

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.8931, 8932 and 21382 of 2009 and
M.P. Nos.1, 2 & 2 of 2009, 1 of 2011 and 1 & 1 of 2014

M.Vempaian .. Petitioner in W.P. No.8931 of 2009
U.Ramasamy .. Petitioner in W.P. No.8932 of 2009
K.Abdul Hakkim .. Petitioner in W.P. No.21382 of 2009

Versus

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Animal Husbandry, Dairying &
Fisheries Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner and Director,
Animal Husbandry and
Veterinary Services,
DMS Building,
Chennai-600 006.

.. Respondents 1 and 2 in all W.Ps.

3.The Regional Joint Director,
Animal Husbandry Department,
V.O.C.Nagar, Thanjavur.

4.The Assistant Director,
Animal Husbandry Department,
Thanjavur and District.

.. Respondents 3 & 4 in W.P. No.8931 of 2009

3.The Regional Joint Director,
Animal Husbandry Department,
Thiruvavur-610 001.

4.The Assistant Director,
Animal Husbandry Department,
Mannargudi, Thiruvavur Dist. .. Respondents 3 & 4 in W.P. No.8932 of 2009

3.The Regional Joint Director,
Animal Husbandry Department,
Thirunelveli-9.

4.The Assistant Director,
Animal Husbandry Department,
Ampasamudram,
Thirunelveli Dist. ... Respondents 3 & 4 in W.P. No.21382 of 2009

Prayer in W.P. No.8931 of 2009: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for records on the file of the first respondent in G.O. Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008 and on the file of the fourth respondent in Proceedings 1.Na.Ka.No.1076/A/04-2 dated 17.09.2008 and 2.Na.Ka.No.1076/A/04 dated 12.02.2009 and quash the same and direct the respondents to regularise the services of the petitioner with effect from 01.07.1999, the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 01.07.2000 with all consequential service and monetary benefits so far as petitioner is concerned.

Prayer in W.P. No.8932 2009: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for records on the file of the first respondent in G.O. Ms.No.117,

Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008 and on the file of the fourth respondent in Proceedings 1.Na.Ka.No.4508/A/08-1 dated 16.09.2008 and 2.Na.Ka.No.3624/A/2008 dated 31.12.2008 and quash the same and direct the respondents to regularise the services of the petitioner with effect from 03.03.1999, the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 01.01.2000 with all consequential service and monetary benefits so far as petitioner is concerned.

Prayer in W.P. No.21382 of 2009: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for records on the file of the first respondent in G.O. Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008 and on the file of the fourth respondent in Proceedings 1.Na.Ka.No.1033/A2/04 dated 19.11.2008 and 2.Na.Ka.No.1033/A2/2004 dated 31.07.2009 and quash the same as far as the petitioner is concerned and direct the respondents to regularise the services of the petitioner with effect from 18.02.2001, the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 01.01.2002 with all consequential service and monetary benefits so far as petitioner is concerned.

For Petitioners in W.P. :
Nos.8931 & 8932 of 2009

Mr.S.Gunasekaran for
Mr.S.Thirumavalavan

For petitioner in W.P. :
No.21382 of 2009

Mr.B.Vishnu Chelliya for
M/s.Ajmal Associates

For Respondents :
in all W.Ps

Mr.N.Srinivasan,
Additional Government Pleader

COMMON ORDER

The writ petitions have been filed challenging the correctness of the impugned G.O. Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008 passed by the first respondent and Proceedings Na.Ka.No.1076/A/04-2, Na.Ka.No.4508/A/08-1 Na.Ka.No.1033/A2/04 dated 17.09.2008, 16.09.2008 and 19.11.2008 and Na.Ka.No.1076/A/04, Na.Ka.No.3624/A/2008 and Na.Ka.No.1033/A2/2004 dated 12.02.2009, 31.12.2008 and 31.07.2009 issued by the fourth respondent and seeking a direction to the respondents to regularise the services of the petitioners with effect from 01.07.1999, 03.03.1999 and 18.02.2001, the date of joining in the regular post as Animal Husbandry Assistants and to sanction increment with effect from 01.07.2000, 01.01.2000 and 01.01.2002 with all consequential service and monetary benefits.

