

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.7.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

Writ Appeal No.847 of 2018
and C.M.P. 7414/2018.

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 Builidings
Chennai 600 006.
 3. The Regional Joint Director
Animal Husbandry Department
VOC Nagar
Thanjavur.
 4. The Assistant Director
Animal Husbandry Department
Kumbakonam
Thanjavur District.
- .. Appellants

Vs.

R.Panneerselvam .. Respondent

Appeal filed under Clause 15 of Letters Patent against the order dated 17.11.2016 made in W.P.No.26806 of 2008.

W.P.No. 26806/2008:

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 (A117) Department dt 28.8.08 and on the file of the 4 th respondent in Proceedings 1. Na.Ka.No.3895/A/08-1 dt 19.9.08 2. Na.Ka.No.3895/A/2008 dt 7.10.08 and 3. Na.Ka.No.3895/A/2008-2 dt 7.10.08 and quash the same and direct the respondents to

regularize the service of the petitioner w.e.f. 1.7.99 and the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment w.e.f. 1.7.2000 with all consequential service and monetary benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram
Spl. Govt. Pleader
For Respondent : Mr.S.Gunasekaran

J U D G M E N T
(Delivered by Huluvadi G.Ramesh, J)

This writ appeal is directed against the order dated 17.11.2016 made in W.P.No.26806 of 2008.

2. Heard Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the appellants and Mr.S.Gunasekaran, learned counsel appearing for the respondent.

3. The case which led to the filing of the writ appeal is as follows:

The respondent was appointed as Casual Labourer in the year 1987 and appointed as Assistant on 07.5.1997. By proceedings of the fourth appellant dated 19.9.2008, the services of the respondent were regularised with effect from 28.8.2008, as per G.O.(Ms)No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.8.2008. In the said G.O.Ms.No.117 dated 28.8.2008, it was clearly stated that the annual increment would be sanctioned only on completion of one year of service from the date of regularisation. Therefore, by proceedings dated 07.10.2008, the fourth appellant ordered to recover the excess amount paid to the respondent by way of increment for the period from 01.7.1999 to 30.9.2008, in 36 monthly instalments and that such recovery would be made from the salary from October 2008 onwards. Aggrieved by the same, the respondent filed the writ petition.

4. The learned single Judge, taking note of the order passed in the case of similarly placed persons in W.P.No.22168 of 2009 dated 17.11.2006, allowed the writ petition, holding that the respondent is entitled to be regularised from the date of appointment or from the date on which he was brought into time scale of pay and for the consequential service benefits. Challenging the said order, the appellants are before this Court.

5. In the above facts and circumstances, we have to consider whether the services of the respondent has to be regularised from the date of initial appointment or from the date on which he was brought into time scale of pay and whether the amount already paid in excess to the respondent could be recovered.

6. As regards regularisation of service, either from the date of initial appointment or from the date on which he was brought into time scale of pay, the Apex Court, in an identical case in State of Tamil Nadu v. A.Singamuthu [(2017) 4 SCC 113], after referring to the judgments in School Education Department, State of Tamil Nadu v. R.Govindaswamy [(2014) 4 SCC 769] and State of Rajasthan v. Daya Lal [(2011) 2 SCC 429], held as under:

"17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned senior counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/- (approximately) towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned senior counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A.

2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No. 22 P & AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.

7. In view of the ratio laid down in the decision cited supra, the services of the respondent has to be regularised from the date of the Government Order by which he was brought into time scale of pay and not from the date of initial appointment. Accordingly, we hold that the respondent is entitled to be regularised from the date of the Government Order and not from the date of initial appointment.

8. Insofar as the recovery of the amount paid to the respondent by way of increment is concerned, the Apex Court in State of Punjab v. Rafiq Masih [(2014) 8 SCC 883], in respect of Class III and Class IV Grade employees, held as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

9. In view of the settled proposition in Rafiq Masih case that where the employer has made payments mistakenly to the employees belonging to Class III and Class IV service or Group 'C' or Group 'D' service, such payments cannot be recovered from the employees as the same is impermissible in law, we have no hesitation to hold that the appellants cannot recover the amount paid to the respondent in excess by way of increment.

10. In the result, the writ appeal is allowed in part. There shall be no order as to costs. Consequently, CMP No.7414 of 2018 is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

kpl

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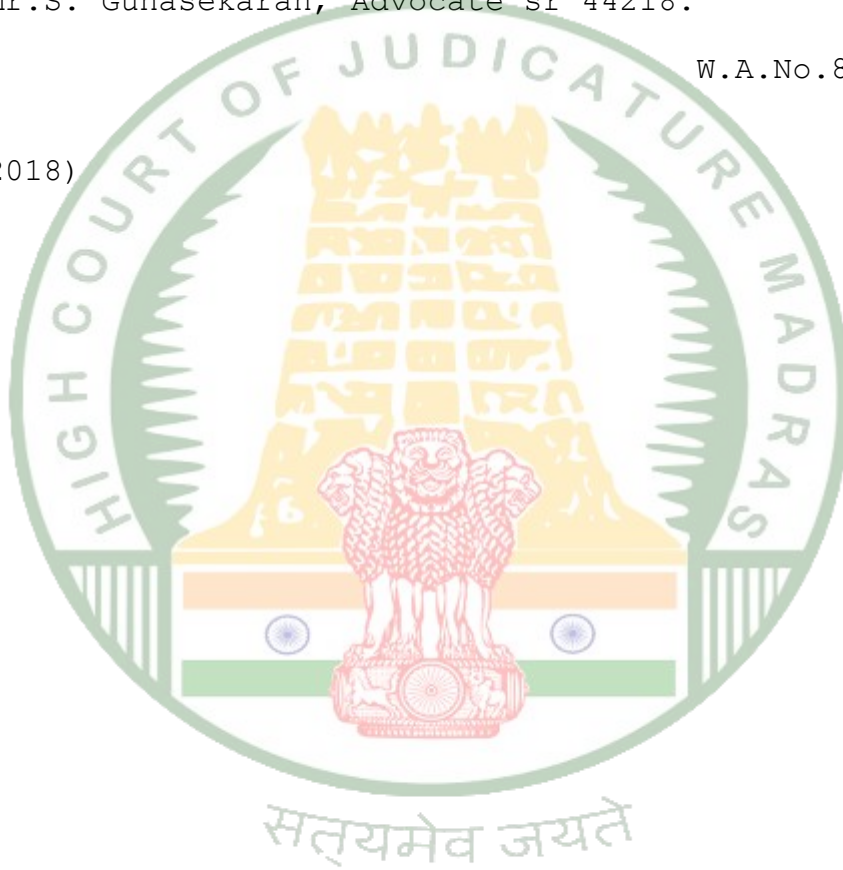
4. The Assistant Director
Animal Husbandry Department
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Thanjavur District.

+1 CC to Govt. Pleader sr 44101.

+1 CC to Mr.S. Gunasekaran, Advocate sr 44218.

W.A.No.847 of 2018.

SP(23/07/2018)



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