



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1036 of 2021

P.Murugan

.. Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Secretariat,
Chennai - 600 009.
2. The Director of School Education,
Animal Husbandry and Veterinary Services,
No.571, Anna Salai,
Nandanam,
Chennai - 35.
3. The Regional Joint Director of Animal Husbandry,
Vellore - 4,
Vellore District.
4. The Accountant General (A & E) Pension,
Teynampet,
Chennai - 600 018.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus directing the respondents to count the officiating (notional) service from 28.03.2005 to 30.11.2014 along with regular service for the purpose of pension and accordingly revise the petitioner's pension and grant revised pension with all benefits.

For Petitioner : Mr.K.Sannjay

For Respondents 1 & 3 : Mr.J.Pothiraj
Special Government Pleader

For Respondent 4 : Mr.V.Vijayshankar



ORDER

The petitioner has come up with this writ petition seeking a direction to the respondents to count the officiating (notional) service from 28.03.2005 to 30.11.2014 along with regular service for the purpose of pension and accordingly revise his pension and grant revised pension with all benefits.

2. Mr.J.Pothiraj, learned Special Government Pleader takes notice on behalf of the respondent Nos.1 to 3. Mr.V.Vijayshankar, learned counsel takes notice on behalf of the respondent No.4. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. The petitioner, who was appointed as Flockman in the year 1984 has got promoted as Livestock Inspector Grade II in the year 2001. He was charged for producing a Bogus Certificate in order to get promotion to Grade-II and that he cheated the Government. As the certificate was found to be false, the punishment of reversion was imposed after a detailed departmental enquiry, wherein the petitioner has also apologized to the authorities for producing the fake certificate.

4. It is not the case of the respondents that the petitioner had produced the fake certificate at the time of entry into service, but only for the purpose of promotion, he has produced the fake certificate. It is no doubt true that the production of fake certificate is very bad and serious punishment has got to be imposed. However, in the present case on hand, there was no Criminal Case registered against the petitioner.

5. It is brought to the attention of this Court that similarly placed persons, who had faced with Criminal Case, approached this Court questioning the punishment by filing a Writ Petition in W.P.No.26940 of 2009 and this Court by an order dated 22.12.2014 modified the punishment into the one of reversion. The relevant paragraph of the judgment is extracted hereunder:

" ... Consequently, the punishment imposed is modified to that of reversion. Since, it is submitted by the learned counsel for the petitioner that the petitioner is no more, the respondent will have to compute the retiral benefits due to the legal heirs of the petitioner within twelve weeks from the date of receipt of a copy of this order. However, there is no entitlement for backwages."



6. It is seen that the petitioner was originally dismissed from service for production of a fake certificate, which was modified by this Court as one of reversion, taking note of the Division Bench judgment of this Court dated 16.02.2013 (P.Sekar, S/o.Ponnan vs. The Registrar, Tamil Nadu Administrative Tribunal, Chennai and others). Per contra, the respondents also rely on the very same judgment quoted by the petitioner to contend that the judgment of the Hon'ble Division Bench dated 16.02.2013 referred to in W.P.No.26215 of 2013 has to be read as a whole, wherein it has been clearly held as follows:

"9. ... However, it is made clear that this order should not be construed as expressing any opinion in the pending Criminal case which should be decided on its own merits without being influenced by any of the observation made in this order. It is also made clear that in case the petitioner is convicted in such Criminal Case, at that stage, it would be open to the respondents to take further action in accordance with law and this reinstatement is obviously subject to the result of the pending Criminal case. No costs."

7. It was also made clear therein that the period during which the petitioner has not worked shall not be counted for any purpose. For the sake of clarity, the operative portion of the order of the learned Single Judge in W.P.No.26215 of 2013 dated 08.11.2016, especially paragraph 6 is extracted hereunder:

"I am of the view that the above judgments are squarely applicable to the facts of this case also. In the result, the punishment of dismissal imposed on the petitioner is modified to one of reversion. The respondents are directed to compute the retirement benefits due to the petitioner within a period of twelve weeks from the date of receipt of copy of this order. The petitioner shall not be entitled for backwages."

8. From the above, it is clear that this Court has modified the punishment of dismissal into one of reversion, without depriving any other service benefits except backwages. Even assuming for the sake of argument that the judgment of the Hon'ble Division Bench has got to be looked into for the purpose of this case, a single sentence cannot be read in isolation and the entire judgment has to be taken note of, for the purpose of deciding a case. Admittedly, the petitioner in those case was facing a Criminal case and therefore it was held that reinstatement was subject to the result of the Criminal case and period of work was not counted for any purpose.



9. In the present case on hand the learned Single Judge has not deprived the past services, except the backwages and held that the retirement benefits due to the petitioner has to be settled within a period of 12 weeks from the date of receipt of a copy of the order.

10. Though Mr.V.Vijayshankar, learned counsel appearing for the fourth respondent would submit that they are bound by the orders of the Government and in the present case on hand, no decision had been taken in terms of Rule 54 and 54(A) of Fundamental Rules, which reads as under:

"54. When a Government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order--

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court."

11. The Rule may not be applicable to the facts of the case, as the petitioner did not suffer any punishment made thereunder. The reading of the aforesaid Rule makes it very clear that once an employee, who has been dismissed is reinstated in service, the period ought to be treated as the one, referred to in the said Rule. The Government has not passed any orders with regard to the services rendered for the period from the date of dismissal till the date of reversion, as modified by this Court. Since the order is silent, the Government ought to have given the benefit of services from the date of dismissal till the date of reversion, as other employees, whose case have been referred to supra may not be



entitled to the same, unless or otherwise it is interfered by the appropriate forum as there is a specific observation that the period during which the petitioner has not worked, shall not be counted for any purpose. Since it is absent in the present case on hand, the past period from the date of dismissal till the date of reversion, as converted by this Court will have to be taken into for the purpose of pension benefit and the benefits have got to be extended. The respondents are directed to issue a fresh order so that the past services mentioned supra is taken into account for the purpose of pensionary benefits. It is needless to state that after receipt of the order, it is open to the fourth respondent to workout the difference in pension and extend the same to the petitioner, within a period of three months from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Secretariat,
Chennai - 600 009.
2. The Director of School Education,
Animal Husbandry and Veterinary Services,
No.571, Anna Salai,
Nandanam, Chennai - 35.
3. The Regional Joint Director of Animal Husbandry,
Vellore - 4,
Vellore District.
4. The Accountant General (A & E) Pension,
Teynampet,
Chennai - 600 018.

+1CC to M/s.G.Elanchezhiyan, Advocate, Sr.No.13510
+1CC to M/s.V.Vijashankar, Advocate, Sr.No.14057
+1CC to Government Pleader, Sr.No.14176

W.P.No.1036 of 2021

PMK (CO)

K.RK. (19.07.2021)