



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.15537 of 2012

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N.Nagarajan (Died)

N.Shanmugathai

... Petitioner

(N.Shanmugathai impleaded as petitioner vide order of this Court in W.M.P.(MD)No.4452 of 2021, dated 11.03.2021)

vs.

1.The Commissioner cum Director,
Director of Animal Husbandry and Veterinary Services,
Central Office Buildings, PART-II,
Chennai - 600 002.

2.The Joint Director,
Office of the District Animal Husbandry,
Tuticorin District.

3.The Assistant Director,
Office of Animal Husbandry,
Bhalaji Bhavan, Lakshmipuram Post,
Kovilpatti Taluk, Tuticorin District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in SE.MU.No.900/A/12, dated 18.04.2012 and quash the same as illegal and subsequently to direct the respondents to made permanent and grant all the attendant benefits from the date of the petitioner's initial appointment, dated 24.03.1984.

For Petitioner : Mr.P.Muthusamy

For Respondents : Mr.M.Linga Durai
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent, dated 18.04.2012 and to direct the respondents to make the petitioner permanent and grant all attendant benefits from the date of his initial appointment, dated 24.03.1984.



2. Heard Mr.P.Muthusamy, the learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate on behalf of the respondents. The petitioner died during the pendency of Writ Petition and his wife has been impleaded by substitution.

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3. The petitioner along with one V.Rajavel and K.Gunasekaran were appointed as Casual Labourer in the third respondent office on available vacancies in the place of Nagalapuram and Vilathikulam dispensaries. It is admitted that the petitioner's appointment was through Employment Exchange. The petitioner also admitted that for every continuous period of 90 days, there was a break for one day and that the petitioner and others, who are similarly placed, have been given reappointment.

4. It is also stated that as per the order of second respondent, dated 30.03.1999, the petitioner and others were given appointment as Assistant in the newly created posts in Animal Husbandry Department. It is further submitted that the petitioner and others, who were completed ten years as daily wagers, were alone considered for the post. Though it is stated that the petitioner's service was regularized and salary to the petitioner was given through specified Government Treasury, the petitioner and others through their Trade Union raised an industrial dispute under Section 25(2) of Industrial Disputes Act for abolishing the break in service system and to make the petitioner and others, as permanent with effect from their date of entry into service with attendant benefits including scale of pay, increments, etc.

5. The dispute was later referred to the Additional Labour Court, Madurai and thereafter, the matter was transferred to Labour Court, Tirunelveli and the Labour Court in I.DNos.258 of 1991 and 393 of 1992, allowed the petitions after finding that the workmen should be made permanent and they are entitled to regularization of their services two years after their joining service with all attendant benefits. It is pertinent to mention that the petitioner's name was not mentioned in the Labour Court's order. From the reading of order, it is seen that the names of the five workmen including the petitioner was there in the petition for regularization. However, the Labour Court observed as follows:

"The other question which I am called upon to consider in this petition is whether all the 5 workmen stated in the petition receive to be regularisze as demanded by the petitioner union. Now it is brought to my notice that out of five persons only 2 persons, viz., K.Gunasekran, V.Rajavelu are now interested in this claim



P.Natarajan are not at all interested in this claim petition. Hence, the relief is confined only to two persons Gunasekaran and V.Rajavelu only."

6. It is not known as to how the petitioner's name could not be considered by the Labour Court, when the question framed was whether of the workmen stated in the petition have to be regularized, as demanded by the Union. Be that as it may, the petitioner, thereafter, appears to have submitted a representation to the respondents seeking similar relief, as it was granted to the petitioner by the Labour Court. It is also admitted that the third respondent in this Writ Petition filed a Writ Petition in W.P.No.5087 of 1995 to set aside the order of Labour Court, dated 14.12.1994 in I.D.Nos.254 of 1991 in 393 of 1992. The said Writ Petition was dismissed. As against the same, an appeal was preferred by the third respondent in W.A.No.1875 of 2003. The Divisional Bench of this Court also dismissed the Appeal. Thereafter, the order of Labour Court was also implemented in the case of two other employees, who were similarly placed. By representation, dated 17.03.2012, the petitioner seeks similar relief.

7. However, by the impugned order, the petitioner's representation was rejected only on the ground that the other two employees were given monetary benefits, as they have approached the Labour Court and that the order of the Labour Court is not applicable to the petitioner. The learned Counsel appearing for the petitioner submitted that the petitioner and others, who are similarly placed, cannot be discriminated and that the respondents are bound to give equal pay for equal work and the petitioner should be paid similar to what was paid to his co-employees. Stating that the petitioner had performed unblemished service under the third respondent department, the petitioner is also entitled for regularization of his service with effect from the date on which he was originally appointed as Casual Labour.

8. The learned Government Advocate on the other hand, relying upon the counter affidavit, submitted that the order regularising the service of others, as per the proceedings of Labour Court, cannot be cited as precedent, as the petitioner did not show any interest to prosecute the earlier petition filed before the Labour Court. Since the order in favour of others was on the basis of Court order, it is contended that the petitioner cannot be given the same benefit, that was extended to others who approached the Labour Court at the relevant point of time. The learned Government Advocate further pointed out that the judgment of Labour Court was passed in the order 1994 and that the Writ Petition filed after the lapse of twenty years has to be dismissed on the ground of delay and laches.



9.This Court is unable to appreciate the stand taken by the respondents in the counter affidavit. First of all, it is not in dispute that the petitioner's name was also referred to in the petition filed before the Labour Court. The Labour Court, for peculiar reasons, passed an order, as if the issue is only concerned about two other co-workers of petitioner, who were also similarly placed. The benefit of regularization cannot be denied to the petitioner merely because the Labour Court did not give any relief in favour of the petitioner. The petitioner has come forward with the present Writ Petition only to get the same benefits, which was extended to co-employee of the petitioner, whose case was also exactly similar to the one projected by the petitioner. As held by the Labour Court, the petitioner is also entitled to get permanency and other attendant and monetary benefits. The Labour Court granted relief to others that they should be made permanent two years after the expiry of their joining service with all benefits.

10.Hence, this Court is inclined to allow the Writ Petition. Accordingly, the impugned order passed by the third respondent, dated 18.04.2012, is quashed and the respondents are directed to regularize the service of the petitioner two years after the date of petitioner's initial appointment, ie., 24.03.1984 and to give all other attendant and monetary benefits that was granted to his co-employees as per the Labour Court award, within a period of six months from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Commissioner cum Director,
Director of Animal Husbandry and Veterinary Services,
Central Office Buildings, PART-II,
Chennai - 600 002.

2.The Joint Director,
Office of the District Animal Husbandry,
Tuticorin District.



3.The Assistant Director,
Office of Animal Husbandry,
Bhalaji Bhavan, Lakshmipuram Post,
Kovilpatti Taluk, Tuticorin District.

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+1 CC to M/s.P.MUTHUSAMY, Advocate (SR-30607[F] dated
29/09/2021)

+1 CC to M/s.SPL.GP (SR-30850[F] dated 01/10/2021)

W.P. (MD)No.15537 of 2012
29.09.2021

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