

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.24671 of 2008 and
M.P.Nos.2 of 2008, 1 of 2009
and W.M.P.No.39577 of 2018

V. Govindarajan

...Petitioner

Vs.

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.
3. The Regional Joint Director,
Animal Husbandry Department,
V.O.C.Nagar, Thanjavur.
4. The Deputy Director,
District Live Stock Farm,
Orathanadu and Taluk, Thanjavur District.

...Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in Roc.No.34420/N3/2007, dated 29.10.2007 and Roc.No.31313/N2/2000, dated 09.09.2008 and quash the same and direct the respondents to implement the order of the Tribunal passed in O.A.No.2180 of 2000, dated 18.04.2000 by appointing the petitioner as Animal Husbandry Assistant in the sanctioned post as per G.O.Ms.No.64, Animal Husbandry, Dairying (AHI) Fisheries Department, dated 03.05.2007.

For Petitioner : Mr.S.Gunasekaran

For Respondents : Mr.C.Selvaraj
Government Advocate

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in Roc.No.34420/N3/2007, dated 29.10.2007 and Roc.No.31313/N2/2000, dated 09.09.2008 and quash the same and direct the respondents to implement the order of the Tribunal passed in O.A.No.2180 of 2000, dated 18.04.2000 by appointing the petitioner as Animal Husbandry Assistant in the sanctioned post as per G.O.Ms.No.64, Animal Husbandry, Dairying (AHI) Fisheries Department, dated 03.05.2007.

2. The petitioner was engaged as a Casual Labourer by the fourth respondent in the year 1989 and he had put in eight years of service. On and from 16.12.1997, the fourth respondent did not permit the petitioner to work. Hence, he made a representation to the third respondent on 18.02.1998. On 20.05.1998, a reply came from the third respondent that in view of the Government Order in G.O.Ms.No.116, Animal Husbandry (AH6) Fisheries Department dated 07.05.1997, fresh engagement of Casual Labourers was banned. On 28.09.1998, the second respondent had replied that there is no provision in the Rule to re-employ a person, who has break in service for more than 90 days. Thereafter, the petitioner had approached the Tamil Nadu Administrative Tribunal at Chennai, in O.A.No.2180 of 2000. The Tribunal, by its order dated 18.04.2000, had disposed of the Original Application with a direction to give preference to the petitioner in case of engagement of temporary or daily rated casual labourers and a further direction that on no account, outsider or other person shall be employed in that contingency before engaging the applicant. Thereafter, the Government passed a Government Order in G.O.Ms.No.64, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 03.05.2007, granting permission to fill up 1317 vacancies to the post of Animal Husbandry Assistant from daily wagers and casual labourers.

3. It is to be noted that the Government in G.O.Ms.No.116, Animal Husbandry (AH6) Fisheries Department dated 07.05.1997, has decided to regularise all the casual employees, who have put in longer years of service as there were lot of cases filed before the Tamil Nadu Administrative Tribunal. Accordingly, a direction was given to bring the casual labourers into the regular establishment in a phased manner. Accordingly, 465 persons, who have obtained favourable orders from the Tribunal, were regularised in the first phase, 361 persons in the second phase and those who had put in 10 years of service as on 06.02.1995.

4. It is also to be noted that directions were given to initiate disciplinary proceedings against officers who had

appointed them on casual basis and a further direction was given not to engage fresh casual labourers in the Animal Husbandry Department. However, the petitioner was not considered as he was stopped from work.

5. In a similar circumstance, a person, who was a retrenched employee, had approached this Court in W.P.No.42212 of 2006. This Court, by its order dated 22.10.2010 considering the stoppage of work to the petitioner therein, in view of the ban order in G.O.Ms.No.116, dated 07.05.1997, had observed that the above-said Government Order bans only fresh engagement and did not ban continuance of the casual labourers, who were unjustly stopped from work and therefore, directed reinstatement of the petitioner and regularisation of his service as per G.O.Ms.No.116. The relevant portion of the order is extracted as follows:-

"10.Considering the aforesaid facts, I am of the view that the order dated 06.07.1999 of the third respondent and the order dated 14.10.1999 of the second respondent are liable to be set aside and accordingly, the same are set aside. The respondents are directed to provide employment to the petitioner and regularise his services, as per G.O.Ms.No.116, within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner is not entitled to any monetary benefits and he is entitled to only notional fixation, pursuant to his regularisation."

An Appeal filed by the Department was dismissed and the order was implemented in G.O.Ms.No.40, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 08.02.2013.

