

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.16821 of 2015
and M.P.No.1 of 2015

R.Thulasiraman

... Petitioner

Vs.

1. The Secretary to Government,
Agriculture Department,
Government of Tamil Nadu,
Fort. St.George, Chennai - 600 009.

2. The Director of Agriculture,
Chepauk, Chennai - 600 005.

3. The Joint Director of Agriculture,
Nagapattinam - 611 001.

... 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 of the proceedings of the first respondent made in Letter No.28541/nt/ep//4(1)/2014-4, dated 27.04.2015 and quash the same consequently, directing the first and second respondents to treat the earlier services rendered by the petitioner from 27.08.1981 to 04.08.1984 as Junior Assistant in the respondent department and the break period from 05.08.1984 to 22.05.1992 for the purpose of promotion, all other service and attendant benefits.

सत्यमेव जयते

For Petitioner : Mr.A.V.Bharathi

For Respondents : Mr.C.Selvaraj
Government Advocate (Civil)

- - - - -

O R D E R

The present Writ Petition been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the first respondent made in Letter

No.28541/nt/ep//4(1)/2014-4, dated 27.04.2015 and quash the same consequently, direct the first and second respondents to treat the earlier services rendered by the petitioner from 27.08.1981 to 04.08.1984 as Junior Assistant in the respondent department and the break period from 05.08.1984 to 22.05.1992 for the purpose of promotion, all other service and attendant benefits.

2. The petitioner was appointed on compassionate basis on the demise of his father, who was working as a Foreman in the respondent Department. He was appointed on 27.08.1981 as Junior Assistant. The Government has issued G.O.Ms.No.998, Labour and Employment Department, dated 02.05.1981, wherein, it is specified that if there is already any earning member in the family of the Government Servant, who dies in harness, the other dependents of the deceased Government Servant will not be eligible for the concession of appointment in Government Departments. In view of the G.O., the employment granted to the petitioner was cancelled on 04.08.1984. Thereafter, the Government, in G.O.Ms.No.1044, Labour and Employment Department, dated 23.11.1990, has amended the earlier G.O.Ms.No.998, Labour and Employment Department, dated 02.05.1981, and incorporated a proviso to paragraph No.3 of the said G.O. The proviso reads as under:-

"3(i) provided, that if any of the dependent dependents of deceased Government Servants is/are employed in Military service, any one of the other dependents is eligible for appointment in Government Department and Government Undertakings under Compassionate Grounds".

3. In the light of the G.O., the petitioner's service was restored with effect from 22.05.1992. However, his appointment was treated as fresh appointment and the continuity of service was not given. Therefore, he made a representation to the Department and since the same has not been considered, he approached this Court by way of W.P.No. 25994 of 2014, wherein, this Court, by its order dated 24.09.2014, directed the respondents to consider the representation of the petitioner on merits and pass orders. Accordingly, the respondents have considered the representation and passed the impugned order holding that his service will be counted only from the date of his re-appointment i.e. 22.05.1992 and it cannot be regularised with effect from the date of his original appointment i.e. 27.08.1981. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would contend that G.O.Ms.No.998, Labour and Employment Department,

dated 02.05.1981, was implemented only with effect from 05.05.1982, but, on the date of appointment on compassionate ground with effect from 27.08.1981, the G.O. was not in operation and therefore, the respondents ought not to have cancelled the appointment. After amendment of the G.O., his service was restored. Therefore, it has to be regularized with effect from the initial date of appointment and not on the basis of restored date. Therefore, the order passed by the respondent is arbitrary and illegal.

5. Mr.C.Selvaraj, learned Government Advocate (Civil Side) would contend that the petitioner has got this re-employment pursuant to the order passed by this Court in W.P.No.25994 of 2014, dated 24.09.2014. For all purposes, he was appointed afresh and therefore, his service can be regularized only with effect from 22.05.1992, otherwise, it will upset the settled seniority in the cadre of Junior Assistant. On these grounds, he would seek dismissal of the Writ Petition.

