

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.12.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2861 of 2018
and
C.M.P.No.23758 of 2018

- 1.The State of Tamilnadu
Rep. by its Secretary to Government,
Animal Husbandry, Dairying &
Fisheries Department, Fort St. George,
Chennai - 9.
 - 2.The Commissioner and Director,
Animal Husbandry and Veterinary Services,
DMS Building, Chennai - 6.
 - 3.The Regional Joint Director,
Animal Husbandry Department,
Thirunelveli - 9.
 - 4.The Assistant Director,
Animal Husbandry Department,
Ampasamudram,
Tirunelveli District. ... Appellants/Respondents
- Vs.
- A.Murugan ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 17.11.2016 made in W.P.No.22168 of 2009.

WP.NO.22168/2009:

Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of 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 (AH7) Department dt.28.8.08 and on the file of the 4th respondent in Proceedings 1) Na.Ka.No.1033/A2/04 dt.19.11.08 and 2) Na.Ka.No.1033/A2/2004 dt.31.7.2009 and quash the same so far as the petitioner is concerned and direct the respondents to regularise the services of the petitioner w.e.f.18.4.2000 the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment

w.e.f.1.4.2001 with all consequential service and monetary benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Govt. Pleader

For Respondent : Mr.S.Gunasekaran

J U D G E M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Challenge in this writ appeal is to an order of the writ court dated 17.11.2016 made in W.P.No.22168 of 2009, by which, the writ court, set aside G.O. Ms. No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008 and consequently directed the respondents therein/appellants, to regularise the services of the petitioner therein/respondent, from the date of appointment or the date on which he was brought into time scale of pay.

2. Short facts leading to the filing of the writ appeal are that, the writ petitioner was appointed as a daily wages Casual Labourer on 01.07.1991 in the office of the Deputy Director, District Live Stock Farm, Abishekapatti, Thirunelveli District and he continued as such till 17.4.2000. He has put in more than 10 years of service as Animal Husbandry Assistant and therefore, he was eligible to be regularised in the said service. As per the qualification prescribed, persons, who are able to read and write Tamil are eligible and as the writ petitioner possessed the said qualification, he is entitled for regularisation. Several persons, similarly placed like the petitioner, who had been working as Animal Husbandry Assistants either on temporary basis or casual daily wages employees, since had not been brought in time scale of pay or regularisation of their services, some of them approached the Tamil Nadu Administrative Tribunal. Ultimately, pursuant to the orders of the Tribunal made in the year 2000, the Commissioner and Director, Animal Husbandry and Veterinary Services, issued an order on 24.3.2000 whereby, services of the respondent as Animal Husbandry Assistant. Similarly several other persons were brought into time scale of pay. However, though the petitioner and others had been brought into time scale of pay and that they had been working for a number of years, their services were not regularised. Therefore, writ petitions were filed. In W.P.No.2461 of 2006, dated 28.07.2006, direction was issued to consider the request, for regularisation of services including grant of regular increment of pay.

3. Vide G.O.Ms.No.116, Animal Husbandry and Fisheries Department dated 07.05.1987, 826 posts of Animal Husbandry Assistants were created in order to regularise the services of temporarily appointed persons, who were subsequently, brought into time scale of pay, like the respondent herein. Government also issued another order in G.O.Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.8.2008, upon considering the plea made by the Animal Husbandry Assistants like the respondent, for regularisation.

4. For regularising their services, the Commissioner and Director, Animal Husbandry and Veterinary Services, Chennai, the second respondent herein, forwarded proposals to the Government for relaxing the relevant service rules enabling the department to regularise the services of 826 Animal Husbandry Assistants from the date on which they joined in services as Animal Husbandry Assistants. The Government accepted the said proposal sent by the second respondent and issued Government Order in G.O.Ms.No.17, Animal Husbandry and Fisheries Department, dated 03.02.2004, wherein the relevant rules for appointment to the post of Animal Husbandry Assistants have been relaxed regarding age, educational qualification etc.