2.Learned counsels appearing for the petitioners submitted that the petitioners were appointed as Daily Wage Casual Labourers in the year 1988 and 1989 in the office of the Additional Director, Exotic Cattle Breeding Farm, Eachankottai, Orathanadu, Thanjavur District and in the office of the Deputy Director, District Live Stock Farm, Abishekapatti, Thirunelveli District and they are eligible to be appointed as Animal Husbandry Assistants, as per

amendment to Adhoc Rules framed under Article 309 of the Constitution of India in G.O. Ms. No.1527, Agriculture (AHVIII) Department dated 28.08.1985. Learned counsels appearing for the petitioners would further submit that the petitioners and others preferred O.A. No.4433 of 1996 batch and the Tribunal passed final order directing the respondents to regularise the service of the petitioners. According to the learned counsels appearing for the petitioners, though the services of the petitioners were regularised as per G.O. Ms. No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008 passed by the first respondent and the respondents 2 and 3 in their Roc.No.99430/N1/2002 & Na.Ka.No.9379/E1/2008-1 dated 01.09.2008 & 05.09.2008 issued instructions to regularise the service of the petitioners as per the said G.O. and sanctioned increment after completion of one year of service, namely the date of regularisation, the fourth respondent by the proceedings Na.Ka.No.1076/A/04-2 & Na.Ka.No.1033/A2/04 dated 17.09.2008 & 19.11.2008 regularised the service of the petitioners with effect from 28.08.2008 and by Proceedings Na.Ka.No.1076/A/04, Na.Ka.No.3624/A/2008 and Na.Ka.No.1033/A2/2004 dated 12.02.2009, 31.12.2009 and 31.07.2009 cancelled the increment sanctioned to the petitioners on 01.07.2000, 01.01.2000 and 13.05.2002 despite the said order passed by the Tribunal. Therefore, the petitioners have given various representations to the respondents seeking

regularisation, but, there is no response from them. Hence, they are before this Court seeking the above prayer.

3. According to the learned counsels appearing for the petitioners, the writ petitioners in W.P. Nos. 8931 and 8932 of 2008 are retired from service on 30.04.2012 and 30.06.2018. Learned counsels appearing for the petitioners would further submit that when a similar issue came up for consideration in W.P. No. 26962 of 2008, this Court, by order dated 30.08.2011 holding that the benefit of regularisation should have been granted from the date of initial appointment, setting aside the order of recovery in respect of the payment of one increment, refused to consider the request for regularisation while granting the part of the relief. Aggrieved by the said order, one M. Thiagarajan, who was also appointed as Daily Wage Casual Labourer, filed a Writ Appeal before the Division Bench of this Court. By order dated 23.04.2014 in W.A. No. 1271 of 2012, holding that the parties in the very same Government order having been granted regularisation from the date of initial appointment, the appellant is also entitled to get the similar benefits, as there is distinguishing factor in this case and the appellant was also one among 163 workmen, who were regularised from the date of issuance of G.O. Ms. No. 117, Animal

Husbandry, Dairying (AH7) Fisheries Department, dated 28.08.2008, the Division Bench of this Court allowed the writ appeal with a direction to the respondents to grant consequential benefits to the appellant. As against the same, the Rev.Appl.Sr.No.88746 of 2014 filed by the respondents therein was dismissed by the Division Bench of this Court vide judgment dated 05.06.2015 finding no merits therein. Aggrieved by the same, the respondents department filed Special Leave Petition before the Hon'ble Apex Court and the same was also dismissed vide order dated 15.09.2015. Thereafter, a Government Order in G.O. Ms. No.185 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 22.09.2015 was passed granting the benefit in favour of the said M.Thiyagarajan from the date of initial appointment. Following the above G.O., yet another Government Order in G.O. Ms. No.144 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 26.09.2016 has also been passed by the respondents regularising the services of one S.Rajangam and others, who were also appointed as Daily Wage Casual Labourers. As the petitioners are also similarly placed as that of M.Thiyagarajan, S.Rajangam and others, the respondents should have come forward to consider the case of the petitioners.

