



W.P(MD)No.5599 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5599 of 2023

R.Alagesan

... Petitioner

Vs

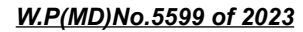
The State represented by
The Secretary to Government,
Agriculture Production Commissioner,
Agriculture Department,
St.George Fort,
Chennai – 9.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to consider the representation of the petitioner dated 10.05.2019 and to post the petitioner as Assistant Executive Engineer in Agricultural Engineering Department in provisos of Para 2 and 3 of the order dated 11.05.2016 of Hon'ble Supreme Court of India in SLP No.12121 of 2011 within the time stipulated by this Court.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondent : Mr.S.Suriyananth
Additional Advocate General



Heard the learned counsel on either side.

“8. The only question that causes for consideration is whether the service put in by them in AGROFED can be taken into account. The learned Additional Advocate General would strongly contend that AGROFED is a non-pensionable establishment and that granting the relief as sought for by the writ petitioners would run contrary to Rule 12(1) of the Tamil Nadu Pension Rules, 1978. No doubt, this is a formidable argument but then the writ petition filed by the petitioners herein is a third round of litigation.

9. Their case was accepted in toto by a learned Judge of this Court in W.P(MD)No.15464 of 2008 dated 01.09.2009. Of course, the Hon'ble First Bench effected a modification of the order passed by the learned Single Judge. When the matter went before the Hon'ble Apex Court, the Government filed



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counter affidavit, in which, they had undertaken to count the entire service put in by the writ petitioners in AGROFED provided they join as Junior Training Officer in the Department of Employment and Training. In the light of the said stand taken by the Government, the Hon'ble Apex Court had issued certain directions which had already been extracted supra. In view of the aforesaid stand already taken by the Government before the Hon'ble Apex Court and the direction set out in Clause No.1, it is now not open to the respondents to contend in this writ petition that AGROFED being a non-pensional establishment, the service put in by the writ petitioners therein will not be taken into account.

10. The learned Additional Advocate General contended that an illegality cannot form the basis for extending the very same benefit to the similarly placed individuals. But the Government is not taking the stand before this Court that the treatment accorded to Ravi was an illegality. That is not the stand taken before me. Right from the day one, the petitioners have been seeking only parity of treatment and nothing else. In fact, the said plea has been substantially accepted even in the first round of litigation itself. When service put in by Ravi in AGROFED has been taken into account, it would be inequitable and a clear infraction of the mandate of Article 14 of the Constitution of India to deny the writ petitioners benefit of the said service.



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11. Even while declining the other reliefs sought for by the writ petitioners herein, the impugned order is set aside to the extent mentioned above. In this view of the matter, the following direction is passed. The service put in by the writ petitioners in AGROFED will be taken into account and computed as a part of their total length of service of the petitioners on attaining the age of superannuation. In other words, the service put in by them in AGROFED from 1990-2004 and the service put in by them in Agriculture Department would be added and clubbed. The impugned order is interfered with to the limited extent as mentioned above. This writ petition is partly allowed. Consequently, connected miscellaneous petitions are closed. No costs."

3. The petitioner now wants this Court to direct the respondent to post him as Assistant Executive Engineer as per the order passed by the Hon'ble Apex Court. This request cannot be accepted for the simple that the petitioner was appointed as Assistant Engineer vide G.O(Ms)No.121 Agriculture (AE 2) Department dated 03.05.2017. The said order has not been challenged by the petitioner. Therefore, in the absence of a formal challenge of the said Government Order (G.O), it is not possible for this Court to direct the respondent to appoint the petitioner as Assistant Executive Engineer from the year 2017. However, as per the relevant recruitment rules, a person who has served as Assistant Engineer for three years is eligible to get promoted as



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Assistant Executive Engineer. The petitioner is due for retirement on 31.05.2024. If there are vacancies in the post of Assistant Executive Engineer, the respondent is directed to consider the case of the petitioner. An appropriate order on merits and in accordance with law shall be passed by the respondent within a period of ten weeks from the date of receipt of a copy of this order.

4. This writ petition is disposed of accordingly. There shall be no order as to costs.

12.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Secretary to Government,
Agriculture Production Commissioner,
Agriculture Department,
St.George Fort,
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G.R.SWAMINATHAN, J.

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