5. Another Government Order dated 28.8.2008 in G.O.Ms.No.117 was issued. For regularising the services of persons, like the respondent, who were numbering about 163, during that point of time of issuance of the said Government Order. Since the date of issuance of the Government Order has been mentioned as the date for the purpose of regularisation, aggrieved by the same, some of the persons like the respondent had already approached this Court. Relevant Paragraphs of the said G.O.Ms.No.117 dated 28.8.2008 are extracted hereunder.

"3. The Government have examined the proposal of the Commissioner of Animal Husbandry and Veterinary Services and accordingly, pass the following orders:

(a) The services of 163 Animal Husbandry Assistants are regularised from the date of issue of this order by relaxation of relevant rules in their favour as indicated in Annexure to this order.

(b) The Commissioner of Animal Husbandry and Veterinary Services is instructed to initiate disciplinary action against those who are all responsible for the appointment of 163 Casual Labourers without Government orders and inform the action taken against the officials in this regard.

4. The Annual increment shall be sanctioned only on completion of one year from the date of regularisation which will be the date of Government order regularising their services."

6. Annexure to G.O.Ms.No.117, shows a list of 163 persons, who were working as Animal Husbandry Assistants and their services had already been brought into time scale of pay. The respondent/petitioner is also one among the 163 and his name is found at Sl.No.49. Since the State Government, issued G.O.Ms.No.117 mentioning the date of Government Order as the date of regularisation, most of the beneficiaries like the respondent/petitioner whose services date back to 2000 or even prior to that, could only be regularised from 2008 i.e., the date of Government Order, whereby they would lose considerable years of service. Therefore, writ petitions were filed, seeking regularisation from the date of their actual appointment, and since the same were rejected, writ appeals were filed by the affected persons, in W.A.Nos.226 to 491 of 2012. Said writ appeals were decided by a Hon'ble Division Bench of this Court by order dated 05.11.2013. The operative portion of the said judgment reads thus:

"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 regularise 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."

7. Pursuant to the abovesaid orders of this Court, several persons, whose names were included in the annexure in the G.O.Ms.No.117 have been regularised from the date of appointment or the date of joining in their service. When that being so, similar relief had been sought for by the respondent/petitioner to get his services regularised from the date of actual appointment, by bringing him into regular time scale of pay. Since the same has been denied, the respondent/petitioner has filed W.P. No.22168 of 2009 with the aforesaid prayer.

8. Before the writ court, learned counsel for the writ petitioner contended that the issue raised in the writ petition has already been decided by this Court, in more than one cases. He has also pleaded that in fact as against the orders of this Court, the appellants filed Special Leave Petition in SLP(Civil)

No.14588 of 2015 and the same has also been dismissed by the Hon'ble Apex Court. Therefore, before writ court respondent has reiterated that the issue raised in the writ petition, has reached its finality and benefits have been given regularising the services of the persons like that of the petitioner from the date of their actual appointment or joining in services, by way of bringing them into time scale of pay. Such a benefit cannot be denied to the writ petitioner and accordingly prayed to allow the writ petition.

9. Per contra, before the writ court, the learned Additional Government Pleader appearing for the appellants/respondents contended that the writ petitioner, was only appointed on daily wages and there was no sanctioned post for the petitioner and others, to be absorbed. However, the Government, on humanitarian consideration created posts and by giving relaxation to the rules which are governing the service conditions of the writ petitioner and others, were to time scale of pay. Since the petitioner and others, sought for regularisation of services, the Government after considering all the aspects issued G.O.Ms.No.117 on 28.8.2008 and from the date of Government Order, the petitioner and others numbering about 163 persons were directed to be regularised as Animal Husbandry Assistants. Before the writ court, appellants have further contended that in respect of some stray cases where some individuals had been given regularisation from the date of their original appointment, it is only pursuant to the directions given by this Court, and such special consideration shown to the individuals in compliance of the orders of this Court cannot be treated as a precedent and on that score, the relief sought for in the present writ petition cannot be accepted and for the abovesaid reasons prayed for dismissal.

