 persons from the cadre of Agricultural Officers who have already worked and are working in the Horticultural Department can give their willing to avail promotion as Assistant Director of Horticultural in Horticultural Department. 123 persons have submitted to remain in the Horticultural Department. The said 123 persons were posted in Horticultural Department on service lent basis were also absorbed in Horticultural Department by virtue of G.O.No.274, dated 01.06.1995. The said 12 of the persons even though selected during the year 1982-1984, they have worked in Horticultural Department on service lent basis and they were all given willingness based on G.O.No.274 and they have all absorbed in Horticultural Department.

4. The contention of the petitioner is that since the petitioner was appointed in Horticultural Department in the year 1981 and is selected in the year 1983 by TNPSC, the petitioner's service ought to have retrospectively regularized and the petitioner name shall be kept in the seniority list above the said 123 persons. The petitioner was promoted as Assistant Director in the year 2008. The second respondent, vide proceedings, dated 09.02.2010, issued the above seniority list among the Assistant Director of Horticulture, wherein the petitioner was placed in the seniority list below the absorbed persons in particularly 1) S.V.K.Rajendran 40/1981, 2) V.Gangadharan 27/82-84, 3) N.Mani 94/82-84, 4) S.Rajamohammed 119/82-84, 5) N.Ramanathan 164/82-84 and 6) P.Kalyanasundaram 166/82-84.

5. The petitioner submitted objections on 01.04.2009. The second respondent on 01.03.2010 has received another representation of the petitioner. The respondents rejected the claim of the petitioner and has placed the petitioner's name below the said six persons. The contention of the petitioner is that he has been placed below them in spite of his original appointment is in the year 1981.



6.The second respondent has filed a counter affidavit stating that the petitioner's appointment is under 10(a)(i)(1) and therefore, the Rules stated there under is applicable. The petitioner applied afresh in the recruitment process in the year 1983-1984 and was selected. Thereafter, entered the service in a permanent post. The petitioner is comparing the other persons whom already entered this service through TNPSC in the Agricultural Department in the year 1982-1983. Since the petitioner's 10(a)(i)(1) appointment cannot be taken into account for fixing the seniority, the petitioner's claim was rejected vide the impugned order. Therefore, the petitioner is not entitled to any relief. It is an admitted fact that the petitioner's initial appointment is under 10(a)(i)(1) in the year 1981 and it is also an admitted fact that the petitioner was selected for the permanent post in the recruitment process held for the academic year 1983-1984. The third respondent in particular was appointed through TNPSC in a permanent post for the academic year 1982-1983.

7.Therefore, the question now arose whether the temporary appointment under 10(a)(i)(1) service can be taken into account while fixing the seniority. The conditions stated in 10(a)(i)(1) appointment is that the petitioner cannot claim any service benefits especially, seniority for the service rendered in 10(a)(i)(1).

8.Therefore, this Court is not inclined to grant any relief because there are several judgments where it has been held that 10(a)(i) appointment is temporary appointment and the employee cannot claim any service or monetary benefits attached to the permanent post. Hence, the claim of the petitioner is rejected.

9.Therefore, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/Ittigrant concerned.



To

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

2.The Director of Horticulture and Plantation Crops,
Chepauk, Chennai 600 005.

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-10478[F] dated
07/03/2022)

+1 CC to M/s.SPL GP (SR-10599[F] dated 08/03/2022)

W.P. (MD) No. 22605 of 2015

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SS/31.05.2022 : 4P/5C