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WP.No.17575 of 2020

In the High Court of Judicature at Madras

Dated : 08.2.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.17575 of 2020

M.S.Subburaman

...Petitioner

Vs

1.The Commissioner & Principal
Secretary to Government,
Agriculture Department,
Secretariat, Chennai-9.

2.The Commissioner & Principal
Secretary to Government,
Agricultural Marketing Department,
Guindy, Chennai-32.

3.The Secretary, Erode Market
Committee, Erode.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents notionally to promote the petitioner as Superintendent of Market in the panel year for 2008-09 and further Market Committee Secretary in the panel drawn for the year 2012-2013 in adherence to Section 7(1)(19) of the Tamil Nadu Government Servants (Conditions and Service) Act 2016 and consequently direct the respondents to pay the retirement benefits and pension applicable to the said post.



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For Petitioner :

Mr.S.Vijayakumar, SC
for Mr.G.Bharadwaj

For Respondents 1 & 2:

Mr.D.Ravichander, SGP

For Respondent-3 :

Mr.V.Jayaprakash Narayanan

ORDER

This writ petition has been filed seeking for the issuance of a Writ of Mandamus directing the respondents to promote the petitioner as Superintendent of Market notionally in the panel year 2008-09 and further promote the petitioner to the post of Market Committee Secretary in the panel year 2012-2013 and consequently pay the attendant benefits to the petitioner.

2. The brief facts leading to filing of this writ petition are as hereunder :

(i) The petitioner was appointed as a Junior Assistant in Erode Marketing Committee on 04.12.1986. He was promoted as Supervisor in the year 2002. A charge memo came to be issued by the second respondent on 18.6.2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner submitted his explanation to the charge memo. An Enquiry Officer was appointed and he submitted his report holding that the charges were proved against the petitioner. After getting the explanation from the petitioner, the second respondent passed an order on 30.12.2006 imposing the



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punishment of stoppage of one increment with cumulative effect from 01.1.2007.

(ii) As against the said order of the second respondent, the petitioner filed an appeal before the first respondent and the same came to be rejected by order dated 19.7.2011. Aggrieved by that, the petitioner filed W.P.No.11099 of 2012 and it came to be allowed by an order dated 17.4.2018. This order was further confirmed in appeal by judgment dated 14.11.2018 in W.A.No.2527 of 2018.

(iii) In the meantime, the petitioner was promoted as the Superintendent of Market on 01.4.2010 and he retired from service while holding the post on 31.1.2020. The petitioner made a representation dated 19.2.2019 to the second respondent to notionally promote him as the Superintendent of Market in the panel year 2008-09 and further promote him as the Market Committee Secretary in the panel year 2012-13 and also sought for other consequential reliefs. Since the said representation has not been considered, the present writ petition has been filed before this Court.

3. The third respondent filed a counter affidavit. The relevant portions in the counter affidavit are extracted as hereunder :

"6. Accordingly, the Director of Agricultural Marketing and Agri Business had prepared common



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State seniority list as on 16.8.1995 and for the period from 16.8.1995 to 31.3.2011 in respect of the posts of Superintendents/Supervisors/Junior Assistants and the same was communicated vide his letter No.MCE1/30268/2010 dated 06.11.2012. According to this State wise seniority list, notional promotions and promotions were given to the qualified persons as Superintendents and Supervisors vide proceedings No.MCE1/16695/2012 dated 26.4.2013 of the Director of Agricultural Marketing and Agri Business. In that order, it was also mentioned that after the issuing of State unit Government Order, promotions already given under district level were cancelled. Further, it is submitted that the promotions of the petitioner have been revised as detailed below :

Name	District Seniority Promotion as Supervisor	State wise promotion as Supervisor	District wise promotion as Superintendent	State wise promotion as Superintendent
Thiru M.S. Subburaman	08.7.2002	01.11.2004	23.7.2010	01.4.2010

7. With reference to the averments made in paragraphs 3 to 14, it is submitted that disciplinary action was taken against the petitioner under Rule No:17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and punishment of stoppage of one increment with cumulative effect was awarded to the petitioner vide proceedings No.AaoNa.2/6098/03 dated 30.12.2006 of the second respondent. Further it is submitted that this punishment order was quashed by the Hon'ble this Court on 17.4.2018 in W.P.No.11099 of 2012 and the same was confirmed on 14.11.2019 in W.A.No.2527 of 2018. Therefore, the petitioner stated that he would be eligible for promotion as Superintendent of Market in the district wise seniority of Erode Market Committee for the year of 2008-09 itself. In this regard, it is submitted that the petitioner wantonly avoided to bring to the notice of this Hon'ble



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Court about the orders already passed by the Hon'ble High Court of Madras (Madurai Bench) on 19.7.2007 in W.P.No.2622 of 2004, on 16.6.2008 in W.A.No.387 of 2008 and on 12.1.2011 in SR.No. 8118 of 2009 in which the Hon'ble Court directed the second respondent to implement the State unit with effect from 16.8.1995 as per G.O.No.449 Agriculture dated 16.8.1995. Further it is submitted that as per the State seniority, the petitioner would be eligible on the year of 2010-11 panel for the promotion of Superintendent of Market, even after the quashing of punishment awarded to him. Accordingly, the petitioner was promoted notionally with effect from 01.4.2010 as Superintendent of Market vide proceeding No.MCE1/16695/2012 dated 26.4.2013 of the second respondent. Therefore, it is submitted that the entire averment of the petitioner is against the factual position and deserves to be rejected.

