

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.22168 of 2009

A.MURUGAN

.. Petitioner

Vs.

- 1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT ANIMAL
HUSBANDRY DAIRYING & FISHERIES DEPARTMENT
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 DEPARTMENT THIRUNELVELI-9.
- 4 THE ASSISTANT DIRECTOR
ANIMAL HUSBANDRY DEPARTMENT AMPASAMUDRAM
THIRUNELVELI DISTRICT. ... 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 dt.28.8.08 and on the file of the 4th respondent in Proceedings 1) Na.Ka.No. 1033/A2/04 dt.19.11.08 and 2) Na.Ka.No.1033/A2/2004 dated 31.7.2009 and quash the same so far as the petitioner is concerned and direct the respondents to regularise the services of the petitioner w.e.f.18.4.2000 the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment w.e.f.1.4.2001 with all consequential service and monetary benefits.

For Petitioners : Mr.S.Thirumalavan

For Respondents : Mr. P.Sanjay Gandhi
A.G.P

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.1033/A2/04 dated 19.11.08 and 2) Na.Ka.No.1033/A2/2004 dated 31.7.2009 and quash the same so far as the petitioner is concerned and direct the respondents to regularise the services of the petitioner with effect from 18.4.2000, the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 1.4.2001 with all consequential service and monetary benefits.

2. The petitioner was appointed as daily wages Casual Labourer on 01.07.1991 in the office of the Deputy Director, District Live Stock Farm, Abishekapatti, Thirunelveli District and he continued as such till 17.04.2000. 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. The said regularisation was possible because as per the qualification prescribed, persons, who are able to read and write Tamil is eligible and as the petitioner has possessed the said qualification, he will be entitled for regularisation. Several persons, similarly placed like the petitioner, who had been working as Animal Husbandry Assistant either on temporary basis or casual daily wages employees since had not been brought in time scale of pay or regularisation of their services, some of them had gone to the Tamil Nadu Administrative Tribunal. Ultimately, pursuant to the orders of the said Tribunal made in the year 2000, the second respondent passed an order on 24.3.2000 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. Like that several other persons had also been brought into time scale of pay. However, though the petitioner and others had been brought in to time scale of pay and they had been working for number of years, their services were not regularised. Therefore, writ petitions were filed before this Court and in W.P.No.2461 of 2006, direction was issued to consider the request of the employees for regularisation of services including the regular increment of pay.

3. On considering the said plea made by the Animal Husbandry Assistants like the petitioner, for regularisation, the Government passed G.O.Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.8.2008. But before passing the said Government Order, the State Government already passed an Government Order in G.O.Ms.No.116, Animal Husbandry and Fisheries Department dated 07.05.1987 wherein 826 posts of Animal Husbandry Assistants were created inorder to regularise the services of temporarily appointed persons, who were

subsequently, been brought into time scale of pay like the petitioner.

4. For making those incumbents as permanent employees by regularising their services, the relaxation of relevant service rules were required. Therefore, the second respondent had forwarded proposals to the Government for relaxing the relevant service rules enabling the department to regularise the services of 826 Animal Husbandry Assistants from the date on which they joined in services as Animal Husbandry Assistants. The Government also having accepted the said proposal sent by the second respondent issued Government Order in G.O.Ms.No.17, Animal Husbandry and Fisheries Department, dated 03.02.2004 wherein the relevant rules for the appointment to the post of Animal Husbandry Assistants were relaxed pertaining to the age, educational qualification etc.,

5. Only in that context, the subsequent Government Order dated 28.8.2008 in G.O.Ms.No.117 was issued. Though the said G.O.Ms.No.117 was issued for regularising the services of persons like the petitioner, who were numbering about 163 during that point of time of the issuance of the said Government Order, since the date of the Government Order has been given as the date for the purpose of regularisation, aggrieved by the same, some of the persons like the petitioner had already approached this Court. Paragraphs 3 and 4 of the said G.O.Ms.No.117 dated 28.8.2008 can be usefully extracted herein in.

"3. The Government have examined the proposal of the Commissioner of Animal Husbandry and Veterinary Services and accordingly, pass the following orders:

(a) The services of 163 Animal Husbandry Assistants are regularised from the date of issue of this order by relaxation of relevant rules in their favour as indicated in Annexure to this order.