10. Writ Court, after considering the rival submissions made by the respective learned counsel and the documents filed, on 17.11.2016, passed the following order:

12. At the outset, this Court feels that the issue raised in the writ petition is no more res integra. It is no doubt that the petitioner and other similarly placed persons were originally appointed as casual employees, who worked as Animal Husbandry Assistants at various places at the respondent department. Since they were working as such for several years, their plea of regularisation were considered and ultimately, the petitioner was brought into time scale of pay only in the year 2000. Since the petitioner was brought into time scale of pay only in 2000, certainly, he would be entitled to get regularisation of his service.

However, for want of regularisation of rules as well as for creation of post, the respondents have taken time till 2008. In the meantime, in the year 2004, the Government passed G.O.Ms.No.17 whereby relaxation for the rules pertaining to age as well as education qualification for these people have been given. Already, the Government created 826 posts of Animal Husbandry Assistants under Government Order in G.O.Ms.No.116, Animal Husbandry and Fisheries Department dated 07.05.1987. Since posts were created and rules were also relaxed, there is absolutely, no impediment on the part of the respondents to regularise the services of these people including the petitioner from the date of appointment or their actually joining in service pursuant to such appointment or the date on which these incumbents, like the petitioner were brought into time scale of pay.

13. Since the respondents issued G.O.Ms.No.117, dated 28.8.2008 which is also impugned herein, affected persons have already approached this Court and ultimately, a Division Bench of this Court in the order referred to above in W.A.Nos. 226 and 491 of 2012 dated 05.11.2013 in S.Rajangam and another Vs. The Secretary to Government, Animal Husbandry, Dairying and Fisheries Department and others has categorically held that all the incumbents, who have been shown in the annexure to the G.O.Ms.No.117 should be treated on par and therefore, those appellants in the said writ appeals were directed to be regularised from the date of their actual appointment and the said portion of the order as extracted above is at paragraph 14 of the said Judgment. As rightly pointed out by the learned counsel for the petitioner, in compliance of the orders of this Court, the respondents passed G.O.Ms.No.185 dated 22.09.2015. In fact in the said Government Order, the Government placed the legal battles between the parties wherein it is specifically mentioned that in W.A.No.1271 of 2012, orders were passed in favour of the appellants and against which review petition also was filed and the said review also was rejected as against which SLP(Civil)No.14588 of 2015 was filed and the Hon'ble Apex Court has rejected the same and in view of the said issue having reached finality, they passed the Government Order regularising the services of the individuals from the date of their original appointment. When that being the factual position, there is no gain saying

to state that this petitioner is not entitled to seek the same benefits of regularisation from the date of his actual appointment or the date on which he was brought in to time scale of pay.

14. Therefore, this Court has no hesitation to hold that the denial of the benefits of regularising of the services of the petitioner from the date of appointment or the date actually the petitioner was brought into time scale of pay, is totally unsustainable in law and therefore, the contentions made in this regard on behalf of the respondents are liable to be rejected and accordingly, is rejected.

15. In the result, the writ petition is allowed. The respondents are directed to regularise the service of the petitioner from the date of appointment or the date on which the petitioner was brought into time scale of pay. Once the petitioner is entitled to get his service regularised as above, needless to say that the petitioner shall also be eligible to get all service benefits including periodical increment in pay. Therefore, the respondents are directed to calculate the said pay difference, pay arrears after calculating increment to be paid to the petitioner and pay the same to the petitioner. All the aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

11. Being aggrieved by the order made in favour of the respondent, instant writ appeal has been filed, on the following grounds:

(i) Writ Court ought to have considered the fact that the respondent herein was originally appointed as Casual Labour by way of irregular appointment and considering his long service, the Government have brought him into regular establishment as Animal Husbandry Assistant temporarily as per G.O.Ms.No.116, Animal Husbandry and Fisheries (AH6) Department dated 07.04.1997.

(ii) Writ Court ought to have considered the fact that though necessary steps have been taken to regularize his services, due to need of relaxation of relevant rules and due to the administrative reasons his services could not be regularized in time.

(iii) Writ Court ought to have considered the fact that after relaxation of the rules, the respondent's service was regularized vide G.O.Ms.No.117, Animal Husbandry and Fisheries (AH4)

Department dated 28.08.2008 though his appointment was irregular.

