



W.A.(MD)Nos.486 to 488 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2024

DELIVERED ON : 24.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.(MD)Nos.486 to 488 of 2021
and

C.M.P.(MD)Nos.2056 to 2058, 2060, 2063 and 2064 of 2021

W.A(MD)No.486 of 2021:-

K.Mariappan

... Appellant

-vs-

1.The Director,
Horticulture and Plantation Crops,
Sepakkam, Chennai -5.

2.The Joint Director of Agriculture,
Pudukottai.

3.The Deputy Director of Morticulture,
Pudukottai.

4.The Assistant Director of Agriculture,
Manamelkudi, Pudukottai District.

...Respondents

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Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.10720 of 2015, dated 07.12.2020 on the file of this Court.

W.A(MD)No.487 of 2021:-

C.Devendran

... Appellant

-VS-

1.The Director,
Horticulture and Plantation Crops,
Sepakkam, Chennai -5.

2.The Joint Director of Agriculture,
Pudukottai.

3.The Deputy Director of Morticulture,
Pudukottai.

4.The Assistant Director of Agriculture,
Annavasal, Pudukottai District.

...Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.10721 of 2015, dated 07.12.2020 on the file of this Court.



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W.A(MD)No.488 of 2021:-

P.Thiyagarajan

... Appellant

-VS-

1.The Director,
Horticulture and Plantation Crops,
Sepakkam, Chennai -5.

2.The Joint Director of Agriculture,
Pudukottai.

3.The Deputy Director of Horticulture,
Pudukottai.

4.The Director,
State Agricultural Extension Management
Institute (STAMIN), Kudumianmalai,
Pudukottai District.

...Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.100839 of 2015, dated 07.12.2020 on the file of this Court.

For Appellant :Mr.R.Maheswaran

For Respondents :Mr.G.Suriyananth

Additional Government Pleader
(in all cases)



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COMMON JUDGMENT

[Judgment of the Court was made by **N.SENTHILKUMAR, J.**]

The unsuccessful Writ Petitioners have filed the present Writ Appeals challenging the impugned order passed by the learned Single Judge of this Court in W.P.(MD)Nos.10720 of 2015, dated 07.12.2020.

2.The appellants contended that they were originally engaged as Farm Workers in the Horticulture Farms at Vallathirakottai on daily wage basis. The Horticulture Employees Association has made a request to the Hon'ble Chief Minister to regularise the appellants and the similarly placed persons, who are engaged as Farm Workers on daily wage basis. Based on the representation given to the then Hon'ble Chief Minister, G.O.Ms.No.494, Agriculture (AA1) Department, dated 29.11.2007 was passed and 1083 daily wage employees, who had completed 10 years of service had brought under the Agricultural Development Agency, which is a registered Society under the Tamil Nadu Societies Registration Act, 1975, as a “Special Purpose Vehicle” and the scale of pay was fixed as 1300-20-1500-25-2000 on par with Noon Meal Employees.



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3.In the meanwhile, on 19.11.2012, the Joint Director, Agricultural Department, Pudukottai, had passed a promotion order promoting the Writ Petitioners from the post of Farm Worker to the post of Office Assistant. After the said promotion, the Writ Petitioners were promoted as Office Assistant and they had received one year increment in the post of Office Assistant.

4.The first respondent has sent a communication, dated 16.06.2015, to the second respondent stating that the promotion was made by following a wrong interpretation of Government Orders and directed that the promotion made to the Writ Petitioners should be cancelled. Based on the said communication, dated 16.06.2015, vide proceedings of the second respondent in Se.Mu.Ka.AaNi3/9833/2012, dated 22.06.2015 and the third respondent in Se.Mu.Ka.Aa401/2015, dated 23.06.2015, the promotion give to the Writ Petitioners was cancelled. Challenging the impugned order, dated 23.06.2015, the Writ Petitioners had contended before the learned Single Judge that before passing the impugned order setting aside the promotion, no notice was served on them and without giving an opportunity, the impugned order was passed in



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violation of principles of natural justice and it had caused a serious prejudice to their right and their service of working as Office Assistant.

