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W.P.No.17821 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.17821 of 2022 and
W.M.P.Nos.17169 & 17171 of 2022

V.Sekaran

... Petitioner

Vs.

1.The Director,
Directorate of Sericulture,
Salem.

2.G.Karunanithi

3.R.Thiraviyam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the first respondent bearing No.9964/E2/2016-1 dated 24.10.2016 read with proceedings bearing No.Proc.No.9964/E2/2016 dated 04.04.2017, quash the same as illegal and unconstitutional insofar as the promotion of the respondents 2 and 3 to the post of Inspector of Sericulture overlooking the petitioner is concerned and consequently, direct the first respondent to consider and grant notional promotion to the petitioner in the post of Inspector of Sericulture with effect from 04.04.2017 before the respondents 2 and 3 were granted such promotion and grant him all other attendant benefits viz., terminal benefits including pensionary benefits.



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For Petitioner : Mr.M.N.Sumathy

For Respondents : Mr.R.U.Dinesh Rajkumar,AGP for R1
No appearance for R2 & R3

ORDER

This Writ Petition has been filed for quashment of the proceedings of the first respondent bearing No.9964/E2/2016-1 dated 24.10.2016 read with proceedings bearing No.Proc.No.9964/E2/2016 dated 04.04.2017 and consequently for a direction to the first respondent to consider and grant notional promotion to the petitioner in the post of Inspector of Sericulture with effect from 04.04.2017 and also grant him all other attendant benefits viz., terminal benefit,s including pensionary benefits.

2.Heard the learned counsel on either side and also perused the materials available on record.

3.The learned counsel for the petitioner submitted that the petitioner was initially appointed as a Sericulture Demonstrator in the year 1982 and the said post was regularized on 24.11.1982. The next promotion to the post of Sericulture Demonstrator is the post of Junior Inspector of Sericulture. The



petitioner was promoted as a Junior Inspector on 01.10.1984. Though the petitioner was much senior to the respondents 2 and 3, he was wrongly placed at S.No.1010 much below to the respondents 2 and 3 in the seniority list to the post of Junior Inspector. For which, the petitioner gave a representation to the first respondent on 26.02.2014 and the same was not considered by the first respondent. But the first respondent by its proceedings dated 28.02.2014, had temporarily promoted some of the Junior Inspectors of Sericulture to the post of Assistant Inspector of Sericulture. By the said proceedings, the respondents 2 and 3, who were juniors to the petitioner, were also temporarily promoted to the post of Assistant Inspector of Sericulture. Pursuant to the representation of the petitioner dated 26.02.2014, the first respondent by its proceedings dated 02.06.2014, had revised the seniority in the post of Junior Inspector and placed the petitioner at S.No.785A. Thereafter, the first respondent by its proceedings dated 26.08.2014 has drawn a panel of names of Junior Inspector of Sericulture qualified for promotion to the post of Assistant Inspector in the year 2014-15 and the petitioner was promoted as Assistant Inspector of Sericulture and the name of the petitioner was found place at S.No.51 in the said promotion panel. An interse seniority list for the post of Assistant Inspector of



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Sericulture between promoted Assistant Inspector of Sericulture and directly recruited Assistant Inspector of Sericulture was issued by the first respondent through his proceedings dated 22.09.2016 wherein the petitioner was placed at S.No.327. The next promotion from Assistant Inspector of Sericulture is to the post of Inspector of Sericulture. The first respondent by its proceedings dated 24.10.2016 had issued a panel of Assistant Inspector of Sericulture, who are fit for promotion to the post of Inspector of Sericulture. The name of the respondents 2 and 3 were included in the said panel. Though the petitioner was qualified for the said post and eligible for promotion, the name of the petitioner did not found place in the said panel. Aggrieved by the same, the petitioner gave a representation to the first respondent on 14.11.2016 and no action was taken on the same. In the meantime, the first respondent by its proceedings dated 04.04.2017, promoted the respondents 2 and 3 to the post of Inspector of Sericulture. The petitioner once again gave a representation to the first respondent on 12.04.2017 and sought the first respondent to promote him to the post of Inspector of Sericulture before his retirement i.e., on 30.04.2017. No action was taken by the first respondent before his retirement and he retired from service on attaining the age of superannuation on 30.04.2017. Thereafter, the petitioner gave another



