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W.P.No.7082 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.7082 of 2021

D.Suseela

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Agriculture Department,
Fort St. George,
Chennai – 600 009.

2. The Director of Horticulture & Plantation Crops,
Chepauk, Chennai – 600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned proceeding of the 2nd respondent in Lr.No.GES4/8808/2020 dated 13.07.2020 quash the same and direct the respondents to give the petitioner notional promotion as Deputy Director of Horticulture from 01.03.2018 and re-fix the pensionary benefits of the petitioner on that basis and pass such other or further orders as



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this Hon'ble Court may deem fit.

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For Petitioner : Mr.V.Selvaraj
for Mr.D.Jayasingh

For Respondents : Mrs.E.Ranganayaki,
Additional Government Pleader

ORDER

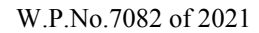
The petitioner herein while working as Assistant Director of Agriculture, she was deployed to the Horticulture Department along with her post. While she was working as Assistant Director of the Horticulture Department, her case was considered for promotion to the post of Deputy Director of Horticulture for the panel year 2016-2017 and she was included in the panel along with six other candidates. The said panel was also approved by Government by issuing G.O (Ms) No.51, Agriculture Department dated 28.02.2018. Through the said Government Order, the Government also further directed the Director of Horticulture and Plantation Crops to promote the petitioner and six others on temporary basis. However, the validity of the said G.O (Ms) No. 51, Agriculture Department dated 28.02.2018 was challenged before this Court in a batch of Writ Petitions vide W.P.No.30420 of 2017 and batch and this Court initially granted stay



of operation of the said Government Order. Consequently, the petitioner could not be promoted to the post of Deputy Director of Horticulture.

During the pendency of the said batch of Writ Petition, the petitioner retired from service on 30.09.2018 on attaining the age of superannuation. It is thereafter the said batch of Writ Petitions came up for final disposal before the learned Single Judge of this Court and the learned Single Judge of this Court by an order dated 05.02.2020 dismissed all the Writ Petitions upholding G.O (Ms) No. 51, Agriculture Department dated 28.02.2018.

2. It is thereafter, the petitioner made a claim for award of grant of notional promotion in terms of the said Government Order. The Respondent No.2, having considered the claim of the petitioner, rejected the same on the ground that the petitioner has already retired from service on 30.09.2018 and the panel approved under G.O (Ms) No. 51, Agriculture Department dated 28.02.2018 came into operation on 07.02.2020 and therefore, the case of the petitioner cannot be considered for promotion, as she was no more in service. It is aggrieved by the said order bearing Letter No.GES4/8808/2020 dated 13.07.2020, the petitioner approached this Court by filing the present



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4. In the light of the above fact situation, the only question that arise for consideration of this Court is whether the petitioner is entitled to derive the benefit under G.O (Ms) No. 51, Agriculture Department dated



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28.02.2018 without reference to her retirement from service or not?

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5. Admittedly, the name of the petitioner was included in the panel for promotion to the post of Deputy Director, Horticulture for the panel year 2016-2017 and the said inclusion was also approved by the Government by issuing G.O (Ms) No. 51, Agriculture Department dated 28.02.2018. By the very same Government Orders, the Government also issued further directions to the Respondent No.2 to promote the petitioner to the post of Deputy Director, Horticulture.

6. It is only because of the interim stay granted by this Court in a batch of Writ Petitions referred to above, the said Government Order could not be given effect to and the petitioner was not promoted to the promotional post. Ultimately, the said Government Order is interfered with by this Court in the above said batch of Writ Petitions, there would not have been any scope or basis for the petitioner to make a claim for grant of the benefit under G.O



(Ms) No. 51, Agriculture Department dated 28.02.2018. But the said batch of Writ Petitions were ultimately dismissed by this Court, by an order dated 05.02.2020, upholding the G.O (Ms) No. 51, Agriculture Department dated 28.02.2018.

7. In that view of the matter, the petitioner is deprived of the benefit under the said Government Order only because of the interim stay granted by this Court in the above said batch of Writ Petitions. But for the interim stay which has ultimately got vacated consequent upon the dismissal of the batch of Writ Petitions, the petitioner would have got promotion by virtue of inclusion of her name in the panel for promotion and appropriate orders for promoting the petitioner to the post of Deputy Director of Horticulture would have been issued. In all probabilities, this Court while dismissing of the said batch of Writ Petitions, ought to have taken care of the situation and issued appropriate directions for reversing the situation that emerged by virtue of granting of interim stay in the said batch of Writ Petitions. In the considered view of this Court, it is in-fact the duty of this Court to remedy all the consequences that have flown because of the passing of the interim



stay, on dismissal of the said batch of Writ Petitions.

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8. Be that as it may. When the petitioner made a claim for extending the benefit of G.O (Ms) No. 51, Agriculture Department dated 28.02.2018, the respondents ought to have taken appropriate steps for granting atleast notional benefit of promotion to the post of Deputy Director, Horticulture in terms of the said Government Order. But, unfortunately the respondents having taken a plea in the impugned order that a panel that was approved in G.O (Ms) No. 51, Agriculture Department dated 28.02.2018 is valid only for a period of one year have taken a different stand in respect of the person who is at Sl.No.4 of the said panel and she was promoted to the post of Deputy Director of Horticulture by following the very same panel in terms of the said Government Order only. Thus, the respondents themselves have implemented the said Government Order after dismissal of the batch of Writ Petitions and promoted the candidate who is at Sl.No.4 of the said panel and she also joined duty on 07.02.2020 i.e., two days after the dismissal of the batch of Writ Petitions. The reason given by the respondents for not giving the benefit under G.O (Ms) No. 51, Agriculture Department dated



28.02.2018 to the petitioner on the ground that the petitioner retired from service on 30.09.2018 i.e., prior to the date of dismissal of the Writ Petitions, in the considered view of this Court is wholly unsustainable and that cannot be a reason to discriminate the petitioner while extending the benefit under G.O (Ms) No. 51, Agriculture Department dated 28.02.2018 to others.

9. Though the petitioner retired from service and cannot be considered for actual promotion, it is always open and possible for the respondents to consider the case of the petitioner for notional promotion and extending the benefit of the such promotion of which the petitioner is deprived of because of the interim stay granted by this Court in the above referred batch of Writ Petitions.

10. In the light of the above, in the considered view of this Court, the reasoning given in the impugned order is wholly unsustainable and the petitioner cannot be deprived of the benefit under G.O (Ms) No. 51, Agriculture Department dated 28.02.2018, merely on the ground that the petitioner retired from service on 30.09.2018 during the operation of the stay



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of the Government Order. Consequent upon the dismissal of the batch of Writ Petitions resulting in vacating the interim stay, the petitioner is entitled for extending the benefit in terms of G.O (Ms) No. 51, Agriculture Department dated 28.02.2018 and accordingly, the impugned order is set aside and the Writ Petition is allowed directing the respondents to extend the benefit of notional promotion to the post of Deputy Director of Horticulture in terms of G.O (Ms) No. 51, Agriculture Department dated 28.02.2018 and pass appropriate orders therein as expeditiously as possible at any rate within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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MUMMINENI SUDHEER KUMAR, J.

skr

To

1. The Principal Secretary to Government of Tamil Nadu,
Agriculture Department,
Fort St. George, Chennai – 600 009.
2. The Director of Horticulture & Plantation Crops,
Chepauk, Chennai – 600 005.

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