

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.10974 of 2009 and

M.P.No.2 of 2009 and

W.P.No.25254 of 2008 and

M.P.No.2 of 2008

- 1.V.Sivashankaran
- 2.C.Murugan
- 3.K.Karunagaran
- 4.P.Chandrasekaran
- 5.D.Sadiriya
- 6.S.Rani
- 7.S.Javid
- 8.B.Ramesh
- 9.C.Nagarajan
- 10.C.Nagaraj
- 11.K.Sivakumar
- 12.S.Lakshmanan
- 13.D.M.Neranjana Kumar
- 14.S.Aswath Narayanan
- 15.Y.Suresh
- 16.M.Venkatraj
- 17.T.Krishnappa
- 18.G.Rosey
- 19.D.Ramaiya
- 20.K.Muniamma
- 21.S.Rajammal
- 22.B.Thottaiya
- 23.L.Madesh
- 24.N.Nagaraj
- 25.T.Mahalingam
- 26.S.Anjappachetty
- 27.M.Billakrishnan
- 28.T.Muniraj
- 29.E.Ellappan
- 30.V.Sudanathan

G.Velmurugan

... Petitioners in W.P.No.10974 of 2009

... Petitioner in W.P.No.25254 of 2008

Vs

1.The State of Tamil Nadu,
Rep by its Secretary,
Animal Husbandry Dept,
Fort St.George, Chennai-9.

2.The Commissioner of Animal Husbandry
and Veterinary Services,
DMS Compound, Chennai-6.

3.The Regional Joint Director
of Animal Husbandry,
Dharmapuri. Respondents in W.P.No.10974 of 2009

1.The State of Tamil Nadu,
Rep by its Secretary,
Animal Husbandry and Fisheries Department,
Fort St.George, Chennai-9.

2.The Commissioner,
Animal Husbandry Services,
DMS Compound, Chennai-6. Respondents in W.P.No.25254
of 2008

PRAYER in W.P NO.10974 OF 2009 : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the respondent's Government Order made in G.O.No.117, Animal Husbandry and Fisheries Department dated 28.08.2008 to quash the same in so far as the regularisation of the services of the petitioners w.e.f. The date of Government Order instead of the respective dates of entry and to consequently modify the date of regularisation as 1999-2000 respectively for all purposes and to extend the legitimate annual increments from 2000-2001 onwards forthwith.

PRAYER in W.P NO.25254 OF 2008 : Writ Petition has been filed under Article 226 of constitution of India praying to issue a writ of certiorarified mandamus to call for records relating to the respondents Government order made in G.O.No.117 Animal Husbandry and Fisheries Department dt 28.8.2008 to quash the same in so far as the regularisation of the services of the petitioner w.e.f. the date of Government Order instead of 21.7.1999 and to consequently modify the date of regularisation as 21.7.1999 for all purposes and to extent the legitimate annual increments from 2000-2001 onwards forthwith

For Petitioners : Mr.L.Chandrakumar
For Respondents : T.M.Pappiah,
Special Government Pleader

C O M M O N O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioners and T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. Since the issues raised in both the writ petitions are common and the same are taken up together for disposal.

3. The petitioners have approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the respondent's Government Order made in G.O.No.117, Animal Husbandry and Fisheries Department dated 28.08.2008 to quash the same in so far as the regularisation of the services of the petitioners w.e.f. The date of Government Order instead of the respective dates of entry and to consequently modify the date of regularisation as 1999-2000 respectively for all purposes and to extend the legitimate annual increments from 2000-2001 onwards forthwith."

4. The case of the petitioners is as follows:-

The petitioners were initially appointed as Casual Labourers in Animal Husbandry Department. According to them, their services were continuously utilised during the period of casual employment. After completion of number of years as casual labourers, they approached the Tamil Nadu Administrative Tribunal and obtained certain directions for regularisation of their service. According to the petitioners, they were brought under regular establishment during 2000. Various dates in which individual employees brought on to the regular establishment is given in a statement enclosed along with the typedset of papers.

5. According to the petitioners, after being brought into regular establishment, they were also granted annual increment immediately, but, the same was discontinued for the subsequent period. The Government has passed an order in G.O.No.17, dated 03.02.2004, regularising about 800 similarly placed persons by relaxing the rules in their favour. However, the petitioners herein and others were not included, despite they being fully qualified for the regularisation. Some of the casual employees employed in the first respondent Department has approached this

Court for grant of annual increment on the basis of their initial appointment between 1998-99, 1999-2000, this Court has passed an order directing consideration of claim for grant of annual increment.

