



W.A.No.1376 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**W.A.No.1376 of 2019
and
C.M.P.No.9464 of 2019**

Dr.M.Manoharan

... Appellant

Vs

1.The Director of Animal Husbandry
and Medical Services,
Chennai – 600 006.

2.The Assistant Director of Animal Husbandry,
Uthagamandalam,
Nilgiris District.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the final order dated 03.07.2018 made in W.P.No.7952 of 2014.

For Appellant : Mr.L.Chandrakumar

For Respondents : Mr.R.Kumaravel
Additional Government Pleader



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal is directed against the order passed by the Writ Court dated 03.07.2018 made in W.P.No.7952 of 2014.

2.The appellant claimed that he was appointed temporarily as Veterinary Assistant Surgeon by the proceedings issued by the Director of Animal Husbandry, Chennai dated 27.01.1989 along with a list of 82 persons. He served as Veterinary Assistant Surgeon from 06.02.1989 to 11.08.1993 continuously for a period of more than 4 years and 6 months without any break in service.

3.The service of the appellant was abruptly terminated on 11.08.1993. Thereafter, the petitioner filed an Original Application in O.A.No.6529 of 1999 before the erstwhile Tamil Nadu Administrative Tribunal to consider his representation dated 18.08.1999 and to pass orders. The said petition stood transferred to this Court as W.P.No.38537 of 2006 where the Writ Court by order dated 17.02.2010 had given a direction permitting the



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appellant to make a representation based on the earlier representation for redressal of his grievance and it was directed to be considered on merits.

4.Pursuant to the said order passed by the Court, subsequently the request of the appellant was considered by the Department and they passed an order on 17.05.2012 appointing the appellant again as Veterinary Assistant Surgeon. Since then he has been continuously working till date.

5.Subsequently since the appellant had been working continuously from 2012 in order to regularize his service with effect from his earlier service i.e., from 1989, he had approached the Department concerned who rejected the same through their order dated 05.12.2013 which was under challenge before this Court in W.P.No.7952 of 2014 where the learned Judge by order dated 03.07.2018 dismissed the said writ petition. As against which, the present intra-court appeal has been directed.

6.It is the contention of Mr.L.Chandrakumar, learned counsel appearing for the appellant that initially he had been appointed on



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06.02.1989 and even though an ousting order has been passed on 11.08.1993 subsequently he had been not ousted in fact and he had been working continuously and in the meanwhile, since orders were passed by this Court in the first round of litigation giving direction to the Department to consider the representation of the appellant that was considered and again a re-appointment was given on 17.05.2012.

7.In this context, it is the contention of the learned counsel appearing for the appellant that, in fact when such a second time re-appointment was made, it was referred to the Tamil Nadu Public Service Commission [TNPSC] where a limited examination was conducted, based on the selection that has been made by the TNPSC he has been re-appointed on 17.05.2012. Therefore, it is a regular appointment and hence, the appellant is entitled to get regularization/absorption as a regular employee and along with the service he has rendered from 17.05.2012 if the earlier service of the appellant is also taken into account he is entitled to get continuity of service including the pensionary benefits under the Old Pension Scheme. Therefore, for all these purpose when he approached the Writ Court, these



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aspects having not been considered in proper perspective the learned Judge has rejected the writ petition. Therefore, challenging the same since the present appeal is directed he seeks indulgence of this Court.

8.However, Mr.R.Kumaravel learned Additional Government Pleader appearing for the respondents on the other hand based on the counter affidavit that has been filed already before the Writ Court as well as the latest instructions that he has received from the Director of Animal Husbandry dated 10.08.2023 has made submission stating that, though the appellant was appointed on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules [hereinafter referred to as “the Rules”], he was ousted for want of vacancy in the year 1993 and thereafter, he was not re-appointed. Hence, he sought for a Mandamus by approaching the Tami Nadu Administrative Tribunal which case was transferred to this Court where direction was given by a learned Judge to consider his representation and subsequently he has been considered and re-appointed only under Rule 10(a)(i) of the Rules by order dated 17.05.2012.



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9.Subsequently in a related case, the Hon'ble Supreme Court had given direction to the State Government to notify all the vacancies that arose in the said cadre including Rule 10(a)(i) appointees vacancies and accordingly a weightage marks can be given for selection of those 10(a)(i) appointees and selection shall go on.

10.In the meanwhile, in this writ appeal since interim order was obtained by the appellant to maintain status quo, he had been permitted to continue till date under Rule 10(a)(i) of the Rules.

11.The learned Additional Government Pleader would also submit that pursuant to the orders passed by the Hon'ble Supreme Court for direct recruitment, TNPSC issued notification on 18.11.2022, examination conducted and result had also been published on 15.03.2023.

12.When that being the position, the learned Additional Government Pleader would contend that, the appellant is not entitled for any absorption/regularization either taking service from 17.05.2012 or from the



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earlier service from 1989 to 1992. Therefore, the plea raised by the petitioner/appellant having been considered was rejected by the learned Judge through the impugned order, of course rightly, it does not warrant interference, he contended.

13.We have considered the said rival submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

14.Though it is the contention of the learned counsel for the appellant that the appointment made on 17.05.2012 itself was made pursuant to the selection that has been given to the appellant by the TNPSC by taking a limited qualifying examination, no document to that effect has been filed before this Court.

