

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.397 of 2018
and
C.M.P.No.3361 of 2018

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Animal Husbandry, Dairying &
Fisheries Department,
Fort St. George, Chennai 600 009.
 2. The Commissioner and Director,
Animal Husbandry and Veterinary Services,
DMS Building, Chennai 600 006.
 3. The Regional Joint Director,
Animal Husbandry Department,
V.O.C.Nagar, Thanjavur.
 4. The Assistant Director,
Animal Husbandry Department,
Pudukkottai District.
- Appellants

Versus

T.Chinnaiyan

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 8.1.2013 passed in W.P.No.3203 of 2009 on the file of this court.

W.P.3203/2009

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified mandamus calling for the records on the file of the 1st respondent in G.O.Ms NO. 117 Animal Husbandry Dairying (AH-7) fisheries Department dated 28.8.2008 and on the file of the 4th respondent in proceeding 1 Na.Ka.NO. 3124/A/08 dated 12.09.2008 ;and 2. Na.Ka. 3124/A/08 dated 30-12-2008 and quash the same and direct the respondents to regularize the services of the petitioner with effect from 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 so far as the petitioner is concerned.

For appellants : Ms.P.Rose Kamalam,
Government Advocate

For respondent : Mr.S.Thirumavalavan

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Government Advocate appearing for the appellant and Mr.S.Thirumavalavan, learned counsel who takes notice on behalf of the respondent.

2. The writ appeal has been filed by the State challenging the order passed by the learned Single Judge in allowing the writ petition and thereby setting aside the impugned order which sought for recovery of annual increment paid to the respondent.

3. The factual matrix behind filing of the writ appeal is as under:-

The respondent herein was appointed as a Casual Labour in the office of the Deputy Director, Exotic Cattle Breeding Farm, Eachankottai, Orathanadu, Thanjavur District in the year 1987. Subsequently, it appears that the Government by issuing G.O.Ms.No.116, Animal Husbandry (AH6) Fisheries Department dated 7.5.1997 sanctioned 826 posts of Animal Husbandry Assistants and out of which 465 posts were intended to be filled by the persons, who have a direction by the Tamil Nadu Administrative Tribunal in their favour and 361 posts were intended to be filled up by the casual labour, who had put in 10 years of service. The grievance of the respondent herein was that though he had put in 10 years of service by the time, the G.O. was issued, his services were not regularised despite the fact that the services of his juniors were regularised. However, it appears that as per the direction of the Tribunal in the Original Application filed by him, his representation was considered and he was absorbed into regular establishment by proceedings dated 16.6.1999. It is the further case of the first respondent herein that though he was granted one increment as on 1.7.2000, thereafter, he was not granted any increment and on his further representation and the direction of this court in a writ petition filed by him, his services were regularised by issuing G.O.Ms.No.117 dated 28.8.2008 prospectively, with a clause therein that annual increment shall be sanctioned only on completion of one year from the date of regularization and as a consequence, the monetary benefit enjoyed by him prior to actual regularization was sought to be recovered in 36 monthly

instalments, which constrained him to file the present writ petition.

4. The learned Single Judge has considered the facts and circumstances of the case, in the light of the decision of the Apex Court in SYED ABDUL QADIR AND OTHERS v. STATE OF BIHAR AND OTHERS (2009(1) SUPREME 163), wherein it has been held that excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and once the benefit was extended more than to what they are entitled and when it is because of a bona fide mistake on the part of the Department, or it was the result of wrong interpretation of the rule that was applicable to them, the appellants cannot be held responsible and recovery shall not be made. The learned Single Judge, also relying upon various other judgments of the Apex Court and this Court, allowed the writ petition and ordered not to recover the increments paid. Challenging the same, the writ appeal is filed.

5. It is the specific case of the respondent herein that services of most of his juniors were regularised from the date of G.O. and in the case of the respondent herein, he was considered only on the direction of the Tribunal, but, the authorities have taken a decision to regularise his services only on a later date.

6. It is pertinent to note that the appointments were made initially as against the non-sanctioned post and though initially the Government had thought of appointing them on regular basis, they were appointed on casual basis and on absorbing them into regular establishment, since it was the sanctioned post, the Government authorities thought it fit to pay the regular increment by mistake on the part of the authorities and as a matter of policy decision and considering the financial implication the Government would have taken a decision to regularize some of the employees on a later date which may be due to change of Government or due to change of policies at the authorities of policy making level. What is done as a policy cannot be changed especially when there is no claim for any such relief.

7. But, it is not in dispute that the respondent herein had worked during the period when he was sanctioned the increment, which alleged to be due to the mistake on the party of the authority in interpreting the procedure and it was sanctioned prior to such a policy decision. Therefore, the recovery of increment paid to the respondent herein for the relevant period

cannot be made. In that view of the matter, we dismiss the writ appeal filed by the State confirming the order passed by the learned Single Judge. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Secretary to Government,
The State of Tamil Nadu,
Animal Husbandry, Dairying &
Fisheries Department,
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3. The Regional Joint Director,
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4. The Assistant Director,
Animal Husbandry Department,
Pudukkottai District.

+1 CC TO MR.S.Thirumavalavan, Advocate SR. No.16523
+1 CC TO The government Pleader SR.NO. 17126

KJI (CO)
RMP (28/03/2018)

W.A.No.397 of 2018

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