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W.P.No.16266 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2023

PRONOUNCED ON : 13.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

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M.Karunanithi

: Petitioner

-VS-

1.The State of Tamil Nadu,
Rep. By the Secretary to Government,
Animal Husbandry,
Dairying and Fisheries (TAPCO) Department,
Secretariat, Chennai-600 009.

2.The Commissioner,
Animal Husbandry and Veterinary Services,
D.M.S.Compound, Teynampet,
Chennai-600 006.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings No.55/Poul/2012-1, dated 20.02.2012 of the first respondent and quash the same as arbitrary and illegal and consequently direct the respondents to promote the petitioner as Deputy Director (Personnel).



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For Petitioner : Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mr.L.S.M.Hasan Fikal
Additional Government Pleader

ORDER

The writ petition is filed to set aside the order of the first respondent herein and to promote the petitioner to the post of Deputy Director (Personnel).

2. The service matrix of the petitioner in brief, is as under:

2.1. The petitioner was appointed as Assistant Manager in Tamil Nadu Poultry Development Corporation Limited (TAPCO) on 08.10.1987. The erstwhile Tamil Nadu Poultry Development Corporation Limited (hereinafter referred to as 'TAPCO') has been closed vide G.O.(Ms)No.86, Animal Husbandry and Fisheries (TAPCO) Department, dated 19.04.1999 without detriment to the interest of the Government as well as the employees of the Corporation. The employees of the Corporation were absorbed in the Animal Husbandry Department for the supervisory work of the Noon-meal egg supply programme carried out by the TAPCO. Further,



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the Government absorbed 139 employees under 16 categories as per the guidelines issued by the High Court vide G.O(Ms)No.91 of the Animal Husbandry and Fisheries (TAPCO) Department, dated 06.06.2000. The transfer of 139 posts, under 16 categories and the appointment to these posts will be under the following conditions:

“

(iii) These personnel will be considered as Government servants only on the dates of their joining in the Department of Animal Husbandry on transfer. The transfer will be with immediate effect.

.....

(ix) Their service will be regularized from the date as further joining in the Department of Animal Husbandry.”

2.2. Though the petitioner had not completed 10 years of service in the same cadre, selection grade was granted and the same was taken into consideration by the Tamil Nadu Animal Husbandry and Fisheries (TAPCO) Department. Pursuant to the order stated in the above said G.O., the services of the petitioner were regularised on 17.12.2011 and his seniority was also fixed in the post of Manager in the Animal Husbandry Department. The petitioner made a representation that he may be promoted as a Deputy Director (Personnel) and the same was not considered and hence, he made



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an appeal to the Commissioner and the same was rejected and hence, he filed the present petition.

3. Heard the learned Senior Counsel appearing for the petitioner.

4(a). The learned Senior Counsel contended that the service rendered by the petitioner viz., M.Karunanithi under the Tamil Nadu Poultry Corporation should be counted for the purpose of promotion. He also submitted that the service rendered by the petitioner in TAPCO should be considered for the purpose of fixing the seniority and cannot insist upon exclusive service in the Animal Husbandry for promotion. He drew my attention to the judgment of the Hon'ble Apex Court in the case of ***Union of India and others Vs. Deo Narain and others*** reported in (2008) 10 SCC 84.

4(b). In reply, the learned Additional Government Pleader contended that at the time of absorption of the petitioner into the Animal Husbandry Department, as per the regulation in G.O(Ms)No.91, dated 06.06.2000, the date of appointment in the Department commenced on 12.06.2000. He also stated that though the petitioner had not obtained promotion, promotional avenues are available in the Department. However, as per the existing rule



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in G.O(Ms)No.228 of Animal Husbandry and Fisheries (AH7) Department, dated 15.11.1999, he is found to be ineligible and consequently, promotion has not been granted.

5(a). The short point for consideration is whether the service rendered by the petitioner in Tamil Nadu Poultry Development Corporation for the period of 12 years 7 months and 27 days, is to be taken into account for the promotion as Administrative Officer and consequently, to Deputy Director. By the impugned order, the 1st respondent has observed that since the petitioner has not put in 10 years of continuous service in Tamil Nadu Animal Husbandry in the feeder category, he is not eligible and hence, the writ petition.

5(b). The learned Senior Counsel for the petitioner filed synopsis of the case to show that he joined TAPCO in the forenoon of 14.10.1987 as Assistant Manager and rendered service of 12 years 7 months and 27 days. On the abolition and merger of the department (TAPCO) with the Tamil Nadu Animal Husbandry Department vide G.O.No.91 dated 06.06.2000, the petitioner joined the Tamil Nadu Animal Husbandry Department on the forenoon on 12.06.2000, as Office Manager.



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5(c). Since there was some shortage, the Tamil Nadu Animal Husbandry Department has obtained relaxation of Special Rules for the Tamil Nadu Ministerial Rule 3 (ee), 5 and General Rule 36 of the Tamil Nadu State and Subordinate Service Rules. He was absorbed as directed in the Government Order and he was placed as junior most in the said Department in the same category.

5(d). The main grievance of the petitioner is that he ought to have been promoted taking into consideration the services that he had rendered in TAPCO. However, his junior has been given promotion and hence, he made a representation and the representation was rejected and on further appeal, the same was also rejected.

5(e). The next grievance of the petitioner is that the petitioner should be treated as an employee of Animal Husbandry Department from the date of joining the petitioner in TAPCO on 14.10.1987 and hence, entire service rendered by the petitioner in TAPCO should be also taken into account for all the benefits and should be even considered for promotion to the higher



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posts depending upon the seniority. He relied upon the decisions of the Hon'ble Supreme Court in *1996 (1) SCC 524* and *(2008) 10 SCC 84*.

