



W.P.(MD)No.12976 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.12976 of 2023 &

W.M.P.(MD)No.10982 of 2023

J.Murugabharathi

... Petitioner

vs.

1.The Agricultural Production Commissioner and
Principal Secretary to Government,
Agriculture - Farmers Welfare Department,
Secretariat, Chennai - 600 009.

2.The Director of Agriculture,
Directorate of Agriculture,
Chepauk, Chennai - 5.

3.The Joint Director of Agriculture,
O/o.the Joint Director of Agriculture,
Collectorate Campus,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Se.Mu.Order.No.ViPaPil/139810/2005 dated 17.02.2023 on the file of the second respondent and the consequential impugned order in Seyalmurai Order No.Nil/13759/



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2022 dated 13.03.2023 on the file of the third respondent and quash the same as illegal insofar as not regularizing the period of absence from duty from 31.07.2019 to 12.12.2022 as duty period and consequently for a direction, directing the second respondent to regularize the period of absence from duty from 31.07.2019 to 12.12.2022 as period spent on duty in accordance with FR 54-A(1) and (3) of the Fundamental Rules of Tamil Nadu Government and in the light of the Judgment rendered by this Court in W.A.(MD)No.625 of 2022 dated 29.06.2022 and to grant promotion to the post of Assistant Director of Agriculture by including the petitioner's name in the appropriate place in the Seniority Panel drawn as on 01.04.2021 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
for M/s.Lajapathi Roy and Associates

For Respondents : Mr.M.Ramesh Arumugam
Government Advocate

ORDER

Heard Mr.T.Aswin Rajasimman, learned counsel for the petitioner and Mr.M.Ramesh Arumugam, learned Government Advocate for the respondents.



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2. The petitioner who has been given with a punishment of compulsory retirement by disciplinary proceedings has filed W.P. (MD)No.18206 of 2019 before this Court and this Court vide order dated 01.04.2021, had set aside the punishment order and directed the first respondent to reinstate the petitioner in service. Challenging the same, the first respondent had filed an appeal before this Court in W.A.(MD)No. 625 of 2022 and this Court by order dated 29.06.2022 disposed of the appeal stating that the punishment of compulsory retirement is modified as stoppage of increment for a period of 18 months without cumulative effect. The petitioner was absent from duty due to the compulsory retirement which existed between the period from 01.08.2019 to 12.12.2022. By way of the impugned order of the second respondent dated 17.02.2023 in Se.Mu.Order.No.ViPaPil/139810/2005, the period of compulsory retirement from 01.08.2019 to 12.12.2022, has been regularized as under.



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1	கட்டாய ஓய்வு : வழங்கிய நாள்	31.07.2019 பிற்பகல்			
2	01.08.2019 முதல் : 24.02.2020 வரை	208 நாட்கள் ஈட்டிய விடுப்பு	வருடம்	மாதம்	நாள்
			-	6	28
3	25.02.2020 முதல் : 22.08.2020 வரை	180 நாட்கள் சொந்த காரணங்களின் பேரிலான ஈட்டா விடுப்பு	-	6	-
4	23.08.2020 முதல் : 12.12.2022 வரை	842 நாட்கள் (No Work, No pay) மருத்துவச் சான்று இல்லாத அசாதாரண விடுப்பு (ஊதியமில்லா விடுப்பு) (UEL without Medical Certificate)	2	3	22
		மொத்த நாட்கள்	3	4	20

3. Now the petitioner has filed this writ petition challenging the same stating that the appropriate rule applicable to his case is FR 54-A (1) and (3) of the Fundamental Rules of Tamil Nadu Government. But, the respondents authorities have invoked FR 54-B 1 (7). FR 54-A (1) and (3) of the Fundamental Rules of Tamil Nadu Government read as under.

"54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set



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aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

54-A (3) If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be."



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4. As per the above Rule, if when a punishment of compulsory retirement is set aside, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowance in accordance with provisions of sub rule (1) and (3) of 54-A of Fundamental Rules of Tamil Nadu Government. The respondents have not dealt with regularization process in accordance with FR 54-A, but has wrongly construed the absence of duty as that of suspension and invoked FR 54-B. Since the impugned order has been passed under a wrong provision, it is liable to be set aside.

5. In the result, the writ petition is disposed of and the order in Se.Mu.Order.No.ViPaPil/ 139810/2005 dated 17.02.2023 passed by the second respondent and the consequential order in Seyalmurai Order No.Nil/13759/2022 dated 13.03.2023 passed by the third respondent are set aside. The respondents are directed to re-consider the regularization of the period of absence from duty by the petitioner from 01.08.2019 to 12.12.2022 and pass an orders afresh in accordance with FR 54-A (1) and (3) of the Fundamental Rules of Tamil Nadu Government within a period



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of six weeks from the date of receipt of a copy of this order. Depending upon the orders so passed, the petitioner shall be considered for the promotion, if he is otherwise found to be eligible. No costs. Consequently, the connected Miscellaneous Petition is closed.

02.04.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

- 1.The Agricultural Production Commissioner and
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R.N.MANJULA, J.

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