(b) The Commissioner of Animal Husbandry and Veterinary Services is instructed to initiate disciplinary action against those who are all responsible for the appointment of 163 Casual Labourers without Government orders and inform the action taken against the officials in this regard.

4. The Annual increment shall be sanctioned only on completion of one year from the date of regularisation which will be the date of Government order regularising their services."

6. Infact in the annexure to the G.O.Ms.No.117, a list of

163 persons, who were working as Animal Husbandry Assistants and their services had already been brought into time scale of pay, had been shown. The petitioner is also one among the 163 and his name is found in Sl.No.49. Since the State Government issued G.O.Ms.No.117 giving the date of Government Order as a date of regularisation, most of the beneficiaries like the petitioner whose services dates back to 2000 or even prior to that could only be regularised from 2008 i.e., the date of Government Order whereby these people would loose considerable year of service. Therefore, these writ petitions were filed for seeking regularisation from the date of actual appointment and since the same was rejected, the writ appeal was filed by the affected persons in W.A.Nos.226 to 491 of 2012. The said writ petitions were decided by the Division Bench of this Court by order dated 05.11.2013. The operative portion of the said order is at paragraph 14 of the Judgment which reads thus:

"14.For the foregoing reasons, the orders of the Writ Court in W.P.No.26753 of 2008 and 17559 of 2009 dated 28.09.2011 and 06.07.2011 respectively are set aside and the writ appeals are allowed. The respondents are directed to regularise the services of the appellants in the post of Animal Husbandry Assistant with effect from 21.08.1997 and 16.06.1999 respectively i.e. the date of appellants' joining in the regular post of Animal Husbandry Assistant and grant all the monetary benefits. If for any period, the appellants had been ousted for want of vacancy, the appellants shall not be entitled to any monetary benefit during that period but the same shall be taken into account for continuity of service. The respondents are directed to comply with the order within a period of four months from the date of receipt of a copy of the judgment. No costs."

7. Pursuant to the orders of this Court, several persons, whose name found in the annexure in the G.O.Ms.No.117 have been regularised from the date of appointment or the date of joining in their service. When that being so, similar relief had been sought for by the petitioner to get his service regularised from the date of actual appointment by bringing him into regular time scale of pay. Since he had been denied, the petitioner has come out with the present writ petition with the aforesaid prayer.

8. Heard both sides.

9. The learned counsel for the petitioner would contend that the issue raised in the writ petition has already been decided

by this Court in more than one cases. Infact as against the orders of this Court, the respondents filed Special Leave Petition in SLP(Civil)No.14588 of 2015 and the same has also been dismissed by the Hon'ble Apex Court. Therefore, the issue raised in the writ petition has reached its finality and benefits have been given regularising the respective services of the persons like that of the petitioner from the date of their actual appointment or joining in services by way of bringing them into time scale of pay. Such a benefit cannot be denied to the petitioner and therefore, the writ petition has to be allowed.

10. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that the petitioner was only appointed as a daily wages and there was no sanctioned post for the petitioner and others to be absorbed. Therefore, the Government on humanitarian consideration has created a post and by giving relaxation to the rules which are governing the service conditions of the petitioner and others had given appointment by bringing them into time scale of pay. Since the petitioner and others sought for regularisation of services, the Government after considering all aspects issued G.O.Ms.No.117 on 28.8.2008 and from the date of Government Order, the petitioner and others numbering about 163 persons were directed to be regularised as Animal Husbandry Assistants. In respect of some stray cases where the individuals had been given regularisation from the date of their original appointment, it is only pursuant to the directions given by this Court, therefore, such special consideration shown to the individuals in compliance of the orders of this Court cannot be treated as a precedent and on that score, the relief sought for in the present writ petition cannot be accepted and therefore, the learned Additional Government Pleader wants the writ petition to be dismissed.

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 into 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.17 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 into 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.1271 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 is not 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.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

- 1 SECRETARY TO GOVERNMENT
THE STATE OF TAMIL NADU
ANIMAL HUSBANDRY DAIRYING & FISHERIES DEPARTMENT
FORT ST. GEORGE CHENNAI-9.
- 2 THE COMMISSIONER AND DIRECTOR
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- 4 THE ASSISTANT DIRECTOR
ANIMAL HUSBANDRY DEPARTMENT AMPASAMUDRAM
THIRUNELVELI DISTRICT.

+1 cc to Mr.S.Thirumavalavan, Advocate, sr.67005

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krd 9/1

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