



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.04.2018
CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD) .No.2843 of 2011

A.Manickam : Petitioner
Vs.

- 1.The Commissioner for Milk
Production and Dairy Development,
Madhavaram,
Chennai - 600 051.
- 2.The District Collector cum Special Officer,
Sivagangai District Co-operative
Milk Producers Union Ltd.,
Karaikudi.
- 3.The General Manager,
Sivagangai District Co-operative
Milk Producers Union Ltd.,
Karaikudi.
- 4.The Managing Director,
Sivagangai District Co-operative
Milk Producers Union Ltd.,
Karaikudi.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the third respondent passed in R.O.C.No.238/P&A1-1/2006, dated 21.04.2010 and the order of the fourth respondent passed in R.O.C.No.238/P&A1/06-2, dated 22.10.2007 and quash the same in so far as the petitioner is concerned and consequently directing the respondents to regularize the service of the petitioner with all monetary and attendant benefits for the services rendered on par with his juniors.

For Petitioner	: Mr.C.Jegannathan
For Respondents 1, 2 & 4	: Mr.M.Jeyakumar
	Additional Government Pleader
For Respondent No.3	: Mr.S.Viswalingam

O R D E R

The prayer sought for in this writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the third respondent passed in R.O.C.No.238/P&A1-1/2006, dated 21.04.2010 and the order of the



fourth respondent passed in R.O.C.No.238/P&A1/06-2, dated 22.10.2007 and quash the same in so far as the petitioner is concerned and consequently to direct the respondents to regularize the service of the petitioner with all monetary and attendant benefits for the services rendered on par with his juniors.

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2.The short facts which are required to be noticed for the disposal of this writ petition are as follows:

2.1.The petitioner was appointed as Casual Labour (Technical) on 13.03.1987 and served with the respondent organization for some years. Thereafter, the petitioner's service was terminated for want of vacancy. The said action was questioned by the petitioner by raising an Industrial dispute in I.D.No.377 of 1993. The Labour Court, by order dated 31.05.1993, directed the respondents to reinstate the petitioner without back wages, pursuant to which the petitioner was reinstated on 22.12.1994 and he was allowed to join duty in January 1995. Since he has completed 750 days as Casual Labour (Technical), he sought for regularization of his employment.

2.2.Though the petitioner seeks for such a regularization as some of the similarly placed employees had already been regularized as Operators, which is a promotional post, however, the petitioner was regularized only as a Junior Mazdoor from 22.10.2007. Because of the said action on the part of the respondents in regularizing the service of the petitioner only as a Junior Mazdoor instead of Operator, considering his long years of service at the respondent organization and also considering the fact that the similarly placed persons who have been working along with the petitioner have been considered and regularized as such in the promotional post, the petitioner has filed this writ petition challenging the orders to that effect passed by the respondent organization in the orders impugned, whereby, the petitioner had been given such regularization only as a Junior Mazdoor by proceedings dated 21.04.2010 and also the consequential order dated 24.11.2010.

3.I have heard Mr.C.Jegannathan, appearing for the petitioner, Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the first, second and fourth respondent and Mr.S.Viswalingam, learned Counsel appearing for the third respondent.

4.The learned Counsel appearing for the respondents would submit that the issue pertaining to the regularization of the petitioner and other similarly placed persons, totally 9 persons are concerned, it had engaged the indulgence of the State Government who, after having considered the issue, had issued the Government Order in G.O.(2D)No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007. As per the said Government Order, 9 casual labourers including the petitioner who possess the required age and educational qualification and has completed 480 days within a period of 24 calendar months were directed to be regularized at the entry level post with effect from 12.03.2001. Along with the said Government Order, the names of 9 persons



including the petitioner, their date of appointment as casual labourers and their completion of 480 days in continuous period of two years had been given as annexure.

5. Pursuant to the said Government Order, the respondent organization ie., Sivagangai District Co-operative Milk Producers Union Ltd., had issued a proceedings on 22.10.2007, whereby all the 9 casual labourers including the petitioner had been regularized as Junior Mazdoor, which is the entry level post at the respondent organization and accordingly they have been working. The learned Counsel appearing for the respondent would further submit that the said regularization process had been undertaken by the respondent organization only pursuant to the Government Order referred to above, where all the 9 casual labours including the petitioner were directed to be regularized only in the entry level post. Since the Junior Mazdoor is the entry level post in the respondent organization and accordingly, they have been regularized. Therefore, the learned Counsel appearing for the respondents would submit that if at all the petitioner is having any grievance over the said regularization of the petitioner as Junior Mazdoor, the import of the said Government Order referred to above should have been questioned. Without questioning the import of the said Government Order, the petitioner cannot echo any grievance regarding the regularization as Junior Mazdoor and therefore, the prayer sought for in this writ petition cannot be granted.

6. In reply to the said argument advanced by the learned Counsel appearing for the respondents, the learned Counsel appearing for the petitioner would submit that, assuming that the regularization process was undertaken and the petitioner and others had been regularized by the respondent organization only pursuant to G.O.(2D) No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007, such regularization shall be taken effect from 12.03.2001, as has been mentioned in the said Government Order. However, the order dated 22.10.2007 does not reflect the date of effect of such regularization of the petitioner. In this regard, the learned Counsel would rely upon paragraph No.3 of the said Government Order and the same is extracted hereunder:

"3. Accordingly, the Government direct that the services of 9 Casual Labourers, who possess the required age and educational qualification and have completed 480 days within a period of 24 calendar months, be regularized at the entry level post with effect from 12.03.2001 as in the case of employees of Co-operative Societies in the light of the orders issued in the Government Order first read above. As these 9 employees are already in employment, the rule of reservation as provided in rule 149(3) of Tamil Nadu Co-operative Societies Rules, 1988 has to be relaxed."



