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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.18618 of 2018

and

W.M.P (MD) No.16484 of 2018

S.Saravanan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by the Secretary,
Department of Animal Husbandry and
Veterinary Services, Secretariat,
St.George Fort,
Chennai - 9.

2.The Director,
Department of Animal Husbandry and
Veterinary Services,
No.571, Annasalai, Nanthanam,
Chennai - 35.

3.The Deputy Director,
O/o.Deputy Director Livestock Farm,
Animal Husbandry and Veterinary Services,
Chettinad Post, Karaikudi Taluk,
Sivagangai District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondent No.3 from terminate the petitioner from his service viz., Casual Labour on daily wage Animal Husbandry Assistant (Kalnadai Paramarippu Uthaviyalar), Office of the Deputy Director Livestock Farm, Animal Husbandry and Veterinary Services, Chettinad, Karaikudi Taluk, Sivagangai District, without following the due process of law.

For Petitioner : Mr.I.Pinayagash

For Respondents : Mr.K.Mu.Muthu
Addl.Govt.Pleader

O R D E R

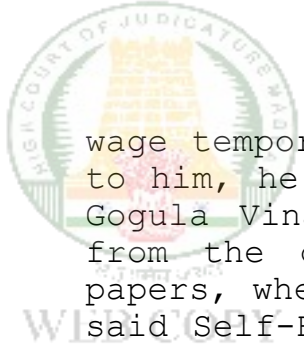
The present Writ Petition has been filed praying for issuance of a Writ of Mandamus, forbearing the 3rd respondent, terminating the petitioner from his service viz., Casual Labour on daily wage, Animal Husbandry Assistant (Kalnadai Paramarippu Uthaviyalar), Office of the Deputy Director, Livestock Farm, Animal Husbandry and Veterinary Services, Chettinad, Karaikudi Taluk, Sivagangai District, without following the due process of law.

2. Mr.I.Pinayagash, the learned counsel appearing for the petitioner would submit that the petitioner was employed as casual labour on daily wage temporary basis with the 3rd respondent Office in the year 1995 and that his service ought to have been regularized. Since the respondents have not regularized the service of the petitioner, he approached this Court by filing a Writ Petition in W.P.(MD)No.7070 of 2018, seeking a direction to the respondents to regularize the appointment of the petitioner as Animal Husbandry Assistant and this Court directed the respondents to consider the case of the petitioner with regard to regularization. The request for regularization was rejected by the 2nd respondent and according to him, it would amount to back door entry. Aggrieved over the same, the petitioner has filed a Writ Petition in W.P.(MD)No.15128 of 2018, challenging the said rejection order and in the said Writ Petition, this Court has ordered 'Notice of Motion returnable after service'. In support of his contention, the petitioner has relied upon a Government Order in G.O.(Ms)No.34, Animal Husbandry Dairying and Fisheries (AH-6) Department, dated 12.11.2009 wherein some of the temporary employees have been regularized and he is also a similarly placed and that his appointment should have been regularized.

3. Mr.K.Mu.Muthu, the learned Additional Government Pleader appearing for the respondents contended that the petitioner has already approached this Court challenging his rejection of regularization and that by filing an yet another writ petition cannot be acceded to and the writ petition has got to be dismissed with costs. Adding further he would submit that the petitioner is not a permanent employee and that he was employed through Self-Help Group. The attendance register produced before this Court is not at all maintained by the Government and that it is belongs to Self-Help Group. Therefore, he prayed for dismissal of the Writ Petition.

4. I have heard the submissions made by learned counsel appearing on either side and perused the materials available on record.

5. It is not in dispute that the petitioner has joined the services in the 3rd respondent office, as casual labour, on daily



wage temporary basis in the year 1995. For the best reasons known to him, he started working through Self-Help Group viz., "Arulmighu Gogula Vinayagar Men Self-Help Group, Chettinad, which is evident from the document filed by the petitioner in the typed set of papers, wherein it has been stated that he was employed through the said Self-Help Group, to work under the Animal Husbandry Department and that he was a contract employee. Therefore, it is very clear that even though the petitioner has said to have joined in the year 2009, he has produced the documents to show that he was working from 2007 under them.

6. The genuineness of the document, dated 17.05.2017, which is enclosed at page 28 of the typed set of papers, itself is doubtful. Even the temporary appointment order, dated 28.11.2015, clearly shows that he was employed on temporary basis. There is no reason why he should get employment through the Self Help Group and it itself clearly shows that he was not employed directly, but through the contractors. Whether the contract is a genuine one or not and he is a direct employee are all disputed question of fact and this Court cannot go into the same in the Writ Petition. It is for the petitioner to raise appropriate industrial dispute to establish the fact that he was a direct employee to enable the Tribunal / Labour Court to come to a conclusion with regard to regularization. If the Tribunal / Labour Court comes to a conclusion that the contract system is genuine, it is for the petitioner to approach the authority, seeking abolition of contract labours. Further, the petitioner, in paragraph 12 of the affidavit, has averred that he has been verbally terminated.

7. The petitioner has not produced any cogent evidence to establish the fact that he has been regularly employed. As there is no sufficient materials before this Court and that there is a disputed question of fact, this Court cannot entertain the writ petition. It is the classic case of situation where the Court finds to give a helping hand to the petitioner, but disposing of the representation and thereafter two other litigations are not proper.

8. In the result, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

SD
ASSISTANT REGISTRAR (CO)

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SUB ASSISTANT REGISTRAR (CS 3)



To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Animal Husbandry and
Veterinary Services, Secretariat,
St.George Fort,
Chennai - 9.

2.The Director,
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Veterinary Services,
No.571, Annasalai, Nanthanam,
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3.The Deputy Director,
O/o.Deputy Director Livestock Farm,
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1CC TO THE SPL GOVT PLEADER SR 80631

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