(iv) Writ Court failed to note that as per existing rules, any temporary Government Servants are not entitled for regular annual increment till their services are regularized and the government servants are eligible for sanction of annual increment only after completion of one year from the date of regularization of their services.

(v) Writ Court failed to note that as per G.O.Ms.No.117, Animal Husbandry and Fisheries (AH4) Department dated 28.08.2008, orders have been issued for regularizing the respondent's services from the date of issue of the above said order and also orders have been issued that annual increment should be sanctioned after completion of one year from the date of regularization i.e., 28.08.2008, the date of issue of the above said Government Order.

(vi) Writ Court ought to have considered the fact that the Government took a policy decision that the persons who were entered into government service as Casual Labourers by irregular appointment can be absorbed considering their long service and may be regularized from the date of issue of orders and accordingly, the respondent's service was regularized from the date of issue of G.O.Ms.No.117, Animal Husbandry and Fisheries (AH4) Department, dated 28.08.2008.

(vii) Writ Court failed to note that there is no discrimination between the persons regularized earlier and later but the services of the Animal Husbandry Assistant were regularized as per the availability of sanctioned posts and hence there is no discrimination.

(viii) Writ Court failed to note that the respondent was sympathetically brought into Government Services considering his long service as Casual Labour appointed by irregular appointment.

12. On the grounds, Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, made submissions. Mr.S.Gunasekaran, learned counsel appearing for the respondent, made submissions rebutting the arguments of learned Special Government Pleader, and prayed to sustain the same.

13. Heard the learned counsel for the parties and perused the entire materials available on record.

14. 163 persons, working as Animal Husbandry Assistants in various institutions (places) filed Original Application on the file of Tamil Nadu Administrative Tribunal, Madras to regularise their services. Government have also considered the orders made in W.P. No.24615/2006 and Contempt Petition No.625 of 2008 filed by Thiru.V.Sivasankaran and 29 others, who were denied annual increments. While considering the case of regularisation and the demand for annual increments, Government have issued G.O. (Ms) No.117 Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.8.2008, and ordered that the annual increment shall be sanctioned only on completion of one year from the date of regularisation which will be the date of Government order regularising their services. The said G.O. reads thus:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Animal Husbandry Department - Casual Labourers appointed in the post of Animal Husbandry Assistant - Regularisation of service by relaxing relevant rules - orders - issued

Animal Husbandry, Dairying and Fisheries (AH7) Department

G.O. (Ms) No.117

DATED 28.8.2008

Read:

From the Commissioner of Animal Husbandry and Veterinary Services Letters No.99430/N1/02, DATED 14.4.04, 15.6.05, 20.3.2006, 3.5.06 and 8.5.08

ORDER:

The Commissioner of Animal Husbandry and Veterinary Services in his letters read above has stated that 163 persons who were working as Casual Labourers in various institutions in the Animal Husbandry Department had filed cases in the Tamil Nadu Administrative Tribunal to bring them into regular establishment as Animal Husbandry Assistant and obtained orders from the Tamil Nadu Administrative Tribunal to consider their representation and pass orders on merits. Based on the orders of the Tamil Nadu Administrative

Tribunal, 163 casual labourers were appointed as Animal Husbandry Assistants as and when vacancy arose in the sanctioned posts. He has requested the Government to issue necessary orders for regularising their service in the posts of Animal Husbandry Assistant with effect from the date of their appointment as Animal Husbandry Assistant duly relaxing the rules relating to age limit, educational qualification, rule of reservation etc., prescribed to the post of Animal Husbandry Assistant.

2. In the meantime, Thiru.V.Sivasankaran and 29 others whose names are also included in the above proposal have filed W.P. No.24615/06 before the High Court for sanctioning increment to them. The High Court in order dated 3.8.2006 has directed the first respondent i.e. Secretary, Animal Husbandry Dairying and Fisheries Department that considering the limited scope of the prayer and without going into the merits of the case to consider the representation of the petitioners dated 22.8.2005 followed by the reminder on 19.3.2006 in respect of granting of annual increments to the petitioners and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. Now the petitioners have filed C.P. No.625/08 for non-implementation of the above order.