6. In pursuance of the direction issued by this Court, the Government has issued G.O.(Ms).No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.08.2008, granting regularisation to the several casual employees from the date of issue of the Government Order dated 28.08.2008 and not from the date of their original appointment. In these circumstances, the petitioners are before this Court, challenging the G.O.Ms.No.117 dated 28.08.2008, insofar as it denies the regularisation from the date of their initial appointment and the time scale of pay and consequential denial of annual increment from the said date.

7. The learned counsel for the petitioners would submit that the issue is covered by the decision of the learned Division Bench of this Court in W.A.Nos.226 and 491 of 2012 dated 05.11.2013. In the said decision, a similar claim came up for consideration before the learned Division Bench and the appeal was allowed in favour of the employees therein who were identically placed like the petitioners herein. The operative portion of the order is reproduced hereunder:-

"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 regularize 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."

The learned Division Bench directed regularisation of service to the appellants therein in the post of Animal Husbandry Assistant with effect from the date of their initial appointment with all monetary benefits. However, the monetary benefits had been restricted and the same should not be applicable during the period of their non-employment.

8. At this, learned counsel for the petitioners would submit that as far as these petitioners are concerned, they have been continuously working and the question of they have been ousted for some time does not arise and therefore, they are entitled to monetary benefits from the date of the initial appointment.

9. Upon notice, learned Special Government Pleader appearing for the respondents has entered appearance and filed a detailed counter affidavit.

10. According to the learned Special Government Pleader, the petitioners are not entitled for regularization from the date of their initial appointment, since their initial appointment was irregular and subsequently regularised by G.O.Ms.No.117, dated 28.08.2008. The substance of the objections as found in paragraph V of the counter affidavit is extracted below:-

"V) It is submitted that the services of the petitioners whose appointment were irregular have been regularized with effect from 28.08.2008 as per G.O.Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH-7) Department, dated 28.08.2008, following the guidelines issued in U.O.Note No.16076/S/95-9, Personnel and Administrative Reforms (S) Department, dated 05.02.1996 and there is an order in para No.4 of the above Government Order regarding sanctioning of annual increments only on completion of one year of service from the date of regularization, which will be the date of Government Order i.e. 28.08.2008. Hence, they are eligible to get next increment only on 01.07.2009. Therefore, necessary orders have been issued for cancelling the increments already sanctioned and recovery of increments paid to those sanctioned increments before 28.08.2008. Hence, there is no error in the order passed by the second respondent."

11. Therefore, learned Special Government Pleader would submit that the petitioners are not entitled to any relief as prayed for in the writ petitions. However, as regards the order passed by the learned Division Bench as aforementioned, the learned Special Government Pleader would submit that the issue raised in the writ appeals are identical as that of the issues raised in the present writ petitions.

12. In view of the submissions of the learned counsel as above, this Court is bound by the decision of the learned Division Bench as the Division Bench order dated 05.11.2013, passed in W.A.Nos.226 and 491 of 2012, wherein, the operative portion of the learned Division Bench order is also extracted supra. Since the issues raised in these writ petitions are squarely covered by the orders passed by the learned Division

Bench and also the learned counsel for the petitioners would submit that the Department has implemented the orders of the learned Division Bench in respect of those similarly placed persons, this Court does not see any justification for taking a different view in the matter. Moreover, the orders passed by the learned Division Bench is binding on this Court. Therefore, this Court has no hesitation in allowing the writ petitions as prayed for.

13. In the above circumstances, the impugned in G.O.No.117, Animal Husbandry and Fisheries Department dated 28.08.2008, is hereby set aside, insofar as it restricts regularization of service of the petitioners with effect from the date of issue of the Government Order. There shall be consequential direction to the respondents to grant regularisation to all the petitioners herein from the date of their original appointment i.e., 2000-01 with all monetary benefits like grant of annual increment except the arrears of pay etc. The consequential direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, the writ petitions stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Secretary,
The State of Tamil Nadu,
Animal Husbandry Dept,
Fort St.George, Chennai-9.

2.The Commissioner of Animal Husbandry
and Veterinary Services,
DMS Compound, Chennai-6.

3.The Regional Joint Director
of Animal Husbandry,
Dharmapuri.

+2cc to Mr.l.chandrakumar Advocate, S.R.No.11360
+1cc to the Government Pleader, S.R.No. 11777 & 11778

W.P.No.10974 of 2009 and
W.P.No.25254 of 2008

sk(CO)
TR(27/02/2018)



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