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9. *It is submitted that the petitioner had completed Market Secretary Training from 01.8.2011 to 31.10.2011 and he had completed 5 years of service in the post of Superintendent of Market on 31.3.2015 and therefore, he is eligible for getting promotion as Market Committee Secretary only on 01.4.2015 and not before that. Further, it is submitted that Thiru R.Suresh Babu, Thiru M.Ravi and Thiru R.Balachandran had completed Market Secretaries Training before 01.4.2011 and therefore, they had become eligible for Market Committee Secretary post for the year 2011-12 in turn they had been promoted as such. Further it is submitted that the petitioner was eligible for getting promotion as Market Committee Secretary only from 01.4.2015 since he had completed 5 years of service only on 31.3.2015. It is submitted that there are no vacancies arose for the post of Market Committee Secretaries for the years of*



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2015-16, 2016-17 and 2017-18 and hence a nil panel was drawn for these years vide G.O.No.139 Agriculture (AM 1) Department dated 12.5.2017, G.O.No.205 Agriculture (AM 1) Department dated 17.9.2018 and G.O.No.206 Agriculture (AM 1) Department dated 17.9.2018 respectively. It is submitted that as per Letter No.15786/AM 1(1)/2018-22 dated 24.4.2020 the Government had approved estimate of vacancy as '4' (four) for the post of Secretary of Market Committee for the year 2018-19. But, the petitioner was retired from service on 31.1.2020 itself and therefore, he is not eligible for getting promotion as Market Committee Secretary."

4. Heard the learned Senior Counsel appearing on behalf of the petitioner, the learned Special Government Pleader appearing for respondents 1 and 2 and the learned counsel appearing for the third respondent.

5. The learned Senior Counsel appearing on behalf of the petitioner submitted that the name of the petitioner should have been considered for promotion to the post of Superintendent of Market in the panel year 2008-09 and instead, he was given promotion only on 01.4.2010, after the expiry of the punishment period. It was further contended that since the punishment itself has been set aside by this Court, the claim made by the petitioner to notionally promote him as the Superintendent of Market, is the natural consequence and the



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petitioner cannot be deprived of the entitlement. Therefore, the learned Senior Counsel urged that necessary directions may be issued to the second respondent to act upon the representation and to grant the reliefs as sought for by the petitioner.

6. Per contra, the learned counsel appearing for the third respondent submitted that pursuant to the orders passed by the Madurai Bench of this Court in W.P.No.2622 of 2004 on 16.6.2008 and the further orders passed in the writ appeal, the second respondent was directed to prepare State-wise seniority with effect from 16.8.1995 as per G.O.No.449 Agriculture Department dated 16.8.1995. On implementing the directions issued by this Court and considering the State seniority, the petitioner was eligible for promotion to the post of Superintendent of Market only in the panel 2010-11. Accordingly, the petitioner was promoted with effect from 01.4.2010. Thereafter, the petitioner completed the Market Secretary Training on 31.10.2011 and he completed five years of service in the post of Superintendent of Market on 31.3.2015. Only on fulfilling this requirement, the petitioner became eligible for getting promotion as the Market Committee Secretary on 01.4.2015. However, no vacancies arose for the years 2015-16 upto 2017-18 and the petitioner ultimately retired from service on 31.1.2020, at which point of time,



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there was no vacancy and there was no possibility to accommodate the petitioner in the post of Market Committee Secretary. Hence, the learned counsel appearing for the third respondent sought for dismissal of the writ petition.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court had the benefit of perusing the panel that was prepared in the year 2008 for promotion to the post of Superintendent. The petitioner was placed at S.No.7 just below one Ms.A. Muthulakshmi, who also joined in the service on the same day when the petitioner joined i.e 08.7.2002. The said Ms.A.Muthulakshmi was promoted in the year 2008 with effect from 01.4.2008. The name of the petitioner was not included in the final list of promotion to the post of Superintendent since there was currency of punishment at that point of time. This fact becomes apparent when going through the communication of the third respondent made to the second respondent in Na.Ka.No.A1/4419/2018 dated 29.6.2018 and it is clearly stated that the name of the petitioner was not included in the panel 2008-09 since there was currency of punishment.



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9. In view of the above, it is clear that had the name of the petitioner been included in this panel, the petitioner would have become the Superintendent of Market on 01.4.2008 and would have got the further promotion as Market Committee Secretary on par with the said Ms.A.Muthulakshmi. The petitioner was deprived of these benefits only due to the currency of punishment.

10. Once the punishment is set aside by this Court, the petitioner is entitled for all the benefits as if there was no punishment against the petitioner at the time when the respondents prepared the panel during 2008-09. As a consequence, the petitioner is entitled for promotion as the Superintendent of Market notionally in the panel year 2008-09 and he is also entitled for further promotion in the panel year 2012-13 to the post of Market Committee Secretary and the petitioner will be entitled for all the attendant benefits. Hence, the petitioner has clearly made out a case for the relief sought for in the representation made to the second respondent.

11. In view of the above discussions, there will be a direction to the second respondent to consider the representation made by the petitioner dated 19.2.2019 and deal with the same in the light of the findings rendered in this writ petition and final orders shall be passed



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by granting all the benefits within a period of twelve weeks from the date of receipt of a copy of this order.

12. In the result, the writ petition stands allowed in the above terms. No costs.

08.2.2023

To

- 1.The Commissioner & Principal Secretary to Government,
Agriculture Department, Secretariat, Chennai-9.
- 2.The Commissioner & Principal Secretary to Government,
Agricultural Marketing Department, Guindy, Chennai-32.
- 3.The Secretary, Erode Market Committee, Erode.

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