3. The Government have examined the proposal of the Commissioner of Animal Husbandry and Veterinary Services and accordingly pass the following orders:-

(a) The services of 163 Animal Husbandry Assistants are regularised from the date of issue of this order by relaxation of relevant rules in their favour as indicated in Annexure to this order.

(b) The Commissioner of Animal Husbandry and Veterinary Services is instructed to initiate disciplinary action against those who are all responsible for the appointment of 163 Casual Labourers without Government orders and inform the action taken against the officials in this regard.

4. The Annual increment shall be sanctioned only on completion of one year from the date of regularisation which will be the date of Government order regularising their services.

5. This order issues with the concurrence of Finance Department vide its U.O. No.54094/AHF/2008-1, dated 28.8.2008.

(By order of the Governor)

Leena Nair
Principal Secretary to Government

15. Proceedings of the Assistant Director, Animal Husbandry Department, Ambasaumudram in Na.Ka. No.1033/A2/04 dated 19.11.2008, regularising five persons including the respondent herein, by relaxing age, educational qualification, appointment not done through employment office, is extracted hereunder:

Na.Ka. No.1033/A2/04 Office of Asst Director
Animal Husbandry Dept.,
Ambasamudram

Date : 19.11.2008

Sub: Tamil Nadu Subordinate service of animal Husbandry - relaxing the rules and regularising the service of Cattle Maintenance Assistant - reg.

Ref: G.O. No.117, Animal Husbandry, Dairy Development and Fisheries (Ka.Pa.7) Department, dated 28.8.2008

2) Letter by the Head Office Na.Ka. No.99430/N1 2002 dated 1.9.2008

3) Letter from the office of Regional Joint Director of Animal Husbandry Department, Tirunelveli in Na.Ka. No.9379/E1/2008-1 dated 5.9.2008

With reference to above cited in the Government order, copies of the letter by the Head office and Regional office, the cattle maintenance assistant as mentioned in the address is forwarded for information.

With reference to the Government order, the five cattle maintenance assistants, their age, Educational qualification, appointment not done through employment office being procedural rules for the appointment, it has been relaxed and their service is regularised from the date of issuance of order by the Government i.e. from 28.8.2008 and order issued.

- 1.Thiru K.Abdul Hakeem, Cattle Maintenance Assistant, Veterinary Dispensary, Pallakkal.
2. Thiru A.Murugan, Cattle Maintenance Assistant, Veterinary Dispensary, Sangnapuram.

3. Thiru A.Murugan, Cattle Maintenance Assistant, Veterinary Dispensary, Panakudi.
4. Thiru S.Subbukutti, Cattle Maintenance Assistant, Veterinary Dispensary, Kalakkadu.
5. Thiru S.Durgaisamy, Cattle Maintenance Assistant, Veterinary Dispensary, Mukkoodal.

In the above said Government order, from the date of issuance, appropriate relaxation granted to their service and it has been regularised, and that their annual salary increment will take effect after one year from the date of issuance of the Government order which is hereby informed and these facts are informed through this.

The Government order, copy of letter of Head Office and copy of the letter of Regional Office forwarded through this letter, the Cattle Maintenance Assistants mentioned in the address below may kindly acknowledge and endorse for the receipt of the same and forward it next post to this office.

Sd/-E.Panneerselvam
Asst Director to Animal Husbandry
Ambasamudram

To

1. Thiru K.Abdul Hakeem, Cattle Maintenance Assistant, Veterinary Dispensary, Pallakkal.
2. Thiru A.Murugan, Cattle Maintenance Assistant, Veterinary Dispensary, Sanganapuram.
3. Thiru A.Murugan, Cattle Maintenance Assistant, Veterinary Dispensary, Panakudi.
4. Thiru S.Subbukutti, Cattle Maintenance Assistant, Veterinary Dispensary, Kalakkadu.
5. Thiru S.Durgaisamy, Cattle Maintenance Assistant, Veterinary Dispensary, Mukkoodal.