representation dated 12.01.2018 to the first respondent requesting to grant him notional promotion to the post of Inspector of Sericulture and also grant terminal and pensionary benefits to the post of Inspector of Sericulture. In support of his contention, he relied on the Rule 39 of the Tamil Nadu State and Subordinate Services Rules and the same is extracted hereunder:

“39. Temporary Promotion:- (1) (i) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion in accordance with the rules, the appointing authority may temporarily promote a person, who possesses the qualifications prescribed for the post, otherwise than in accordance with the rules.

(b) where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in service or class by promotion from lower category and the appointment of the person who is entitled to such promotion under the rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may promote any other person who possesses the qualification if any prescribed for the higher category.



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© *A person temporarily promoted under sub-rule (a) shall be replaced as soon as possible by the member of the service, who is entitled to the promotion under the rules.*

(d) where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending the appointing authority may promote him temporarily pending enquiry into the charges against him. The competent authority shall have discretion to make regular promotion in suitable cases.

(e) A person promoted under sub-rule (a)(b) or (d) shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category. The services of a person promoted under sub-rule (a) (b) or (d) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned.

(f) (i) A person promoted under sub-rule (a) or (d) shall commence his probation if any, in such category either from the date of his temporary promotion or from such subsequent date as the appointing authority may determine;

(ii) He shall also be eligible to draw increments in the time scale of pay applicable to him from the date of commencement of his probation. Where commencement of probation is



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ordered from a date earlier than the date of the order and if this has not been enabled by relaxation of any rule, he shall draw increments, including arrears, in the time scale of pay applicable to him from such earlier date. The appointing authority shall include a provision to this effect while issuing order in all such cases.”

4. The learned Additional Government Pleader appearing for the first respondent submitted that based on the representation of the petitioner dated 26.02.2014 to revise the seniority in the post of Junior Inspector of Sericulture, the seniority of the individual was revised from S.No.1010 to S.No.785A. A panel for promotion to the post of Inspector of Sericulture for the year 2016-17 was issued and the name of the petitioner was also considered for promotion. The qualification for the promotion to the post of Inspector of Sericulture from the post of Assistant Inspector of Sericulture as per the Tamilnadu Industries Subordinate Service Rules as amended by G.O.Ms.No.127, Handlooms, Handicrafts, Textiles and Khadi (G1) Department, dated 27.07.2005 is that a person must have completed two years of service in the post of Assistant Inspector of Sericulture. As there was shortfall in the experience period in the post of Assistant Inspector of Sericulture as on the crucial date i.e., 15.04.2016, the name of the petitioner



could not be included in the panel for the year 2016-17. The respondents 2 and 3 have joined on 04.04.2017 in the promoted post of Inspector of Sericulture and the petitioner got retired from service on 30.04.2017 and therefore, he could not get the opportunity for promotion to the post of Inspector of Sericulture. The petitioner has submitted a representation on 30.11.2020 requesting to include his name in the panel for the post of Inspector of Sericulture for the year 2016-17 and notionally promote him for availing the retirement benefits. The representation of the petitioner is under consideration of the department and necessary orders in this regard to be issued as per the respective rules.

5. Considering the submissions made by the learned counsel on either side and on perusal of the Rule 39 of the Tamil Nadu State and Subordinate Services Rules, this Court directs the petitioner to give a fresh representation to the concerned Department within a period of two weeks from the date of receipt of a copy of this order and on such representation being made, the Department concerned is directed to consider the same and pass orders in accordance with the law within a period of one month therefrom.



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6. With the above directions, this Writ Petition is disposed of. No costs.

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Consequently, connected Miscellaneous Petitions are also closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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VIVEK KUMAR SINGH, J.

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