5(f). The learned Additional Government Pleader relying upon the impugned order dated 20.02.2012 made a submission that for the promotion to the post of Administrative Officer from the Manager, the candidates must have served for a period of not less than 15 years in the Animal Husbandry Department and must have also passed the Account Test for Subordinate Officers Part I & II or equivalent Account Test for the Executive Officers. Furthermore, a candidate should have been appointed to the post of Administrative Officer in the category 2 from the date on which he joined duty and on probation for a total period of one year on duty within continuous period of two years. Since the petitioner has not complied with the above two conditions, the 1st respondent has rightly rejected the representation made by the petitioner.

5(g). The service particulars furnished by the petitioner are not in dispute. My attention is drawn to G.O.No.91 dated 06.06.2000 whereby the Tamil Nadu Poultry Corporation was closed and employees have been



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moved to the Tribunal and the High Court passed the order on 22.02.2000 and based upon the same, the original 139 posts were transferred under 16 categories subject to following conditions:

“

(iii) Those personnel will be considered as Government Servants only on the date of their joining in the Department of Animal Husbandry on transfer. The transfer will be with immediate effect.

(iv).....

(v) The seniority will be fixed below the seniority of the personnel of the Department of Animal Husbandry working on that date, in that category.

(vi)....

(vii).....

(viii)....

(ix) Their services will be regularised from the dates of their joining in the Department of Animal Husbandry.

(x) ...”

5(h). The contention of the petitioner is that the services rendered by the petitioner in TAPCO should also be taken into consideration and cannot insist upon exclusive service in the Animal Husbandry while the juniors have been promoted.



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6. After perusing the relevant G.O(Ms)No.91 and also G.O(Ms)No.228 of Animal Husbandry for the promotional post of Deputy Director (Personnel), the feeder category, the method of appointment are by promotion among the holders of the post of Administrative Officer and as per the G.O.(Ms)No.228, Animal Husbandry and Fisheries (AH7) Department, dated 15.11.1999 in the Amendment issued to the Special Rules for Class XXII of Tamil Nadu General Services, the qualification for the post of Deputy Director (Personnel) is as follows:

Category	Method of Appointment
Deputy Director (Personnel)	By promotion from among the holders of the post of Administrative Officer
Administrative Officer	By recruitment by transfer from among the holders of the post of Manager in the Animal Husbandry Department.
	<u>Qualification</u> No person shall be eligible for appointment to the post specified in “column (1) of Table below unless he possesses the qualification specified in column (2) thereof”.



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The Table

	Post	Qualifications
1.	Deputy Director (Personnel)	Must have served as Administrative Officer for a period of not less than two years.
2.	Administrative Officer	(i) Must have served for a period of not less than fifteen years in the Animal Husbandry Department and (ii) Must have passed the Account Test for Subordinate Officers Parts I and II or Account Test for Executive Officers. Probation Every person appointed to the post of Administrative Officer in category 2 shall from the date on which he joins duty, be on probation for a total period of one year on duty within continuous period of two years.

7. Admittedly, on the factual position from the Administrative Officer to the post of Deputy Director, he must have served for the period of not less than 15 years in Animal Husbandry Department and must have qualified the Departmental Test of Accounts for the Executive Officers. As per the G.O(Ms)No.91, the persons absorbed in the Department will be



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considered as Government servants only on the dates of their joining in the Department of Animal Husbandry and the petitioner joined in the Department by accepting the conditions laid down in the G.O. as extracted *supra*.

8. In the counter affidavit, the other two rival persons are mentioned and their service records were also been incorporated at paragraph 17 and thus, I find that for the promotion to the post of Deputy Director (Personnel), the individual should have served in the Administrative Officer post for not less than two years, since the feeder category of the Deputy Director (Personnel) post is a post of Administrative Officer. However, it is seen that the petitioner has not acted as Administrative Officer so far, due to his non-eligibility for the post of Administrative Officer. In short, as per the G.O.(Ms)No.228, Animal Husbandry and Fisheries (AH7) Department, dated 15.11.1999, the eligibility for the promotion to the post of the Administrative Officer is completion of 15 years of service in the Animal Husbandry Department and the eligibility for Deputy Director (Personnel) post is only on completion of 2 years of service in the Administrative Officer post. So, the petitioner is eligible for the post of Administrative



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Officer only on completion of 15 years of service in the Department. Since he has not completed the eligibility of 15 years of service in the Department, his claim is against the Special Rules enacted by the Government. Further, when he is not eligible for the post of Administrative Officer itself, the question of his further promotion is not at all acceptable.

9. Hence, I find that the reasoning given in the impugned order is in accordance with the above said two G.Os., and as such, is bound to be ineligible, as he has not completed 15 years of service in Animal Husbandry Department during 2004 because he joined in the Government service only on 12.06.2020. The past service rendered at the TAPCO cannot be counted in view of G.O(Ms)No.91 dated 06.06.2000 since the same remains unchallenged and therefore, I find no merit in this case and accordingly, the writ petition is dismissed. No costs.

13.12.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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To



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- 1.The Secretary to Government,
State of Tamil Nadu,
Animal Husbandry,
Dairying and Fisheries (TAPCO) Department,
Secretariat, Chennai-600 009.

- 2.The Commissioner,
Animal Husbandry and Veterinary Services,
D.M.S.Compound, Teynampet,
Chennai-600 006.

RMT. TEEKAA RAMAN, J.

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**Pre-Delivery Order made in
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