16. Based on the above order, Assistant Director (Addl I/c) Animal Husbandry, Seranmadevi (E), Ambasamudram, issued proceedings dated 31.7.2009 to the respondent herein, regularising his services. The said proceedings are extracted hereunder:

PROCEEDINGS OF ASSISTANT DIRECTOR (Addl I/C) ANIMAL
HUSBANDRY, SERAMANDEVI (E), AMBASAMUDRAM

Present: Thiru Dr.K.Subramanian, B.V.Sc.
Se.Na.Ka. No.1033/A2/04 Date : 31.7.2009

Sub: management - Subordinate service of Cattle Maintenance - regularising the service of Thiru.A.Murugan in the cadre of Cattle Maintenance Assistant - reg.

Ref: G.O. (Ms) No.117, Animal Husbandry, Dairy Development and Fisheries (Ka.Pa.1) Department, dated 28.8.2008

2) Letter by Commissioner of Veterinary Service,
Chennai in No.99430/N1/02 dated 1.9.2008
3) Letter by the Regional Joint Director, Tirunelveli in No.9379/E1/2008-1 dated 5.9.2008
4) This office proceedings in Na.Ka. No.1033/A3/04 dated 19.11.2008.

ORDER:-

Thiru A.Murugan serving as Cattle Maintenance Assistant at the Sankanapuram Veterinary Hospital which administered under the control of this office from 18.4.2000 onwards. He was granted first pay increment at Rs.60-2610-60-3150-65-3540 in the pay scale on 1.4.01. On the basis of the temporary employees service would be regularised this pay increment was granted.

But with reference to (1) and (2) in the Government order and letter by the Commissioner of animal Husbandry, (a) veterinary services, it has been stated that service of A.Murugan in the cadre of Cattle Maintenance Assistant is regularised on 28.8.08 f.n. only after a period of one year from the date of regularising his service of next pay increment to be granted. Upon such order, the pay increment granted to A.Murugan in the cadre of Cattle Maintenance Assistant from 1.4.2001 is hereby cancelled. Thereafter in view of the above said pay increment, the amount received by him till 30.6.2009 and surrender commutations every year aggregate at Rs.10,920/- (the annexure enclosed) it is instruct to deducted from the monthly salary from August 2009 as mentioned below:-

First installment Rs.420/- (August 2009)

From 2 to 22 (September 2009)
at the rate of Rs.500/-
For 21 months (500 x 21) Rs.10,500/-

Director of Animal Husbandry (Addl I/c)
Ambasamudram (E) Seranmadevi

En: annexure

To
Thiru A.Murugan
Cattle Maintenance Assistant
(thro Veterinary Assistant Doctor, Veterinary
Dispensary,
Sanganapuram)

Copy to
humbly submitted

- 1) Regional Joint Director, Animal Husbandry Dept.,
Tirunelveli
- 2) Commissioner, Veterinary Services, Chennai.

17. Three persons whose names were included in G.O. Ms. No.117 Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.8.2008, at Sl. Nos.140, 141 and 147 were not regularised. Hence, they filed writ petitions seeking for a writ of certiorarified mandamus to quash the said Government Order, insofar as they are concerned, and to direct respondents therein, to regularise the services of the post of Animal Husbandry Assistants with effect from 21.08.1997. Based on the decisions of the Hon'ble Supreme Court in State of Karnataka vs. Umadevi reported in (2006) 4 SCC 1 and Union of India and another vs. Arulmozhi Iniarasu and others reported in (2011) 7 SCC 397, the writ court rejected their prayer. Being aggrieved they preferred W.A. Nos.226 and 491 of 2012. A Hon'ble Division Bench of this court in W.A. Nos.226 and 491 of 2012 dated 05.11.2013, while setting aside the impugned G.O. dated 28.8.2008, at paragraph Nos.12 to 14, ordered as follows:

