



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1569 of 2018

and W.P. (MD) No.15128 of 2018

and C.M.P. (MD) Nos.11227 and 11228 of 2018 in W.A. (MD)No.1569 of 2018

and W.M.P. (MD) No.13698 of 2018 in W.P. (MD) No.15128 of 2018

W.A. (MD)No.1569 of 2018:

S.Saravanan

... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary,
Department of Animal Husbandry and
Veterinary Services,
Secretariat, St. George Fort,
Chennai - 9.

2.The Director,
Department of Animal Husbandry and
Veterinary Services,
No.571, Annasalai, Nanthanam,
Chennai - 35.

3.The Deputy Director,
O/o. Deputy Director Livestock Farm,
Animal Husbandry and Veterinary Services,
Chettinad Post, Karaikudi Taluk,
Sivagangai District.

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.18618 of 2018, dated 27.08.2018.

Prayer in WP(MD). 18618 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the Respondent No.3 from terminate the petitioner from his service viz., Casual Labour on daily wage Animal Husbandry Assistant (kalanadai Paramarippu Uthaviyalar) office of the Deputy Director Livestock Farm, Animal Husbandry and Veterinary Services, Chettinad, Karaikudi Taluk, Sivagangai District without following the due process of law.



For Appellant : Mr.I.Pinaygash
For Respondents : Mr.R.Baskaran
Standing Counsel for Government

W.P. (MD)No.15128 of 2018:

S.Saravanan ... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Secretary,
Department of Animal Husbandry and
Veterinary Services,
Secretariat, St. George Fort, Chennai - 9.
- 2.The Director,
Department of Animal Husbandry and
Veterinary Services,
No.571, Annasalai, Nanthanam,
Chennai - 35.
- 3.The Deputy Director,
O/o. Deputy Director Livestock Farm,
Animal Husbandry and Veterinary Services,
Chettinad Post, Karaikudi Taluk,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order in Na.Ka.No.16526/No.1/2018 dated 24.05.2018 on the file of the Respondent No.2 and quash the same as illegal and consequently to issue direction directing the Respondents to regularize the appointment of the Petitioner as Animal Husbandry Assistant (Kalnadai Paramarippu Uthaviyalar) in the light of G.O.Ms.No.134 dated 12.11.2009 (Animal Husbandry Dairying and Fisheries (AH-6) Department) on completion of 10 years service with all consequential benefits.

For Petitioner : Mr.I.Pinaygash
For Respondents : Mr.R.Baskaran
Standing Counsel for Government

COMMON JUDGMENT

(Judgment of the Court was delivered by T. S. SIVAGNANAM, J.)

Heard Mr.I.Pinaygash, learned counsel for the appellant and the writ petitioner and Mr.R.Baskaran, learned Standing Counsel for Government, appearing for respondents.

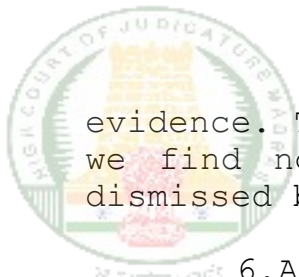


2.The appellant has filed W.A.(MD) No.1569 of 2018, challenging the order of the learned Single Bench dated 27.08.2018, in W.P.(MD) No.18618 of 2018, which was filed to forbear the respondent No.3 from terminating the petitioner without following the due process of law. The appellant has also filed W.P.(MD) No.15128 of 2018, seeking to quash the order of the second respondent dated 24.05.2018, in Na.Ka.No.16526/No.1/2018 and a consequential direction upon the Respondents to regularize the appointment of the Petitioner as Animal Husbandry Assistant (Kalnadai Paramarippu Uthaviyalar) in the light of G.O.Ms.No.134 dated 12.11.2009 (Animal Husbandry Dairying and Fisheries (AH-6) Department) on completion of 10 years service with all consequential benefits.

3.The appellant would state that there is no valid reason to exclude the appellant from getting the benefits of the said Government Order as he has been working under the Department as daily wager from 1995 onwards. In this regard a copy of the order 21.11.1995 is pressed into service. The learned Writ Court has dismissed the Writ Petition on the ground that there is no proof to show that he has worked under the direct employment of the department, for which purpose, he has to approach the Labour Court. Challenging the same, W.A.(MD) No.1569 of 2018 has been filed. Parallely, he submitted a representation to regularize his service, which was rejected by order dated 24.05.2018. Challenging the same W.P.(MD) No.15128 of 2018 has been filed.

4.Learned Standing Counsel for the Government submitted that the appellant was not under the direct employment of the Department but employed under a Scheme, which is evidently clear under the proceedings dated 28.11.1995. The scheme came to an end and thereafter, the services of the Self Help Group was brought in 2007 and the appellant was engaged by the Self Help Group on a daily wage basis and when G.O.Ms.No.134, Animal Husbandry Dairying and Fisheries (AH-6) Department, dated 12.11.2009, was issued since the appellant has not completed 10 years of service as on 01.01.2006, the benefit of the Government Order was not extended to the appellant.

5.Considering the above facts and after elaborately hearing the learned counsel for the parties, we are of the view that unless the appellant establishes the fact that he was under the direct employment of the Department, the appellant's case cannot be considered. This involves adjudication into factual issues as the claim of the appellant has been disputed by the respondents. This is also the reason assigned by the learned Writ Court for not granting the relief sought for by the appellant. When the appellant claims that he is continuously working under the respondent Department, he has to establish the said fact by adducing oral and documentary



evidence. This exercise cannot be done in the Writ Court. Therefore, we find no merit in the Writ Petition and the same was rightly dismissed by the learned Writ Court.

6. Accordingly, W.A.(MD) Nos.1569 of 2018 stands dismissed. Consequently, W.P.(MD) No.15128 of 2018 also stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions in the Writ Appeal and the Writ Petition are also dismissed.

7. However, we are inclined to grant liberty to the appellant to approach the Labour Court. In the event, the appellant approaches the Labour Court, the said Court shall decide the matter based on oral and documentary evidence uninfluenced by any of the observations made by us in this common judgment or the observations made by the Writ Court.

8. During the pendency of the Writ Appeal, the appellant had the benefit of interim order and direction issued to the respondents not to disengage the services of the appellant and continue to employ him on daily wages till the disposal of the Writ Appeal. Since the appellant is a daily wager and claims to be working continuously in the respondent department for decades, if he is disengaged from the service of the respondent Department he will be put to great prejudice. Therefore, if the appellant raises a dispute before the Labour Court within four months from the date of receipt of a copy of this order, the respondents shall continue to engage the appellant on daily wage basis, provided if the appellant fails to raise the dispute before the Labour Court within four months, the above interim protection shall stand vacated immediately without any further reference to this Court.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.The Secretary,
Department of Animal Husbandry and
Veterinary Services,
State of Tamil Nadu,
Secretariat, St. George Fort,
Chennai - 9.
- 2.The Director,
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W.A. (MD)No.1569 of 2018
and W.P. (MD) No.15128 of 2018
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