

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.5206 of 2007
[O.A.No.5836 of 2002]

S.Murugan

...Petitioner

Vs.

1.The Director of Veterinary Services
Chennai - 6.

2.The Assistant Director of Animal Husbandry
Ambasamudram, Tirunelveli District.

..Respondents

This petition came to be numbered by transfer of O.A. No.5836 of 2002 from the file of the Tamil Nadu Administrative Tribunal praying for a writ of certiorarified mandamus to call for the records relating to the impugned order of the first respondent in A.Thi.U.Mu.No.72658/R2/2002 dated 27.08.2002 and quash the same and direct the first respondent to appoint the petitioner in the post of Upgraded Assistant by including his name in his Proceedings in Na.Ka.No.21390/R-2/2002-1 dated 26.06.2002 and grant him all consequential benefits.

For Petitioner :Mr.P.Rajendran

For Respondents :Mr.R.Govindasamy

Additional Government Pleader (T)

O R D E R

Mr.S.Murugan, aggrieved by the impugned order dated 27.08.2002, passed by the Director of Veterinary Sciences, Chennai in A.Thi.U.Mu.No.72658/R2/2002, filed O.A.No.5836 of 2002 before the learned Administrative Tribunal, Chennai to quash the same, with a further direction to appoint him in the post of Upgraded Assistant by including his name in Proceedings in Na.Ka.No.21390/R-2/2002-1 dated 26.06.2002 and grant him all consequential benefits. Later on, it came on transfer to the file of this Court as W.P.No.5206 of 2007.

2. Mr.P. Rajendran, learned counsel appearing for the petitioner would submit that, after the petitioner was appointed as a Typist on 22.04.1983 in the Taluk Excise Office, Nanguneri, on temporary basis, he came to the office of the Assistant Director of Animal Husbandry, Ambasamudram, Tirunelveli District and his

services were also regularised with effect from 25.06.1984 on the basis of G.O.Ms.No.996 (P & A.R.) Department, dated 22.09.1984. He further stated that the petitioner was also declared to have completed the period of probation in the post of Typist on the afternoon of 24.06.1986, but, he was retrenched from service for want of vacancy in the Revenue Department on 20.08.1988. However, he was re-appointed and allotted to the office of the Joint Director of Animal Husbandry, Abishekapatti, Tirunelveli District, by the orders of the Government in letter No.96544/Per-J/88-2 dated 01.11.1988 and he joined the duty in the said Office on 10.11.1988. Later on, the Director of Veterinary Services, the first respondent herein, issued a letter in Na.Ka.No.21390/R-2/2002-1 dated 26.06.2002, appointing 68 Junior Assistants/Typists in the post of Upgraded Assistant in the Time Scale of Rs.4000-100-6000. Initially, they were appointed on temporary basis and subsequently, they were regularised by G.O.Ms.No.996 (P & A.R.) Department, dated 22.09.1984. The petitioner's name did not find place in the said proceedings. Hence, he submitted a representation to the Director of Veterinary Services, Chennai on 21.08.2002, praying for appointment as Upgraded Assistant, by clearly mentioning in the said representation that his services were regularised in the Revenue Department as per G.O.Ms.No.996 (P&AR) Department, dated 22.09.1984; that he was retrenched from the said Department for want of vacancy; that he was re-appointed in the Animal Husbandry Department and hence, his seniority should be counted with effect from the date of his initial appointment. However, his representation was returned by the Director of Veterinary Services/the first respondent herein, on the ground that only those who were selected by the Tamil Nadu Public Service Commission [for short "the TNPSC"] and retrenched for want of vacancy in one Department and re-appointed in another Department, are entitled for protection of seniority.

3. Indicating the unreasonable approach adopted by the first respondent, Mr.Rajendran, learned counsel appearing for the petitioner would submit that when the petitioner's name was shown in the order of regularisation passed in G.O.Ms.No.996 (P & A.R.) Department, dated 22.09.1984 and he was declared to have completed the period of probation in the post of Typist on 24.06.1986, when all the 68 Junior Assistants/Typists in the post of Upgraded Assistant were given benefit, the petitioner alone cannot be discriminated. Adding further, he stated that it is an admitted case of the first respondent that the petitioner was given the benefit of Selection Grade on 01.01.1996 by counting his period from 01.01.1986. Similarly, he was also given the benefit of Special Grade, again counting from 01.01.1986, after completion of 20 years. Therefore, when the respondents have extended the benefit of Selection Grade and also Special Grade by counting the petitioner's service from the date of his original appointment i.e., 01.01.1986, the first respondent cannot take a diametrically opposite stand while giving the benefit of upgradation to the post of Upgraded Assistant in the Time Scale of Rs.4000-100-6000.

4. Concluding his argument, he would submit that the respondents, having regularised the services of the petitioner along with 68 Junior Assistants/Typists as per G.O.Ms.No.996 (P.& A.R.) Department, dated 22.09.1984 and having given the benefit of upgradation to the other 68 persons who are shown in G.O.Ms.No.996 (P.& A.R.) Department, who are also not selected through the Tamil Nadu Public Service Commission, the first respondent is estopped from taking a stand that the petitioner is not entitled to get the benefit of upgradation as Upgraded Assistant, on the ground that he was not appointed through TNPSC.