6. I considered the submissions made by the learned counsel appearing on either side.

7. The admitted fact remains that the petitioner was appointed as Junior Assistant on 27.08.1981 after his father, who was working as Foreman in the Department died in harness. At the time of appointment, it is not in dispute that the petitioner was fully eligible to hold the post of Junior Assistant. He continued as such till 04.08.1984 and he was removed from service. Once he has become the member of the service, he should not be removed without following the procedure for the same. However, it is not clear as to why the petitioner has not challenged his removal.

8. Be that as it may, now the crucial issue is that whether regularization of his employment should be counted from the date of his initial employment or not? It is noted that vide G.O.No.1044, dated 23.11.1990, the proviso has been incorporated to G.O.Ms.No.998, dated 02.05.1981. It is pertinent to note that G.O.Ms.No.998, which prescribed the procedure for recruitment on compassionate ground is still in force, and it is not superseded by any other G.O. Even G.O.Ms.No.1044, dated 23.11.1990, amends the existing G.O. by incorporating a proviso to paragraph No.3 in G.O.Ms.No.998 and the G.O. has been clarified by the Government. The clarification takes effect from the date of issuance of the G.O. i.e. 02.05.1981. This amendment in other words, does not alter or change the procedure, but, only clarifies paragraph No.3, which says that where one of the family members is a earning member, other dependents are not entitled to the compassionate ground appointment. The clarification exempts the employment of the family members in

the Defence Post and provides for compassionate ground appointment to other dependent family members. Had it been clarified as early as in the year 1984, the petitioner would not have been removed from service.

9. Secondly, as rightly contended by the learned counsel for the petitioner, this G.O.Ms.No.998, dated 02.05.1981 came into force only from 1982. In that view of the matter, there can not be any impact of this G.O on the petitioner's employment. Further, the petitioner has been restored to service to which, he was appointed on compassionate ground basis. That means, his appointment to the Post of Junior Assistant on compassionate ground on 27.08.1981 is restored. Therefore, it shall be construed that the petitioner would have continued in the service, but, for wrong implementation of G.O.Ms.No.998, dated 02.05.1981. For all purposes, the service should be counted from the date of initial appointment on compassionate ground with effect from 27.08.1981. It is only a rectification of the error and the petitioner was not removed from service for any misconduct or on basis of other disqualification. Therefore, it is not the fault of the petitioner for remaining out of service for six long years. He was restored in service only after intervention of this Court. Therefore, it is clear that the petitioner was always ready and willing to continue his employment.

10. As per the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. K.V.Janakiraman, if a person is kept out of employment for no fault of his, he will be entitled to monetary benefits on reinstatement. However, admittedly, the petitioner has not challenged the order of removal and therefore, I consider that the monetary benefits need not be given to him. At the same time, his service should be counted from the date of his initial appointment and he is entitled to all other attendant benefits.

11. It is submitted before this Court that the petitioner is left with only two years of service. Therefore, his services can be counted for the purpose of pension and he can be considered for notional promotion on par with his immediate juniors.

12. In effect, the order passed by the respondent refusing to regularize the service with effect from the date of his initial appointment in Letter No.28541/nt/ep//4(1)/2014-4, dated 27.04.2015, is set aside and the respondents are directed to regularize the service of the petitioner with effect from 27.08.1981 from the date of his initial appointment and provide all other attendant benefits and continuity of service and notional promotion.

In fine, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asi
To

1. The Secretary to Government,
Agriculture Department,
Government of Tamil Nadu,
Fort. St.George, Chennai - 600 009.
2. The Director of Agriculture,
Chepauk, Chennai - 600 005.
3. The Joint Director of Agriculture,
Nagapattinam - 611 001.

+1cc to Mr.Santhanamari, Advocate SR.No. 28887
+1 cc to Government Pleader Sr.No. 29017

W.P.No.16821 of 2015
and M.P.No.1 of 2015

SRA (CO)
A.SK(12.07.2021)

सत्यमेव जयते
WEB COPY