

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16340 of 2023

and

W.M.P(MD)No.13679 of 2023

M.Ganapathy

... Petitioner

Vs.

1.The Principal Secretary to the Government,
Department of Handloom and Khadi Textile,
Fort St.George,
Chennai-09

2.The Director of Sericulture,
O/o. The Director of Sericulture,
Department of Sericulture,
Salem.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to include the petitioner's name in the panel for promotion to the post of Deputy Director of Sericulture for the year 2022-23 and promote the petitioner as Deputy Director of Sericulture and grant all further promotions in the light of Government Order in G.O.Ms.No.239 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 03.09.1987 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed seeking direction to the respondents to include the petitioner's name in the panel for promotion to the post of Deputy Director of Sericulture for the year 2022-23 and promote the petitioner as Deputy Director of Sericulture and grant all further promotions in the light of Government Order in G.O.Ms.No.239 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 03.09.1987 within the time period stipulated by this Court.

2. The petitioner was appointed as Junior Inspector of Sericulture on 17.11.1982. He was promoted to the post of Assistant Inspector of Sericulture on 03.03.2014. Further, he was promoted to the post of Inspector of Sericulture on 06.07.2016. He was promoted as Assistant Director of Sericulture on 24.04.2020 in the office of Assistant Director of Sericulture, Theni. The petitioner has completed 38 years of service.

3. The next avenue of promotion is Deputy Director of Sericulture. As per the amendment to Special Rules for Tamil Nadu Industries Service, vide G.O.Ms.No.239 Handlooms, Handicrafts, Textiles & Khadi (G1) Department, dated 03.09.1987, the necessary qualification for promotion to the post of Deputy Director of Sericulture is that the candidate must have practical experience in the Sericulture department for a period of not less than 15 years, of which he should have served as Assistant Director of Sericulture for a period of not less than 7 years. However, the petitioner was promoted to the post of Assistant Director of Sericulture only on 24.04.2020 along with others and he has completed 3 years and 3 months of service as Assistant Director of Sericulture. The petitioner submitted that no candidate who has served as Assistant Director of Sericulture for a period of not less than 7 years is available. As regards Rule 2 (b) with respect to the promotion to the post of “Deputy Director of Industries and Commerce (Sericulture)” in the annexure referred in Rule 4(b) of Tamil Nadu Industries Service envisaged in Section 19 of Sub Rules for Tamil Nadu Industries Service, the practical experience in the Sericulture Department for a period not less than 15 years of which, an experience of not less than 7 years in the post of Assistant Director of Sericulture is contemplated. Since no candidate would be available with an

experience of 7 years as Assistant Director of Sericulture, normally, the Government relaxes the said clause of Rule 4 (b) from time to time during finalizing the promotion panel for every year. Though the petitioner is entitled for promotion as Assistant Director on completion of 8 years of service, he was issued with promotion only after 35 years of service due to non-availability of vacancy. But, directly recruited Assistant Inspectors of Sericulture are promoted to the post of Assistant Director of Sericulture within a span of 6 years. From the very instruction of Sericulture department, candidates with 15 years experience in Sericulture were alone considered for promotion as Deputy Director of Sericulture. No candidates with 15 years of experience are available in the Sericulture Department among the direct recruits.

4. However, the petitioner who fall under the promotee category has completed 38 years experience in the Sericulture department. Now, the petitioner came to know that the directly recruited Assistant Inspectors of Sericulture who were appointed in the year 2014 presently working as Assistant Director of Sericulture who do not have the requisite 15 years experience or under the consideration line of the respondents are to be included in the panel for promotion to the post of Deputy Director of Sericulture. If such directly

recruited Assistant Inspector of Sericulture who are working in the post of Assistant Director of Sericulture are included in the panel, that will be in violation of the Special Rules mandated in G.O.Ms.No.239 Handlooms, Handicrafts, Textiles & Khadi (G1) Department, dated 03.09.1987. The date of initial appointment in the post of Assistant Inspector of Sericulture if taken for determining the seniority, the competent authority should also consider the required qualification of 15 years of experience in the Sericulture department for inclusion in the panel for promotion. The petitioner claims that since the petitioner is only available candidate who has got more than 15 years experience in the department of Sericulture, only after granting promotion to him, the rest of the vacancies could be filled up by granting relaxation to the Service Rules to the qualified candidates who have the mandated experience in the department of Sericulture.