15.However, in the counter affidavit filed before the Writ Court by the respondents i.e., Director of Animal Husbandry [undated] in paragraph No.14, the following has been stated:



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“14. With regard to the averment made in Para:G in the grounds of the affidavit this respondent submits and once again reiterates that the service rendered by the petitioner for the period from 06.02.1989 to 11.08.1993 is purely on temporary basis and terminated on the A.N. Of 11.08.1993. The petitioner was not in service for nearly 17 years from 12.08.1993 to 16.05.2012 and later on he applied for the post of Veterinary Assistant Surgeon and he was selected as a fresh candidate by the Tamil Nadu Public Service Commission and no re-appointed as construed by the petitioner and joined the Animal Husbandry Department on the F.N. Of 17.05.2012 [copy enclosed]. The Contributory Pension Scheme [CPF] took its effect from the year 2003. In as much as the petitioner was selected through Tamil Nadu Public Service Commission and had joined the Department on the F.N. Of 17.05.2012 he is entitled to the CPF scheme and not the old pension scheme. Hence the writ petition of the petitioner is not sustainable in law and liable to be rejected.”

16. Therefore, it is the stand of the respondent Department also that the appellant had been selected by the TNPSC and was re-appointed on



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17.05.2012. Therefore, he is entitled to CPF scheme and not the old pension scheme.

17. Therefore, the only stand that has been taken by the respondent in the counter affidavit filed before the Writ Court was that the appellant is entitled to get regularization because he was selected by the TNPSC. He is not entitled to get pension under the Old Pension Scheme but only under the CPF Scheme.

18. Even for such a stand taken by the respondent Department, no document has been filed before this Court despite several time has been given to the respondent Department.

19. The latest instruction given by the Director of Animal Husbandry dated 10.08.2023 does not suggest anything as has been uttered in paragraph No.14 of the counter affidavit already been filed by the very same office i.e., Director of Animal Husbandry, Government of Tamil Nadu.

20. Despite these controversies, one factor is certain where, earlier,



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between 1989 and 1993, the appellant was working on temporary basis as

10(a)(i) appointee.

21. Even the appointment order dated 17.05.2012 has stated that the appellant has been appointed under Rule 10(a)(i) of the Rules. The relevant portion of the order dated 17.05.2012 reads thus:

பார்வை டில் கண்ட அரசாணையில்
வேவைவாய்ப்பகம் மூலம் முதநிலை மற்றும் இன
கழற்சி முறையில் கால்நடை மருத்துவ
பட்டதாரிகளை இத்துறையில் தமிழ்நாடு மாநிலம்
மற்றும் சார்நிலை பணி பொது விதி 10(ஏ)(1)-ன்படி
கால்நடை உதவி மருத்துவராக நியமனம் செய்ய
சென்னை கால்நடை பராமரிப்பு (ம)
மருத்துவப்பணிகள் இயக்குநருக்கு அதிகாரம்
அளிக்கப்பட்டதின் அடிப்படையில், அப்பட்டியலில்
இடம் பெற்றுள்ள கீழ்க்குறிப்பிடப்பட்டுள்ள கால்நடை
மருத்துவ பட்டதாரிக்கு அவரது பெயருக்கு எதிரே
குறிப்பிடப்பட்டுள்ள இடத்தில் தமிழ்நாடு கால்நடை
பராமரிப்பு பணியின் கீழ் [நு.15600-39100](#) + 5400 தர



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ஊதியம் என்ற ஊதிய கட்டில் முற்றிலும் தற்காலிக
கால்நடை உதவி மருத்துவராக இதன்மூலம் பணி
நியமனம் வழங்கி ஆணையிடப்படுகிறது.

22. Therefore, atleast from 17.05.2012 till date the appellant has been continuously working as 10(a)(i) employee according to the learned counsel for the appellant and he is superannuating by 2026.

23. Therefore, altogether he will be having 14 years plus service at his hands where he has completed 11 years service already.

24. As the stand has been taken by the respondent Department that he is not entitled for getting any pension under the old pension scheme but he is entitled only to be included under CPF scheme and even for that benefit in order to get the same by the appellant his service atleast from 17.05.2012 has to be regularized.

25. The reason being that, he has been continuously vigilant over his



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right and had already approached this Court in the earlier occasion in the year 1999. Subsequently the present writ petition which is continued as the present writ appeal.

26.On 17.05.2012 since he has been re-appointed and has been continuously working and the said appointment is pursuant to the TNPSC selection and that is the uniform stand taken by the learned counsel for the appellant as well as the respondent Department, for which despite there is no document by both sides before this Court, taking note of the fact that he has been in continuous service from 17.05.2012, this Court feel that atleast for this service i.e., from 17.05.2012 the appellant should be regularized, otherwise his long years of service for the entire career he has put in the Department will go waste.

27.In that view of the matter, this Court feel that this wri appeal can be disposed of with the following orders:

- (1)That the impugned order dated 03.07.2018 made in W.P.No.7952 of 2014 is hereby set aside and the respondent Department is hereby directed to regularize the



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service of the appellant with effect from 17.05.2012.

- (2)Consequent upon such regularization, the appellant is entitled to get service benefits based on the time scale of pay for which he is entitled to.
- (3)However, he is not entitled to claim any pensionary benefits under the Old Pension Scheme which was prevailing prior to 01.04.2003. At the same time, with regard to CPF scheme is concerned, as admitted in paragraph 14 of the counter affidavit filed by the respondent Department, the appellant is entitled to be paid.

28.With all these directions, the writ appeal is allowed to the terms indicated above. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
cse



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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

cse

To

- 1.The Director of Animal Husbandry
and Medical Services,
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- 2.The Assistant Director of Animal Husbandry,
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