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W.P.No.31227 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.31227 of 2016

and

W.M.P.Nos.27097 of 2016 & 16938 of 2017

R.Avudaiappan

.. Petitioner

VS

1.The Principal Secretary to Government,
Department of Agriculture,
Fort St.George, Chennai – 09.

2.The Director of Horticulture and Plantation Corps,
Chepauk, Chennai – 05.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in pursuant to the impugned order passed by the 2nd respondent in proceedings Lr.No.GES4/577/2015 dated 19.03.2015 and quash the same and consequently direct the respondents to regularise the services of the petitioner in the cadre of Deputy Director of Horticulture with effect from 22.12.2011 on par with his junior and to retrospectively promote the petitioner as Joint Director of Horticulture by including his name in the 2012 – 2013 panel for promotion to the post of Joint Director of Horticulture with all consequential service and monetary benefits.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.R.Neethi Perumal
Government Advocate
for R1



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ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking interference in the order passed by the second respondent in proceedings Lr.No.GES4/577/2015 dated 19.03.2015 and consequently direct the respondents to regularize the services of the petitioner in the cadre of Deputy Director of Horticulture with effect from 22.11.2011 on par with his juniors and to promote the petitioner as Joint Director of Horticulture by including his name in the 2012 – 2013 panel for promotion to the post of Joint Director of Horticulture. The petitioner also claims all consequential service and monetary benefits.

2. The petitioner was initially appointed as Horticulture Officer under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. Any employee, who has so joined under that particular provision would necessarily have to write a specific qualifying examination conducted by the Tamil Nadu Public Service Commission in order to seek recognition of the service as being regularised from the date of initial appointment.



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3. The petitioner had appeared for the examination in the year 1983 – 1984. He was successful and his services were regularised with effect from 11.01.1980, the date on which he was temporarily appointed in the Department. To this extent, there is no dispute.

4. The petitioner unfortunately received a charge-memo against him and questioning the same, W.P.No.7142 of 2008 was filed. By judgment dated 20.04.2010, a learned Single Judge of this Court, allowed the writ petition and quashed the charge-memo. In effect, this has wiped out the charges from the records.

5. The first opportunity for subsequent panel for promotion was in the year 2010 – 2011. This was for the post of Deputy Director of Horticulture. The petitioner was not considered for such promotion but was included in the panel i.e., 2011 – 2012. Since he was not accommodated in the 2011 – 2012 panel, he suffered ignominy on his juniors being promoted ahead on him. This has continued till the post of Joint Director of Horticulture. The petitioner had given a representation in this regard seeking the relief as sought for in the writ petition.



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6. In the counter affidavit, it had been stated that his juniors were included in the panel for promotion to the post of Joint Director of Horticulture for 2012 – 2013. Though the petitioner had contended that he qualified the examination in the year 1980, those whom he term as juniors who were admittedly employed in the initial instance after him, had qualified in the examination conducted by the Tamil Nadu Public Service Commissioner before the petitioner.

7. But, however, the crucial aspect is the date of regularization. The date of regularization of an employee is from the date of initial appointment i.e., namely 11.01.1980. The others who had qualified their examination prior or before the petitioner herein were also similar to their date of initial appointment was subsequent to 11.01.1980. Therefore, they cannot be considered as juniors to the petitioner but they should be considered only as juniors in service to the petitioner.

8. The date 11.01.1980 assumes significance, since the qualifying period of years of service for calculating the pension would commence from 11.01.1980. The experience of the petitioner would be calculated from 11.01.1980. If he is denied promotion



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only because the others who are much juniors to him had qualified the examination, that reason cannot withstand to scrutiny of this Court. It should be interfered with and it is set aside.

9. It is contended before this Court by learned Government Advocate that the petitioner had qualified the written examination much later to the others, whom they term as juniors. That may be correct as to the date of regularization into services which is one aspect and the petitioner had been recognized even admittedly by the respondents from the date of initial appointment and others having been regularized with effect from their dates of initial employment, which was admittedly subsequent to 11.01.1980. Therefore, the petitioner cannot and should not have been denied to be included in the panel for consideration of promotion in the post of Joint Director of Horticulture in the panel year 2012 – 2013.

10. Additionally, learned Government Advocate had raised objections about the inclusion of the petitioner in the panel. It is one of the service conditions which entitles other employees to be considered for promotion. Whether they are actually promoted or not is a different issue but in the first available panel, which opens up an avenue of promotion if the petitioner is otherwise eligible,



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then the employee must be included in that particular panel. The petitioner was eligible for the panel for 2010 – 2011 for the post of Deputy Director of Horticulture and 2012 – 2013 for the post of Joint Director of Horticulture. This should be recognized by the respondents.

11. In view of this particular fact, this writ petition stands allowed. The respondents are directed to re-work the benefits which would accrue to the petitioner herein. For that purpose, three months time is granted for calculating the pensionary benefits. No costs. Connected miscellaneous petitions are closed.

18.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To:

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C.V.KARTHIKEYAN,J.

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