5. A detailed counter affidavit has been filed by the respondents. Mr.R.Govindasamy, learned Additional Government Pleader, would admit the fact that the services of the petitioner were regularised with effect from 25.06.1984 as per G.O.Ms.No.996 (P &A.R.) Department dated 22.09.1984 and he was declared to have completed the period of probation on the afternoon of 24.06.1986. He further submitted that the petitioner was ousted from service on the afternoon of 23.08.1988 from the Sub Collector's Office, Cheranmadevi, for want of vacancy. Later on, he was re-allotted to the Animal Husbandry Department and he had joined duty only on the forenoon of 10.11.1988 in the Office of the Joint Director of Animal Husbandry Tirunelveli. Therefore, as per G.O.Ms.No.548, P & A.R.(Per.J) Department dated 19.06.1987, the seniority of a candidate appointed through special absorption in 1984, shall be fixed with reference to the date of first temporary appointment in the Departmental unit in which he had been absorbed, irrespective of whether he had been subsequently discharged for want of vacancies or appointed again through the Employment Exchange in that departmental unit and not with reference to the date of first appointment in any other departmental unit. Therefore, the seniority of the Junior Assistants/Typists who were appointed in this Department temporarily through Employment Exchange under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules between 1981 and 1984 and whose services were regularised with effect from 25.06.1984 through special absorption as per G.O.Ms.No.996, Personnel and Administrative Reforms (Placements) Department, dated 22.09.1984, were fixed as per G.O.Ms.No.548, Personnel and Administrative Reforms (Per.J) Department, dated 19.06.1987. According to this seniority list, Junior Assistants/Typists were promoted as Upgraded Assistant vide proceedings dated 25.06.2002 issued by the Director of Veterinary Services, whereas, in the case of the petitioner/S.Murugan, Typist, it must be seen that he was ousted from service on 23.08.1998 from the Sub Collector's Office Cheranmadevi and was re-allotted to this Department and he has joined duty only on 10.11.1988. Therefore, his seniority will be taken from the date of joining in this Department. That apart, in G.O.Ms.No.648, Personnel and Administrative Reforms (Per) Department dated 25.06.1985, referred to by the petitioner, the Government have decided that in the case of candidates selected by the TNPSC and allotted to various District Revenue Units and retrenched for want of vacancy and reappointed in other Departments, their seniority should be taken from the date of their first appointment in the District Revenue

Unit. But, the petitioner was not selected by the TNPSC and admittedly, he was appointed through Employment Exchange under 10 (a)(i) and subsequently, his services were regularised by G.O.Ms.No.996, P. & A.R. Department dated 22.09.1984. Therefore, he cannot be treated on par with the candidates selected by the TNPSC. But, this Court is unable to accept the said contention for five reasons:

i Firstly, the petitioner, having been appointed temporarily as a Typist on 22.04.1983 in the Taluk Excise Office, Nanguneri, his services were regularised from 25.06.1984 through G.O.996 (P. & A.R) Department dated 22.09.1984 along with 68 other Junior Assistants/Typists. When the 68 other Junior Assistants/Typists, whose names are also shown in G.O.996 (P. & A.R) Department dated 22.09.1984 were not appointed through the TNPSC and they were also given upgradation to the post of Upgraded Assistant in the Time Scale of Rs.4000-100-6000, the Director of Veterinary Services/first respondent herein cannot single out the case of the petitioner.

ii Secondly, as admitted by both parties, the petitioner, after he was retrenched, was re-appointed and allotted in the Office of the Joint Director of Animal Husbandry, Tirunelveli by order issued by Government in Letter No.96544/Per-J/88-2 dated 01.11.1988 and he also joined in the said Office on 10.11.1988. Although he has joined duty on 10.11.1988, he was given the benefit of Selection Grade on 01.01.1996, by counting his earlier service in the Revenue Department, namely in the year 1985.

iii Thirdly, on completion of 20 years of service, when he was given the benefit of Special Grade on 12.01.2005, again they have admittedly counted his earlier services which he has rendered in the Revenue Department.

Iv Fourthly, when the order of regularisation was passed in G.O.Ms.No.996, P.&A.R. Department dated 22.09.1984, admittedly, the petitioner's name also was shown along with 68 other Junior Assistants/Typists who were also not appointed through the TNPSC. When 68 Junior Assistants/Typists were given the benefit of upgradation by the Director of Veterinary Services, Chennai/the first respondent herein, in his order dated 26.06.2002, giving the benefit of Time Scale Pay of Rs.4000-100-6000 to other 68 persons whose names were also found in G.O.Ms.No.996 dated 22.09.1984, this Court hardly finds any justification to leave out the case of the petitioner alone.

v Finally, when 68 Junior Assistants who were not appointed through TNPSC have been given the upgradation, the sole reason assigned by the first respondent to reject the petitioner's request to become Upgraded Assistant on the ground that he was not appointed through TNPSC, is wholly unsustainable and a sheer act of discrimination.

6. Therefore, the writ petition is allowed and the impugned order is set aside. Needless to mention that as the matter has been pending for quite some time, all the consequential benefits should be given to the petitioner as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director of Veterinary Services
Chennai - 6.

2.The Assistant Director of Animal Husbandry
Ambasamudram, Tirunelveli District.

+ 1 cc to Mr.Mr.P. Rajendran, Advocate SR.8964

+ 1 cc Government Pleader Sr.9238

KGK(CO)
EU 30.03.2015

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