



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2017
Pronounced on : 18.12.2017

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.A. (MD) No. 1317 of 2015 and
M.P. (MD) No. 2 of 2015

1. The Commissioner and Director,
Animal Husbandry and Veterinary Services,
Chennai - 6.
2. The Assistant Director,
Animal Husbandry and Veterinary Services,
Uthamapalayam, Theni District.
3. The Joint Director,
Animal Husbandry and Veterinary Services,
Allinagaram,
Theni District.

... Appellants

vs.

S. Paramasivam

... Respondents

Prayer : Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order dated 04.12.2014 made in W.P. (MD) No. 14685 of 2011 on the file of this Court.

Prayer in WP (MD) No. 14685/2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein to regularize the service of the petitioner with effect from 2000 in accordance with law.

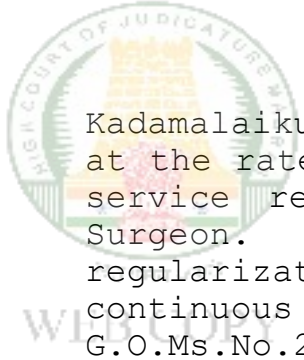
For Appellants	: Mr. T.S. Mohammed Mohideen, AGP
For Respondent	: Mr. K. Appadurai

JUDGMENT

(Judgment of the Court was delivered by G.R. SWAMINATHAN, J.)

This intra-court appeal is directed against the order of the learned Judge directing consideration of the claim of the writ petitioner for regularization of his service.

2. The writ petitioner was appointed as a part-time daily wage worker in March 2000 in Mayiladuthurai veterinary sub centre under

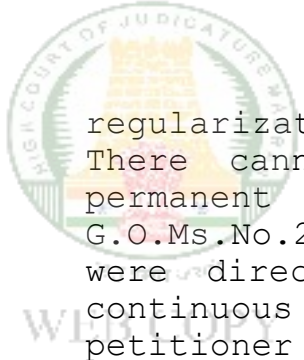


Kadamalaikundu Veterinary Dispensary Centre. He was paid daily wages at the rate of Rs.2/- per day. This entry regarding payment in the service register has been endorsed by the Veterinary Assistant Surgeon. The Writ Petitioner submitted representation for regularization as he had already completed and put in 12 years of continuous service. Claiming that his case is covered by G.O.Ms.No.22(P & AR) Department dated 29.2.2006 whereby the services of daily wages employees working in the government department who have put in 10 years of service were ordered to be regularised, the writ petitioner filed W.P.(MD) No.14685/2011. The learned Judge by order dated 4.12.2014 directed the Commissioner, Animal Husbandry and Veterinary Services, Chennai, to consider the writ petitioner's claim. Aggrieved by the said direction this writ appeal has been filed.

3.The learned counsel appearing for the respondent filed a compilation of orders passed in similar cases by various Division Benches of this Court. W.A.(MD) No.391 of 2007 pertained to part-time sweepers / sanitary workers who were working from the year 1993-94 on a consolidated pay of Rs.100/- per month. They filed WP No.11707/2006 on the strength of G.O.Ms.No.22 P & AR Department dated 28.2.2006 for regularization. The writ petition was allowed. The writ appeal filed by the District Education Officer, Tirunelveli was dismissed by the Division Bench on 25.10.2007. The said order was followed in the decision reported in 2011 (2) CWC Page 80. The said case also pertained to part-time employees who had worked for more than 10 years in the Animal Husbandry and Veterinary Services Department. Yet another decision of this Bench reported in (2013) 4 MLJ 172 is also apposite. The contention of the learned Counsel appearing for the respondent is that when the factual matrix of the present case is similar to the ones obtaining in the aforesaid decisions, the writ appeal filed by the government deserves to be dismissed straightaway.

4.The contention of the learned counsel for the respondent / writ petitioner is certainly correct, but it cannot be accepted. This is because no ratio has been laid down in the decisions relied on by him. A large number of individuals moved this court and sought relief. The writ petitions were allowed. The writ appeals filed by the department were dismissed. At least in a few cases, the SLPs were also dismissed in limini. In fact we notice that most of the subsequent orders, we say with utmost respect, were more in the nature of cut and paste orders. The core question raised by the government was never dealt with in any of the decisions referred to by the learned counsel appearing for the writ petitioner.

5.Unfortunately for the writ petitioner, the answer was given in unambiguous terms by the Hon'ble Supreme Court in the decision reported in **(2017) 4 SCC 113 State of Tamil Nadu v. A. Singamuthu**. The Hon'ble Supreme Court followed an earlier decision reported in **(2014) 4 SCC 769 School Education Department v. R. Govindaswamy**. It has now been held that part-time employees are not entitled to seek



regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part-time temporary employees. Vide G.O.Ms.No.22 dated 28.2.2006, only full-time daily wage employees were directed to be regularised on completion of 10 years of continuous service on 1.1.2006. This cannot be applied to the writ petitioner who is admittedly a part-time employee. As held by the Hon'ble Supreme Court in **State of Tamil Nadu v. A. Singamuthu** reported in **(2017) 4 SCC 113**, engaging part-time employees is meant to serve exigencies of administration and continuance of service for long period cannot confer any right of regularization particularly when scheme of regularization of such categories of employees is not available.

6.A direction to consider the claim of a person can be issued by the writ court only if a legal right is found to be in existence. Since the writ petitioner has not made out such a case, a direction for consideration of the claim of the writ petitioner for regularization cannot be issued. We therefore set aside the order dated 4.12.2014 in W.P.(MD) No.14685/2011.

7.This writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner and Director,
Animal Husbandry and Veterinary Services,
Chennai - 6.
2. The Assistant Director,
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Uthamapalayam, Theni District.
3. The Joint Director,
Animal Husbandry and Veterinary Services,
Allinagaram, Theni District.

+ 1 CC TO Mr.K.APPADURAI, ADVOCATE IN SR No. 93772

ARUL

TE/SV-MMS/SAR-4 : 18/01/2018 : 3P/5C

Judgment made in
W.A. (MD) No.1317 of 2015 and
M.P. (MD) No.2 of 2015
18.12.2017