

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.10165 of 2009 and
M.P.No.2/2009

K.KATHAIYAN

.. Petitioner

Vs.

- 1 THE STATE OF TAMILNADU
REP BY ITS SECRETARY TO GOVERNMENT ANIMAL
HUSBANDRY DAIRYING AND FISHERIES DEPT.
FORT ST.GEORGE CHENNAI 9.
- 2 THE COMMISSIONER AND DIRECTOR
ANIMAL HUSBANDRY AND VETERINARY SERVICES
DMS BUILDING CHENNAI 6.
- 3 THE REGIONAL JOINT DIRECTOR
ANIMAL HUSBANDRY DEPT. V.O.C. NAGAR
THANJAVUR.
- 4 THE ASSISTANT DIRECTOR
ANIMAL HUSBANDRY DEPT. THANJAVUR AND DT..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for records on the file of the 1st respondent in G.O.Ms.No.117 Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.8.08 and on the file of the 4th respondent in proceedings 1. Na.Ka.No.1076/A/04-2 dated 17.9.2008 and 2. Na.Ka.No.1076/A/04 dt 12.2.2009 and quash the same and direct the respondents to regularize the services of the petitioner w.e.f. 1.7.99 the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 1.7.2000 with all consequential service and monetary benefits.

For Petitioners : Mr.S.Gunasekaran

For Respondents : Mr. P.Muthukmumar
Govt.Advocate.

ORDER

The prayer in the writ petition is for a Writ of certiorarified mandamus calling for records on the file of the 1st respondent in G.O.Ms.No.117 Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.8.08 and on the file of the 4th respondent in proceedings 1. Na.Ka.No.1076/A/04-2 dated 17.9.2008 and 2. Na.Ka.No.1076/A/04 dt 12.2.2009 and quash the same and direct the respondents to regularize the services of the petitioner w.e.f. 1.7.99 the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 1.7.2000 with all consequential service and monetary benefits.

2. The petitioner was appointed as daily wages Casual Labourer in the year 1989. The petitioner had put in more than 10 years of service as Animal Husbandry Assistant and therefore, he was eligible to be regularised in the said service. Ultimately, pursuant to the orders of the State Administrative Tribunal, the second respondent passed an order on 16.06.1999 whereby, the services of the petitioner was brought into time scale of pay and he was posted in the regular services as Animal Husbandry Assistant. All the issues raised in the writ petition are similar to that of the issue raised in W.P.No.22168 of 2009 which came to be disposed by this Court today i.e., 17.11.2016.

3. In Para Nos. 11 to 15 of the order dated 17.11.2016 in W.P.No.22168 of 2009, it was held as follows:-

"11. This Court have considered the rival submissions made by the respective counsel and documents filed before this Court for perusal.

12. At the outset, this Court feels that the issue raised in the writ petition is no more res integra. It is no doubt that the petitioner and other similarly placed persons were originally appointed as casual employees, who worked as Animal Husbandry Assistants at various places at the respondent department. Since they were working as such for several years, their plea of regularisation were considered and ultimately, the petitioner was brought into time scale of pay only in the year 2000. Since the petitioner was brought in time scale of pay only in 2000, certainly, he would be entitled to get regularisation of his service. However, for want of

regularisation of rules as well as for creation of post, the respondents have taken time till 2008. In the meantime, in the year 2004, the Government passed G.O.Ms.No.117 whereby relaxation for the rules pertaining to age as well as education qualification for these people have been given. Already, the Government created 826 posts of Animal Husbandry Assistants under Government Order in G.O.Ms.No.116, Animal Husbandry and Fisheries Department dated 07.05.1987. Since posts were created and rules were also relaxed, there is absolutely, no impediment on the part of the respondents to regularise the services of these people including the petitioner from the date of appointment or their actually joining in service pursuant to such appointment or the date on which these incumbents, like the petitioner were brought in time scale of pay.

13. Since the respondents issued G.O.Ms.No.117, dated 28.8.2008 which is also impugned herein, affected persons have already approached this Court and ultimately, a Division Bench of this Court in the order referred to above in W.A.Nos. 226 and 491 of 2012 dated 05.11.2013 in S.Rajangam and another Vs. The Secretary to Government, Animal Husbandry, Dairying and Fisheries Department and others has categorically held that all the incumbents, who have been shown in the annexure to the G.O.Ms.No.117 should be treated on par and therefore, those appellants in the said writ appeals were directed to be regularised from the date of their actual appointment and the said portion of the order as extracted above is at paragraph 14 of the said Judgment. As rightly pointed out by the learned counsel for the petitioner, in compliance of the orders of this Court, the respondents passed G.O.Ms.No.185 dated 22.09.2015. In fact in the said Government Order, the Government placed the legal battles between the parties wherein it is specifically mentioned that in W.A.No.12712 of 2012, orders were passed in favour of the appellants and against which review petition also was filed and the said review also was rejected as against which

SLP(Civil)No.14588 of 2015 was filed and the Hon'ble Apex Court has rejected the same and in view of the said issue having reached finality, they passed the Government Order regularising the services of the individuals from the date of their original appointment. When that being the factual position, there is no gain saying to state that this petitioner need not be entitled to seek the same benefits of regularisation from the date of his actual appointment or the date on which he was brought in to time scale of pay.

14. Therefore, this Court has no hesitation to hold that the denial of the benefits of regularising of the services of the petitioner from the date of appointment or the date actually the petitioner was brought into time scale of pay, is totally unsustainable in law and therefore, the contentions made in this regard on behalf of the respondents are liable to be rejected and accordingly, is rejected.

15. In the result, the writ petition is allowed. The respondents are directed to regularise the service of the petitioner from the date of appointment or the date on which the petitioner was brought into time scale of pay. Once the petitioner is entitled to get his service regularised as above, needless to say that the petitioner shall also be eligible to get all service benefits including periodical increment in pay. Therefore, the respondents are directed to calculate the said pay difference, pay arrears after calculating increment to be paid to the petitioner and pay the same to the petitioner. All the aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs."

4. In view of the said order having been passed in the aforesaid writ petition today, since the facts of the present case also is identical, this petitioner also shall be entitled to get the same relief as has been provided in the said case. Therefore this writ petition is allowed in the terms as indicated above in paragraphs 14 to 15 of the order in WP No.

22168 of 2009. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1 SECRETARY TO GOVERNMENT, ANIMAL
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 - 4 THE ASSISTANT DIRECTOR
ANIMAL HUSBANDRY DEPT. THANJAVUR AND DT
- +1 CC to Govt. Pleader sr 67099

W.P.No. 10165 of 2009

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