7.I have considered the said submissions made by both sides.

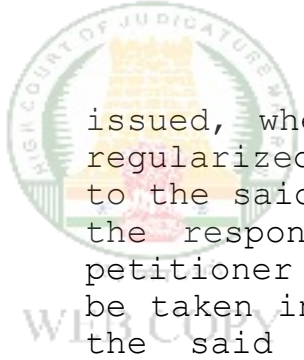
8.No doubt, the petitioner was initially appointed in the year 1987 as casual labour (Technical) at the respondent organization and thereafter, for want of vacancy, since he was terminated, he raised an industrial dispute and ultimately it was concluded by the Labour Court by passing an award on 31.05.1993. A perusal of the operative portion of the said award passed by the Labour Court would disclose that the petitioner was directed to be reinstated into service without back wages. The Labour Court award does not say anything about the continuity of service right from his initial time as casual labour in the year 1987. Admittedly, as against the award passed by the Labour Court, no appeal or proceedings was filed by the petitioner and therefore, he has accepted the verdict made in the said Labour Court award.

9.In view of the said position, the petitioner cannot make out a case to state that he should be treated on par with other casual labourers who have been appointed along with him or during same period as they had been subsequently regularized in some other promotional post such as Operator etc.,

10.However, insofar as the petitioner is concerned, he is one among the 9 persons whose services have been directed to be regularized by the Government in the afore-referred G.O.(2D)No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007. As has been extracted in paragraph No.3, the Government has directed the respondent organization to regularize the services of 9 persons including the petitioner, of course, in the initial level post with effect from 12.03.2001.

11.Only pursuant to the said Government Order, consequential order of regularizing the petitioner and others had been made by the respondent organization dated 22.10.2007. A perusal of the said order dated 22.10.2007, does not disclose from which date that regularization would take effect. However, the learned Counsel for the respondents would submit that certainly, that would take effect from 12.03.2001, the date which has been specifically mentioned in G.O.(2D)No.131, dated 28.09.2007. However, the learned Counsel for the petitioner submits that in practical arena, effect from 12.03.2001 for regularizing the petitioner had not been given.

12.Insofar as the claim of the petitioner to be treated on par with other similarly placed persons who had been taken for service as casual labours along with the petitioner in the late 80's cannot be accepted here, because of the subsequent termination and re-entry by way of reinstatement pursuant to the Labour Court award. However, at the same time, the petitioner at least from the re-entry, pursuant to the order of the Labour Court ie., from 22.12.1994, it can be taken into account and only after taking into account of those aspects, G.O.(2D)No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007, was



issued, wherein the petitioner and others had been directed to be regularized at the entry level post from 12.03.2001. Only pursuant to the said Government Order, since subsequent orders were passed by the respondent organization in regularizing the services of the petitioner as Junior Mazdoor, such regularization, no doubt, shall be taken into effect only from 12.03.2001, as has been mentioned in the said Government Order and not from any subsequent date, especially from 22.10.2007, the date on which the subsequent proceedings was passed by the respondent organization.

13. In that view of the matter, this Court is of the considered view that though the petitioner's grievance in entirety cannot be considered by this Court in this writ petition, his grievance in part with regard to the date of the regularization of his service as Junior Mazdoor shall be taken effect from 12.03.2001 in accordance with G.O.(2D)No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007, referred to above is well-founded and therefore, the same can be accepted.

14. In the result, the following orders are passed in this writ petition:

(i) the petitioner's service as Junior Mazdoor with regularization shall be taken effect from 12.03.2001 as has been specifically directed by the Government in G.O.(2D)No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007.

(ii) if such regularization of the petitioner as Junior Mazdoor is given effect to from 12.03.2001, if any service benefits including monetary benefits is to be conferred on him, if is not so far conferred, the same shall be conferred and disbursed to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

(iii) it is made clear that since in G.O.(2D)No.131, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007, it has been specified that the monetary benefits shall be given to the petitioner from the date of issuance of the said Government Order ie., 28.09.2007, such monetary benefits shall be calculated notionally for the purpose of pension and other retirement benefits and the actual pay benefits shall be calculated and be given to the petitioner from 28.09.2007.

15. With these directions, the writ petition stands disposed of. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar



To

1.The Commissioner for Milk
Production and Dairy Development,
Madhavaram,
Chennai - 600 051.

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Karaikudi.

4.The Managing Director,
Sivagangai District Co-operative
Milk Producers Union Ltd.,
Karaikudi.

+1cc to M/S.S.Viswalingam, Advocate SR.No. 59436
+1cc to M/S.Veera Associates, Advocate SR.No. 59723
+1cc to Special Government Pleader, SR.No. 59669

ORDER MADE IN
W.P. (MD) .No.2843 of 2011
03.04.2018

mr

JM/SV MMS/SAR 4/11.04.2018/6P/8C