" 12. One S.Mathiyalagan, whose name is found in Sl.No.25 of G.O.Ms.No.117 dated 28.08.2008 had fled W.P.No.7049 of 2009 seeking for a direction to withdraw the proceedings of the Clinician, Veterinary Hospital, Kumbakonam dated 18.09.2008 and 30.12.2008 and direct the authorities to regularise the services of S.Mathiyalagan with effect from 01.07.1999 i.e. the date of joining the regular post of Animal Husbandry Assistant and also to sanction the annual increment with effect from 01.07.2000. The said writ petition was allowed

interalia issuing directions. The Government implemented the order passed in W.P.No.7049 of 2009, regularising the said S.Mathiyalagan with effect from 01.07.1999 i.e. the date of joining in the regular post of Animal Husbandry Assistant by issuing G.O.Ms.No 49 dated 20.02.2013. While so regularising, the Government had also relaxed Rule 23(a)(ii) of General Rules of Tamil Nadu State and Subordinate Services in favour of the said S.Mathiyalagan.

13. The name of the said S.Mathiyalagan is found in Sl. No.25 of G.O.Ms.No.117 dated 28.08.2008. The names of the appellants in W.A.No.226 of 2012 viz., S.Rajangam and N.Thirukasu are found in Sl.Nos.140 and 141 (Ramanathapuram Region). Likewise, the name of the appellant in W.A.No.491 of 2012 viz., K.Krishnasamy is found in Sl.No.147. When the respondents have regularised the services of S.Mathiyalagan (Sl. No.25 in G.O.Ms.No.117 dated 28.08.2008) in the post of Animal Husbandry Assistant with effect from 01.07.1999 i.e. the date of joining in the regular post of Animal Husbandry Assistant and issued G.O.Ms.No.49 dated 20.02.2013, the respondents are not justified in denying the benefit to the appellants, contending that they are not similarly placed. When the appellants are similarly placed as that of S.Mathiyalagan, the respondents cannot seek to deny the benefit of regularisation of the appellants with effect from the date of joining in the regular post of Animal Husbandry Assistant. We are of the view that the appellants are similarly placed as that of S.Mathiyalagan and the appellants are entitled to be regularised with effect from the date of joining in the regular post of Animal Husbandry Assistant i.e. 21.08.1997 and 16.06.1999 respectively. The orders of the Writ Court cannot be sustained and are liable to be set aside.

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 regularise 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.

18. Following the judgment made in W.A. Nos.226 and 491 of 2012 dated 05.11.2013, another Hon'ble Division Bench of this court in W.A. No.1271/2012 dated 23.4.2014, in the matter of M.Thiyagarajan vs. The State of Tamil Nadu represented by its Secretary to Government, Animal Husbandry, Dairying & Fisheries Department, Chennai and others, set aside the order of a learned single Judge dated 30.8.2011 made in W.P. No.26962 of 2008, denying regularization and consequently, while allowing the writ appeal, issued a direction to the respondents therein to grant all the consequential benefits to the appellant therein regularising his services with effect from 1.7.1999 i.e. the date of joining in the regular post of Animal Husbandry Assistant and also directed the respondents therein to sanction increment with effect from 1.7.2000 with all consequential benefits.

19. Judgment in W.A. No.1271 of 2012 dated 23.04.2014 was sought to be reviewed in Review Application SR No.88746/2014 with a delay of 147 days. After considering the merit of the Review Application, a Hon'ble Division Bench of this court in Rev.Appl. SR No.88746 of 2014 and M.P. No.1 of 2014 dated 5.6.2015 ordered as hereunder:

" 3. A perusal of the paragraph No.2 of the impugned order, which is the subject matter of the review petition, discloses that the parties in the very same Government Order was granted regularization from the date of initial appointment and hence, it was held that the appellant is also entitled to get the similar benefits. The earlier order granting regularisation to the above said date of initial appointment, has not been put to challenge and hence, it reached the finality.

4. The grounds urged in the review application, on the face of it, are unsustainable and the learned Additional Government Pleader under the guise of arguing the review application wants to re-agitate the matter once again. It is a well settled position of law that the review application cannot be treated as an appeal in disguise.

5. This court finds no merits in the review application. Therefore, the condone delay petition in M.P. No.1 of 2014 is dismissed and the Review Application SR No.88746 of 2011 is rejected."