5.The Writ Court had dismissed the said Writ Petitions by taking into consideration the fact that the appointment of the Writ Petitioners was regularised only on a Special circumstance by virtue of G.O.Ms.No.494, Agriculture (AA1) Department, dated 29.11.2007, under a “Special Purpose Vehicle”, which was implemented for various schemes in the Horticulture Department. The Writ Court by taking into consideration that the Writ Petitioners' promotion was not governed under the service rules, which were in force and the guidelines enumerated in G.O.Ms.No.1435, dated 19.08.1964, which clearly shows that the promotion made to the Writ Petitioners was direct contravention to the aforesaid Government Order. It was held that a mistaken interpreting the Rules and Regulations was done by the third respondent and therefore, the said mistake was rectified pursuant to a letter issued by the first respondent herein in letter, dated 16.06.2015.



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6.The Writ Court while referring the recruitment Rules for the Office Assistant by promotion through transfer, had extracted the relevant portion of the letter issued by the first respondent, which reads as follows:

“(i)the services of the daily wage farm workers in Tamil Nadu Horticultural Development Agency (TANHODA) as regular farm workers as per the rules and regulations of TANHODA and put them under a special scale of pay of Rs. 1300-20-1500-25-2000 (pre revised) on par with the noon meal workers of the Tamil Nadu Government and they were eligible only for dearness allowances and not eligible for House Rent allowances and other allowances as such they are not brought under Class IV category employees under the purview of the Tamil Nadu Basic Service and as such they were not eligible for considering further promotions;

(ii)the promotion by transfer to the post of Office Assisant could be made only from the 87 category of eligible class IV Basic Servants posts approved by the Government of Tamil Nadu under the Tamil Nadu Basic Service Rules only. The Farm Worker posts by which the 6 respondents had worked has not been categorised under such 87 eligible class IV Basic Servants posts. render the natural justice by applying the rules rightly in correcting the mistakes.

10.It is humbly submitted that kind attention is invited to the orders of Government issued in G.O.Ms.No.1435, Public (Special-A) Department, dated 19.08.1964. wherein the Government have issued the following clarification for the promotion or appointment in an officiating capacity found to be erroneous:”

7.The Writ Court while referring the promotional rules for the sanctioned post under the Tamil Nadu Basic Service Rules, has taken note that the promotion



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given to the Writ Petitioners should form part of the service rules and the said proviso should contain the eligibility for the promotion and that in the absence of any Rule under the Tamil Nadu Basic Service Rules to promote the Writ Petitioners, any order passed by the third respondent promoting the Writ Petitioners is in contravention not only to the Rules but also a wrong interpretation of the Rules thereunder.

8.Heard the learned Counsel appearing for the appellant and the learned Additional Government Pleader appearing for the respondents.

9.When there is no basic Rules to bring the appellants under the category of promotion, they cannot be compared with the regular employees of the Government, whose recruitment is followed in accordance with law. A parity or analogy cannot be adopted in case of promotion unless and until the Tamil Nadu Basic Rules is governed and any order passed without a basis rules, even if he is a competent person, that order is *per se* illegal and contrary to the service rules. The entire service appointment, promotion, reduction of pay scale are governed by the Tamil Nadu Basic Service Rules and in the absence of any rule



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empowering the third respondent to effect promotion, is contrary to the service rules, is absolutely illegal order, which was rightly set aside the first respondent.

10.However, this Court has taken note of the contention of the appellants that the impugned orders in the Writ Petition have been passed without issuing show cause notice to them and it is violation of principles of natural justice. They have also received their annual increment for a period of one year. This Court is of the view, that, naturally, there is a prejudice caused to the appellants, as they had been reduced to the rank of Farm Workers and after promotion to the post of Office Assistant, they have also received their annual increment in the promotional post. In view of the same, this Court is inclined to pass the following order:

(1)The Writ Appeals are partly allowed;

(2)The matter is remanded back to the original authority to pass appropriate orders on merits and in accordance with law by taking note of the basic service rules, after issuing show cause notice and after affording sufficient opportunity of hearing to the appellants. The said exercise shall be completed within a period of



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one year from the date of receipt of a copy of this judgment;

(3)No costs.

(4)Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [N.S., J.]
24.01.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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