

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.12.2019
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P No.692 of 2018
and W.M.P No.865 of 2018

V.Muthuramalingam

Petitioner

vs.

1. The Principal Secretary to Government,
Animal Husbandry, Dairying & Fisheries (AH6) Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Director of Animal Husbandry and Veterinary Services,
DMS Complex, Chennai 600 006.
3. The Regional Director of Animal Husbandry,
Thanjavur Region,
Thanjavur 613 001.
4. The Deputy Director of Animal Husbandry,
Exotic Cattle Breeding Farm,
Etchankkottai, Orathanadu Tk.
Thanjavur District 614 902.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the proceedings of the 1st respondent dated 07.12.2017 made in Letter No.18425/AH6/2016-6 and quash the same consequently directing the respondents herein to appoint the petitioner as Animal Husbandry Assistant in the Exotic Cattle Breeding Far, Etchankkottai, Thanjavur District.

For Petitioner: Mr.S.Thirumavalavan

For Respondents: Mr.Zakir Hussain
Government Advocate

ORDER

This writ petition was filed challenging the proceedings of the 1st respondent dated 07.12.2017 rejecting the application made by the petitioner to regularize his services in the Animal Husbandry Department.

2.It is seen from records that in the year 1986, the petitioner was called to appear for an interview through

District Employment Office, Thanjavur, and he was selected as a Casual Labour by proceedings dated 24.04.1986. During the year 1991, the petitioner made a request to the 4th respondent to appoint him as a Animal Husbandry Assistant. The said request was kept pending. In the meantime, in the year 1992, the petitioner was orally terminated and therefore, the petitioner raised an Industrial Dispute before the Labour Court, Cuddalore in ID.No.153 of 1993. The ID was ordered in favour of the petitioner on 18.12.1997 and the Labour Court directed the petitioner to be reinstated with back wages w.e.f. 01.04.1992. It is also brought to the notice of this Court that the petitioner was reinstated by the 4th respondent on 24.09.2010, in compliance with the orders of the Labour Court.

3.In the meantime, the Government had taken into consideration the persons placed similarly like the petitioner who have been working continuously for a long period of time and by virtue of G.O.Ms.No.17, dated 03.02.2004, the Government relaxed the recruitment rules in respect of 804 persons. In continuation of the same, an order was also passed on 28.08.2008 regularizing the services of temporarily appointed Animal Husbandry Assistants in G.O.Ms.No.117.

4.The petitioner after being reinstated, made a representation to the 4th respondent requesting for regularizing the services of the petitioner on par with others who were regularized as per the Government Order. This was kept pending and the petitioner approached this Court and filed W.P.No.41844 of 2016 and this Court had also given directions to consider the representation and pass orders. Subsequently, a contempt petition was filed and ultimately the 1st respondent passed the impugned order dated 07.12.2017 rejecting the claim made by the petitioner.

5.Mr.S.Thirumavalavan, learned counsel appearing on behalf of the petitioner submitted that the petitioner was discriminated and his rightful claim has been rejected and the petitioner was not treated on par with the others, whose services were regularized in the year 2008. The learned counsel further submitted that the petitioner has been fighting for his right from the beginning and even after oral termination the petitioner, had to approach the Labour Court and get an order before he was reinstated in his service. The learned counsel submitted that the reasons that have been assigned by the 1st respondent in the impugned order is totally untenable, since the same reasons will also apply to those persons who were regularized in services in the year 2008. The learned counsel submitted that out of the total sanctioned strength to the post of Animal Husbandry Assistants, there are even now posts that

are lying vacant and the petitioner can be easily accommodated and his services can be regularized. Therefore, the learned counsel sought for the quashing of the impugned order of the 1st respondent and to consequently give a direction to the respondents to appoint the petitioner as Animal Husbandry Assistant.

6.Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the petitioner was not working in a sanctioned post. The learned Government Advocate submitted that just because the petitioner was engaged continuously for a long period of time, he cannot be regularized and the petitioner does not have any right to be appointed as Animal Husbandry Assistant. The learned Government Advocate further submitted that the petitioner was appointed through back door entry and therefore, the claim made by the petitioner goes against the well settled principles of law. Therefore, the learned Government Advocate submitted that the present writ petition is liable to be dismissed.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.The engagement of the petitioner by the 4th respondent from the year 1986 onwards is not under serious dispute. In fact, when the petitioner was orally terminated, he contested before the Labour Court and the Labour Court directed reinstatement of the petitioner w.e.f. 01.04.1992 along with back wages. This order passed by the Labour Court has already been implemented by the 4th respondent.

9.Under such circumstances, what requires consideration is as to whether the petitioner can be treated differently from others who were also similarly placed and who were regularized by the respondent in the year 2008. It is seen from G.O.Ms.No.17, dated 03.02.2004, that the Government had decided to relax the recruitment rules insofar as 804 persons and to regularize and appoint them as Animal Husbandry Assistants. Pursuant to the said Government Order, G.O.Ms.No.117 dated 28.08.2008 was passed regularizing the services of 163 Casual Labourers and taking them on regular basis as Animal Husbandry Assistants.

10.It will be relevant to extract the portions in the said Government Order for proper appreciation:

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 regularized 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 regularization which will be the date of Government order regularizing their services.

5. This order issues with the concurrence of Finance Department vide its U.O.No.54094/AHF/2008-1, dated 28.08.2008.

11. It is clear from the above that persons who were similarly placed like the petitioner were regularized from their temporary posts that they were holding and therefore the petitioner is also entitled to be treated on par with them. The 1st respondent cannot apply a different yardstick for the petitioner and give different reasons to reject a similar claim that was made by the petitioner. The 1st respondent ought to have treated the petitioner on the equal footing more particularly, since services of the petitioner has been utilized right from the year 1986 onwards. If at this stage the petitioner is left in lurch, it will become very difficult for him to find a job and therefore looking at the impugned order passed by the 1st respondent from any angle, this Court is convinced that the same requires interference.

12. In the result the impugned order passed by the 1st respondent in Letter No.18425/AH6/2016-6 dated 07.12.2017 is hereby quashed and there shall be a direction to the 2nd respondent to immediately take steps to appoint the petitioner as Animal Husbandry Assistant in the Department by getting a Government Order passed in this regard. The entire exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order.

13.This writ petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Principal Secretary to Government,
Animal Husbandry, Dairying & Fisheries (AH6) Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Director of Animal Husbandry and Veterinary Services,
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Thanjavur 613 001.
4. The Deputy Director of Animal Husbandry,
Exotic Cattle Breeding Farm,
Etchankkottai, Orathanadu Tk.
Thanjavur District 614 902.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Thirumavalavan, Advocate sr.103511

+1cc to Government Pleader SR.NO. 104046

W.P No.692 of 2018
and W.M.P No.865 of 2018

rr(co)
nr 30/01/2020