

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.765 of 2016 against W.P.No.29439 of 2010
and CMP No.9909 of 2016

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai 9.
2. The Director of Animal Husbandry and
Veterinary Services,
Central Administrative Buildings,
(DMS Campus), Chennai.
3. The Regional Joint Director,
Animal Husbandry Department,
Pudukkottai District.
4. The Assistant Director,
Animal Husbandry Department,
Aranthangi,
Pudukkottai District. Appellants/Respondents

versus

M.Chandrabose ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated
12.03.2013 passed in W.P.No.29439 of 2010.

W.P.No.29439 of 2010: This Writ Petition is filed Under Article
226 of the Constitution of India praying to issue a Writ of
Mandamus directing the respondents not to fill up the posts of
Animal Husbandry Assistants based on the letter dated 29.10.07
in ROC.No.34420/N3/07 on the file of the 2nd respondent herein
without considering the name of the petitioner in filling up the
vacancies of the Animal Husbandry Assistants.

For Appellants : Mr.N.Manikandan

Government Advocate

For Respondent : Mr.G.Arul Murugan

J U D G M E N T

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

The challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 12.03.2013 made in WP No.29439 of 2010, in any by which, the learned Single Judge had directed the respondents to regularize the services of the petitioner (respondent herein) in the post of Animal Husbandry Assistant following the orders passed in WP No.35691 of 2007 etc. batch.

2. The case of the respondent before the learned Single Judge was that, he was appointed as a part time helper in the Animal Husbandry Department, during year 1989 on a daily wage of Rs.2/- per day. The appointment was made after calling for list of candidates from the Employment Exchange and a process of selection was also followed. It is claimed that the respondent was working as a part time helper from 1989 till the date of filing of the Writ Petition in the year 2010 on the daily wages of Rs.2/-.

3. Certain similarly placed persons moved this Court in WP No.35691 of 2007 etc. batch and this Court had allowed the said Writ Petition, by an order dated 02.09.2010, following the judgment of the Madurai Bench of this Court in WP Nos.872, 884, 1773 of 2008 etc. batch dated 04.12.2008. The respondent also sought for similar relief of regularization in service. The said prayer was allowed by the learned Single Judge resulting in the above appeal.

4. We have heard Mr.N.Manikandan, learned Government Advocate appearing for the appellants and Mr. G.Arul Murugan, learned counsel appearing for the respondent.

5. Mr.N.Manikandan, learned Government Advocate would contend that the benefits of regularization cannot be extended in view of the judgment of the Hon'ble Supreme Court in Secretary to Government, School Education Department v. R.Govindasamy and others made in Civil Appeal Nos.2726 - 2729 of 2014 dated 21.02.2014. He would also rely upon G.O.Ms.No.74, P

& AR (F) Department dated 27.06.2013, the sole contention of the learned Government Advocate based on the decision of the Hon'ble Supreme Court as well as the G.O.Ms.No. 74, P & AR (F) Department dated 27.06.2013, is that inasmuch as the respondent was working as a part time employee he cannot be favoured with the benefits of regularization contemplated in G.O.(Ms) No. 22, P & AR (F) Department dated 28.02.2006.

6. Per contra, Mr. G.Arul Murugan, learned counsel appearing for the respondent would submit that the appellants have implemented the orders passed in the earlier Writ Petitions including the order passed in WP No.35691 of 2007 etc. batch and had regularized the services similarly placed persons and therefore, the appellants are not justified in discriminating the respondent and denying him the benefits of regularization, as per G.O.(Ms) No. 22, P & AR (F) Department dated 28.02.2006. It is not in dispute that the respondent was appointed to the post of part time helper in the Animal Husbandry Department after going through a process of selection and calling for the list of eligible candidates from the respective Employment Exchange. Therefore, it is not as if the respondent had gained back door entry into the service. He was selected and appointed through the process of selection though his appointment was purely temporary on a part time basis.

7. The judgment of the Hon'ble Supreme Court relied on by the learned Government Advocate is confined the cases where the initial appointment itself was made without a process of selection. It is also seen from the proceedings of the Regional Joint Director of Animal Husbandry, Thirvarur District dated 13.08.2012 that the appellants had complied with the orders passed in WP No. 35691 of 2007 and had regularized at least 10 persons working as part time helpers in the said department. The said proceeding also discloses that 1360 posts of Animal Husbandry Assistants were created and out of the said posts, 28 posts were sanctioned for the part time employees and 10 part time employees were ordered to be appointed as Animal Husbandry Assistants.

8. We are of the considered view that the said benefit will have to be extended to the respondent also and the appellants cannot take shelter under the subsequent Government Orders to deny the benefit to the respondent, which has been granted to similarly placed persons earlier.

9. We therefore see no merit in the Writ Appeal and the Writ Appeal therefore fails and it is dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai 9.
2. The Director of Animal Husbandry and
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(DMS Campus), Chennai.
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Pudukkottai District.
4. The Assistant Director,
Animal Husbandry Department,
Aranthangi, Pudukkottai District.

+1cc to Mr.G.Arulmurugan, Advocate Sr.40721
+1cc to the Government Pleader Sr.41422

W.A.No.765 of 2016
and CMP No.9909 of 2016

rj[co]
srg 13/07/2018