6. The petitioner herein had also made a representation for same treatment. According to him, because of wrong implementation of G.O.Ms.No.116, he was stopped from work and was not permitted to continue the work. He had rendered more than eight years of service as on 1997 and a proposal was sent by the Director of Animal Husbandry Department to regularise the service of those who had put in five years of service. The Government has sanctioned 826 posts in the year 1997 and while passing G.O.Ms.No.64, granted permission to fill up 1317 posts and further directed to consider the regularisation of the casual labourers. In that event, the petitioner should have been considered. It is relevant to state that the Tamil Nadu Administrative Tribunal on 18.04.2000 had also given a direction to the Department to give preference to the petitioner. In spite of the Government Orders and the directions and also specific orders of this Court to reinstate the persons who were unjustly stopped from work, the respondents have taken a stand that there is no provision for regularising the persons who had put in less than 10 years of service and as the petitioner has not completed

10 years of service, he was not considered.

7. From the facts averred here, we are able to find out that but for stoppage of work to the petitioner, he would have completed more than 10 years of service as on 1999 and 18 years of service on the date of passing G.O.Ms.No.64, Animal Husbandry, Dairying (AHI) Fisheries Department, dated 03.05.2007. It is not that the petitioner voluntarily failed to report for duty, but he was stopped from work due to the wrong understanding of G.O.Ms.No.116. Actually, he was denied employment. Further, in the counter affidavit, the respondents would submit that in G.O.Ms.No.209, Personnel and Administrative Reforms Department, dated 23.11.2001, the Government formulated a scheme to absorb the retrenched employees engaged for taking census in the year 1991 in State Government, local bodies, etc., whereas, there was no retrenched census employees in Thanjavur District and hence, the appointing authority decided to recruit through Employment Exchange. But the fact remains, the petitioner had obtained an order from the Tribunal on 18.04.2000 and remained retrenched ever since 1997. The respondents have over looked and unjustly denied reinstatement to the petitioner as per the Government Order in G.O.Ms.No.209, Personnel and Administrative Reforms Department, dated 23.11.2001.

8. The learned counsel for the petitioner would also draw the attention of this Court to paragraph No.8 of the counter, wherein, the juniors of the petitioner namely, Gnanasekar and Malaiyappan, who were appointed in the year 1990, were regularised whereas, the petitioner alone was singled out and was not allowed to work from 15.12.1997. When his juniors have been regularised, the claim of the petitioner that he should also be regularised is justified.

9. Considering the totality of the circumstances and the Government Orders in G.O.Ms.No.116, Animal Husbandry (AH6) Fisheries Department dated 07.05.1997, G.O.Ms.No.64, Animal Husbandry, Dairying (AHI) Fisheries Department, dated 03.05.2007 and G.O.Ms.No.209, Personnel and Administrative Reforms Department, dated 23.11.2001 as well as the order passed in W.P.No.42212 of 2006, this Court is of the considered opinion that the petitioner should have been regularized in service. The direction issued by this Court in W.P.No.42212 of 2006, dated 22.10.2010 squarely covers the issue on hand. Therefore, the respondents are directed to provide employment to the petitioner and regularise the service as per G.O.Ms.No.116, dated 07.05.1997 within a period of eight (8) weeks from the date of receipt of a copy of this order. *** However, it is made clear that applying the principle of no work, no pay, the petitioner will not be entitled to any monetary benefits or backwages for the period during which he was out of service and he is entitled**

to notional fixation pursuant to his regularisation and all other benefits in accordance with law.

With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)
dated:14.03.2022

//True Copy//

*** Amended as per order dated
05.05.2022 made in
WP No.24671 of 2008**

Sd/-
Assistant Registrar (CS-VI)
dated: 06.05.2022

Sub-Assistant Registrar

To

1. The 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.
 3. The Regional Joint Director,
Animal Husbandry Department,
V.O.C.Nagar, Thanjavur.
 4. The Deputy Director,
District Live Stock Farm,
Orathanadu and Taluk, Thanjavur District.
- +1 CC to Mr.S.Thirumavalavan, Advocate sr 35432
+1 CC to The Government Pleader sr 36242.

*** To be
substituted
to the order
already
Despatched on
17.03.2022**

W.P.No.24671 of 2008 and
M.P.Nos.2 of 2008, 1 of 2009
and W.M.P.No.39577 of 2018

NMI (CO)
SP(14/03/2022)
SU(06/05/2022)