

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P. VELMURUGAN

W.A.No.817 of 2013

Dr.R. Sekar

..... Appellant/Petitioner

-vs-

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

2. The Commissioner and
Director of Animal Husbandry and
Veterinary Services,
Teynampet,
Chennai - 6

..... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent
against the order passed in W.P.No.7153 of 2009 dated
28.09.2011.

WP.No.7153 of 2009:Petition is filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of
Mandamus, directing the respondents to consider the claims of
the petitioner for promotion as Veterinary Assistant Surgeon
from the date of acquiring qualification as per the G.O (2D)
No. 27 Animal Husbandry and Fisheries (AH-7) Department dated
5.7.2002.

For Appellant : Mr.G. Elanchezhian
For respondents: Mr.V. Anandamoorthy
AGP

JUDGMENT

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

The appellant initially worked as Livestock Inspector. He was not given promotion to the post of Veterinary Assistant Surgeon for want of Recruitment Rule inspite of acquiring necessary qualification. Therefore, the appellant filed an Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.4243 of 1995. The Tribunal appears to have passed an interim order directing the Government to consider the claim for promotion. The Tribunal further directed the Government to keep one post vacant taking into account the case pleaded by the appellant. Subsequently, the Government amended the Recruitment Rule and notified it in the year 2002. The appellant was given promotion to the post of Veterinary Assistant Surgeon, after the Notification of the Amended Rule. The appellant, therefore not pressed the Writ Petition, which was originally numbered as O.A. No.4243 of 1995 and subsequently renumbered as W.P. No. 15517 of 2006, after transferring the same from the Tamil Nadu Administrative Tribunal to this Court.

2. The appellant after his appointment as Veterinary Assistant Surgeon submitted a representation for giving him appointment retrospectively taking into account the case of other employees and more particularly, Dr. S. Ramachandran, who was appointed as Veterinary Assistant Surgeon by order dated 03.11.1988. Since the representation was not considered, the appellant filed a Writ Petition before the Writ Court in W.P. No.7153 of 2009.

3. The learned Single Judge dismissed the writ petition on the ground that it is unknown to the service jurisprudence to give retrospective effect to the order of appointment. The order is under challenge in this intracourt appeal.

4. The learned counsel for the appellant contended that the Government appointed Dr.S. Ramachandran and others originally as Veterinary Assistant Surgeon and thereafter regularised their services after notifying the Amended Rules. According to the learned counsel, the appellant is also entitled to a similar treatment and for that purpose only, he submitted a representation. The learned counsel further contended that if the appellant is given promotion retrospectively, it would only give him notional benefits as he is not in service now.

5. We have also heard the learned Additional Government Pleader for the respondents.

6. There is no dispute that till the Amended Recruitment Rules were notified, the appellant worked only as a Livestock Inspector. It is also true that similarly situated employees were appointed temporarily as Veterinary Assistant Surgeon, pending issuance of the Amended Rules of Animal Husbandry and Veterinary Services.

7. Since promotion was not given and there was stagnation, the appellant initiated proceedings before the Tamil Nadu Administrative Tribunal in O.A. No.4243 of 1995. The Tribunal directed the Government to keep one post vacant.

8. It is a matter of record that subsequently the Government notified the Amended Rules for Animal Husbandry and Veterinary Services. The appellant and other employees were promoted by Order dated 07.08.2002. The appellant, immediately thereafter, not pressed the writ petition. The appellant voluntarily accepted the order of appointment dated 07.08.2002. The order was made in accordance with the amendments made to the Special Rules. There was no challenge to the appointment order.

9. The fact that the Government have given regularisation to the employees who were appointed initially as Veterinary Assistant Surgeon on temporary basis, would not give right to the appellant to seek similar benefit. The appellant ought to have taken liberty from the writ Court to challenge the appointment order insofar as it restricts the operation from 07.08.2002.

10. There is no question of giving retrospective effect unless the appointment order giving prospective effect is challenged and is set aside in the manner known to law.

11. We are therefore of the view that the appellant is not entitled to claim retrospective effect to his order of appointment.

12. We, therefore, confirm the order passed by the learned Single Judge.

13. We dismiss the intracourt appeal. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sr

To

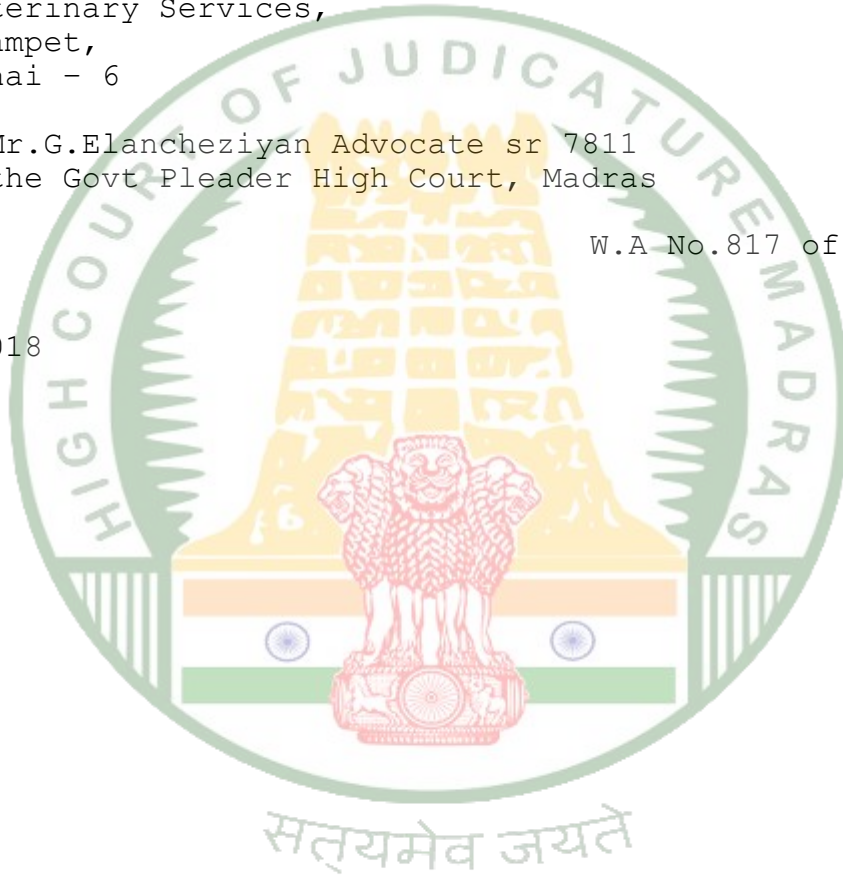
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+1 cc to Mr.G.Elanchezhiyan Advocate sr 7811
+1 cc to the Govt Pleader High Court, Madras
sr 8389,

W.A No.817 of 2013

mr(co)
aa06/03/2018



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