4.A detailed counter affidavit has been filed. Although the learned

Additional Government Pleader appearing for the respondents admitted to argue the matter in favour of the respondents department, he is unable to give any reply to the G.O. Ms. No.185 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 22.09.2015 and G.O. Ms. No.144 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 26.09.2016.

5.It is seen that the petitioners were also appointed as Daily Wage Casual Labourers as that of one M.Thiyagarajan, S.Rajangam and others and the writ petitioners in W.P. Nos.8931 and 8932 of 2008 are retired from service on 30.04.2012 and 30.06.2018. A perusal of the above order shows that the above said persons have been granted the benefit of regularisation from the date of initial appointment. Therefore, this Court finds no impediment to grant the benefit of regularisation from the date of joining, since the respondents themselves have issued the above said G.O. Ms. No.185 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 22.09.2015 and G.O. Ms. No.144 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 26.09.2016. Accordingly, the writ petitions are allowed and the impugned proceedings restricting the benefit of regularisation from the date of issuance of G.O. are quashed. The respondents are directed to grant the benefit of regularisation to the petitioners with effect from 01.07.1999, 03.03.1999 and 18.02.2001, the

date of joining in the regular post as Animal Husbandry Assistants and other consequential benefits within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected M.Ps. are closed. No costs.

11.03.2019

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To

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Animal Husbandry, Dairying &
Fisheries Department,
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2.The Commissioner and Director,
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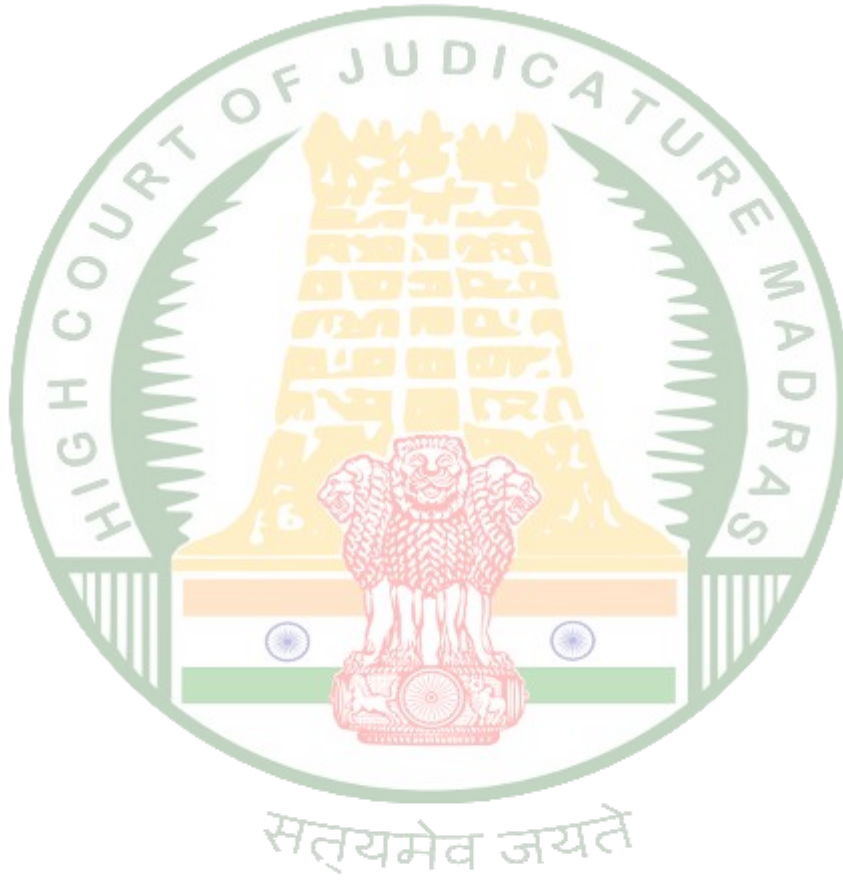
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T.RAJA,J.

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