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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17281 of 2023

G.Mariappan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Animal Husbandry, Dairying & Fisheries Department,
St. George Fort,
Chennai-9.

2.The Director of Animal Husbandry & Veterinary Services,
Office of the Directorate of Animal Husbandry & Veterinary Services,
DMS Building, Thenapet,
Chennai-6.

3.The Regional Joint Director,
Animal Husbandry Department,
Tirunelveli,
Tirunelveli District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation, dated 09.04.2021 to regularize his service with effect from 12.11.2009, i.e., from the date on which his batch

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mates were got regularized in terms of G.O.Ms.No.136 Animal Husbandry, Dairying and Fisheries Department, dated 14.07.2017 and fix the pay notionally from the date of completion of probation and pay the arrears with effect from 14.07.2017 in the light of similar order passed by the Assistant Director of Animal Husbandry, Ambasamudram in his proceedings in Na.Ka.No. 2753/A1/2017-1, dated 20.11.2017.

For Petitioner : Mr.H.Mohammed Imran

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The present writ petition has been filed seeking direction to the respondents to consider the petitioner's representation, dated 09.04.2021 to regularize his service with effect from 12.11.2009, (i.e.,) from the date on which his batch mates were got regularized in terms of G.O(Ms)No.136 of the Animal Husbandry, Dairying and Fisheries Department, dated 14.07.2017 and fix the pay notionally from the date of completion of probation and pay the arrears with effect from 14.07.2017 in the light of similar order passed by the Assistant Director of Animal Husbandry, Ambasamudram in his proceedings in Na.Ka.No. 2753/A1/2017-1, dated 20.11.2017.

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2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. Initially the petitioner was appointed as Casual Labour on daily wages basis on 28.12.1992 at Animal Husbandry Department, Tirunelveli. He worked as a Casual Labour for more than five years. The petitioner and other similarly placed persons approached the Administrative Tribunal to regularise their service. While so, the first respondent by his proceedings, dated 11.11.2008 called for the service particulars for the eligible daily wages employees working in the Government Departments, who have rendered 10 years of service as on 01.01.2006 to be regularised by appointing them in the time scale of pay. Based on the same, the Commissioner of Animal Husbandry and Veterinary Services, Chennai sent a list of 121 eligible employees, who are eligible for regularisation in which the petitioner's name stands in serial No.11.

4. While so, the first respondent vide G.O(Ms)No.134, dated 12.11.2009 passed orders regularising only 111 Casual Labourers, who have completed 10 years of service as on 01.01.2006 thereby eliminating the petitioner and 9 others. The petitioner is eligible for regularisation along with the said batch

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mates, whose services were regularised vide G.O(Ms)No.134, dated 12.11.2009. The reason behind that being, a criminal case came to be registered against the petitioner and 6 others and hence, his name was not included. However, the criminal case registered against the petitioner ended in acquittal vide order, dated 07.04.2011 in C.C.No.110 of 2009 on the file of the Judicial Magistrate Court, Tirunelveli.

5. Thereafter, the petitioner preferred a representation to the respondents to regularise his service from the date on which his batch mates were regularised, that is, from 12.11.2009. Since there was no response from the respondents, the petitioner filed a writ petition before this Court in W.P(MD)No.5698 of 2012 and the same was disposed of on 24.04.2012. However, the order passed by this Court in the said writ petition was not complied with. Hence, this petitioner filed another writ petition in W.P(MD)No.7780 of 2012 and the same was also disposed of on 30.06.2014 with a direction to the respondents. However, in compliance to the order passed by this Court in the said writ petition, the second respondent by his proceedings, dated 15.03.2015 and 24.06.2015 recommended the first respondent to include the petitioner's name in G.O(Ms)No.134, dated

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12.11.2009 by which the petitioner's batch mates were regularised. Based on the same, the first respondent by his proceedings, dated 02.03.2016 brought the petitioner into regular establishment on regular time scale of pay in the post of Animal Husbandry Assistant in the existing vacancy by relaxing the relevant rules.

6. Though the recommendation has been made by the second respondent to include the petitioner's name in G.O(Ms)No.134, dated 12.11.2009 and the same was accepted by the first respondent vide proceedings, dated 02.03.2016 instead of regularising his service on par with his batch mates with effect from 12.11.2009, he was actually regularised with effect from 02.03.2016 thereby depriving him with the benefit extended to similarly placed batch mates in G.O(Ms)No.134, dated 12.11.2009. The said act on the part of the first respondent is highly arbitrary and the same is violation of Articles 14 and 16 of the Constitution of India and hence, this writ petition came to be filed.

7. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader for the respondents and carefully perused the materials available on record.

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8. It is needless to point out that whenever a representation of this nature is made to a Statutory Authority, there is a duty cast upon the respondent to consider the same on its own merits and pass appropriate orders in one way or other instead of keeping the same pending indefinitely. As such, non-consideration of the representation made by the Statutory Authority would amount to dereliction of duty and hence, this Court will be justified in invoking the extraordinary powers under Article 226 of the Constitution of India.

9. This Court is inclined to direct the respondents to consider the petitioner's representation, dated 09.04.2021 to regularise his service with effect from 12.11.2009 that is from the date on which his batch mates got regularised in terms of G.O(Ms)No.136 of the Animal Husbandry, Dairying and Fisheries Department, dated 14.07.2017 and fix the pay notionally from the date of completion of probation and pay the arrears with effect from 14.07.2017 in the light of similar order passed by the Assistant Director of Animal Husbandry, Ambasamudram on 20.11.2017 in accordance with law. I make it clear that without going into the merits of this case, this Court is inclined to pass these directions to the respondents to deal with the representation in accordance with relevant rules and provisions of law and the representation of

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the petitioner may be considered within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. This writ petition stands disposed of, accordingly. There shall be no order as to costs.

18.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Secretary to Government,
The State of Tamil Nadu,
Animal Husbandry, Dairying & Fisheries Department,
St. George Fort,
Chennai-9.

2.The Director of Animal Husbandry & Veterinary Services,
Office of the Directorate of Animal Husbandry & Veterinary Services,
DMS Building, Thenapet,
Chennai-6.

3.The Regional Joint Director,
Animal Husbandry Department,
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Tirunelveli District.

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L.VICTORIA GOWRI, J.

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