5. Hence, the petitioner submitted a detailed representation on 05.03.2022 to the respondents 1 and 2 to include the name of the petitioner in the panel for promotion to the post of Deputy Director of Sericulture for the year 2021-22 considering the fact that the petitioner has only one more year in service. He also insisted in his representation not to include the Assistant

Directors of Sericulture who do not have practical experience in Sericulture department for a period of not less than 15 years in accordance with G.O.Ms.No.239, dated 03.09.1987. Since the same was not considered, this writ petition came to be filed.

6. The learned Special Government Pleader has filed a counter and also submitted that the Government has issued amendment to the Special Rules for Tamil Nadu Industries Service in respect of promotion to the post of Deputy Director of Sericulture vide G.O.Ms.No.239 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 03.09.1987. As per the amended rule, the degree holders possessing a degree in Botany or Zoology or Chemistry or Agriculture of any university or institution recognized by the University Grants Commission for the purpose of its grant only can be considered for promotion to the post of Deputy Director of Sericulture and he insisted that as per special rule, no practical experience has been prescribed for the candidates having the said degree qualification. He further elaborated that the petitioner do not possess a degree as mandated and he is holding a degree only in commerce and hence, he is not entitled to be included in the promotional panel for the post of Deputy Director of Sericulture.

7. Heard Mr.Aswin Rajasimman, learned counsel for the petitioner and Mr.N.Muthuvijayan, learned Special Government Pleader for the respondents.

8. However, the learned counsel for the petitioner drew my attention to the Special Rules wherein it is clearly mandated that the necessary qualification can be a degree in Botany or Zoology or Chemistry or Agriculture of any university or a candidate could possess minimum general education qualification which is SSLC as prescribed in Schedule I [referred to in Rule 12(a) (1)] to the General Rules for the State and Subordinate Services and must have practical experience in Sericulture department for a period of not less than 15 years, of which he should have served as Assistant Director of Sericulture for a period of not less than 7 years.

9. A careful perusal of the said amended rule would reveal that the content in the tabulation and the head note in Paragraph No.12 of the counter filed by the respondent is incorrect. A clear practical experience for a period of not less than 15 years has been mandated, of which a period of 7 years has been earmarked that the candidate should have served as Assistant Director of Sericulture.

10. This Court is of the considered view that as rightly pointed out by the learned counsel for the petitioner, only to support the cause of those candidates who do not have practical experience of 15 years, such a counter came to be filed. However, this Court came to understand that the petitioner has got a total experience of 38 years in the department of Sericulture and he has been promoted to the post of Assistant Director only on 24.04.2020. Because of non-availability of vacancy, for which he ought to have been considered even before 35 years of service. Hence, the case of petitioner's experience with a prolonged service of 38 years may be considered. Vide G.O.Ms.No.49 Handlooms, Handicrafts, Textiles and Khadi (G1) Department, dated 23.04.2020 of Handlooms, 17 Inspectors of Sericulture were promoted to the post of Assistant Director of Sericulture across the State in various places including the petitioner in Serial No.15 of the said Government Order. All of them were promoted to the post of Assistant Director, Sericulture with effect from 23.04.2020. This G.O would reveal that all the candidates, who are competing to be included in the promotion panel to be considered to the promotion to the post of Deputy Director, were appointed on the same date and all of them have the similar experience of 3 years and 3 months. Hence, the Government is under the compulsion to relax the 2 (b) of the Special Rules for the Tamil Nadu

Industries Service which mandates both total experience of 15 years, of which 7 years experience as Assistant Director of Sericulture. Hence, by all means, the Government will have to relax the 7 years of experience of Assistant Director of Sericulture for all the existing available 17 Assistant Directors of Sericulture.

11. In view of the same, this Court is inclined to direct the respondents to include the petitioner's name in the panel for promotion to the post of Deputy Director of Sericulture for the year 2022-23 and promote him as Deputy Director Sericulture considering his representation, dated 05.03.2022. This Court reiterates that the petitioner will also be entitled to relaxation of whatever rules which is made available to the other directly recruited Assistant Inspectors of Sericulture who were promoted as Assistant Director of Sericulture. The respondents are directed to consider the prolonged 38 years of experience of the petitioner in the Sericulture department and in the line of relevant sub rules considering the fact that he has also got a minimum educational qualification prescribed in Schedule I to the General Rules of the State and Sub-ordinate Service Rules and 38 years of practical experience in the Sericulture department which could be well covered within the mandates of

G.O.Ms.No.239 Handlooms, Handicrafts, Textiles and Khadi (G1) Department
dated 03.09.1987.

12. Accordingly, this Writ Petition stands allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

08.08.2023

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

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Fort St.George,
Chennai-09

2.The Director of Sericulture,
O/o. The Director of Sericulture,
Department of Sericulture,
Salem.

L.VICTORIA GOWRI, J.

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