20. The Government took the matter to the Hon'ble Supreme Court in Special Leave to Appeal (C) C.C. No.14588 of 2015 in the matter of State of Tamil Nadu, represented by its Secretary to Government, Animal Husbandry, Dairying & Fisheries Department and Ors. vs. M.Thiyagarajan on 15.09.2015. After condoning the delay, the Hon'ble Supreme Court dismissed the Special Leave Petition as hereunder:

" Delay condoned.

The special leave petition is dismissed.

As a sequel to the above, interlocutory application exemption from filing official translation is disposed of."

21. In the case on hand, the respondent herein/writ petitioner was appointed in the post of Animal Husbandry Assistant by bringing him into the regular time scale of pay by the proceedings of the Directorate of Veterinary Services in ROC No.1598/RR1/2000 dated 24.3.2000. Name of the respondent herein is included at Sl.No.49 of Annexure to G.O. (Ms) No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.8.2008 and in respect of respondent, rules relating to appointment and appointment not made through Employment Exchange, have been relaxed.

22. When the appellants have regularised the services of similarly placed persons, they denied the benefit to the respondent herein, from the date of his initial appointment to the post, contending that he is not similarly placed. Respondent is included at Sl.No.49 in G.O.(Ms).No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.08.2008 and on the facts and circumstances of this case, we are of the view that he is similarly placed as that of S.Mathiyalagan, Sl.No.25 in the Annexure to the G.O. Ms. No.117 (W.P. No.7949 of 2009), S.Rajangam and N.Thirukasu, Sl.Nos.140 and 141 respectively, in the Annexure to G.O. Ms. No.117 (appellants in W.A. No.226 of 2012) and K.Krishnasamy, Sl. No.147 in the Annexure to G.O. Ms. No.117 dated 28.8.2008 (appellant in W.A.No.491 of 2012), and therefore, the appellants cannot deny the benefit of regularisation of the respondent herein, with effect from his date of joining in the regular post of Animal Husbandry Assistant. Therefore, the respondent who is also similarly placed as that of the persons included at

Sl.Nos.25, 140, 141 and 147 in the Annexure to G.O. Ms. No.117 dated 28.8.2008 is entitled to the same benefit and entitled to be regularised with effect from the date of joining in the regular post of Animal Husbandry Assistant i.e. 18.4.2000. In this regard, we also deem it fit to consider, few decisions:

i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court, at paragraph 8, held thus,

"8. As regards the right to equality guaranteed under Article 14, the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

ii) In State of Karnataka v. N.Parameshwarappa reported in 2003 (12) SCC 192, in paragraph 8, the Hon'ble Apex Court held thus:

"8. we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court."

iii) In Hari Ram v. State of Hariyana reported in 2010 (2) CTC 336 (SC), the Supreme Court held that, if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right guaranteed under Article 14 of the Constitution of India.

iv) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court

held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

23. In the light of the above discussion and decisions, we do not find any error in the order of the writ court. Accordingly, the writ appeal is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

24. The appellants are directed to regularise the services of the respondent in the post of Animal Husbandry Assistant with effect from 18.4.2000 i.e. the date of the joining in the regular post of Animal Husbandry Assistant and grant him all the monetary benefits. If for any period, the respondent had been ousted for want of vacancy, the respondent shall not be entitled to any monetary benefit during that period, but the same shall be taken into account for continuity of service. The appellants are directed to comply with the order within a period of four months from the date of receipt of a copy of the judgment.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

TO:

- 1.The Secretary to Government,
Animal Husbandry, Dairying &
Fisheries Department, Fort St. George,
Chennai - 9.
- 2.The Commissioner and Director,
Animal Husbandry and Veterinary Services,
DMS Building, Chennai - 6.
- 3.The Regional Joint Director,
Animal Husbandry Department,
Thirunelveli - 9.

4.The Assistant Director,
Animal Husbandry Department,
Ampasamudram,
Tirunelveli District.

W.A.No.2861 of 2018
and
C.M.P.No.23758 of 2018

nr 16/05/2019



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