



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.15057 OF 2011

A.Syed Ajaz

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Animal Husbandry Department,
Fort St. George, Chennai - 9.
2. The Commissioner for Milk Production
and Diary Development,
Madhavaram, Chennai - 51.
3. The Deputy Commissioner for Milk (Cooperation)
Milk Production and Diary Development,
Madhavaram, Chennai - 51.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent in Na.Ka.No. 6376/A4/2004 dated 23.09.2005, to quash the same and consequently direct the respondents to regularize the services of the petitioner as Junior Assistant w.e.f. 16.06.1986 with all benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner's father, late Syed Anwar, was an employee under the second respondent. Owing to his death, the petitioner herein was appointed on compassionate grounds as a temporary Mazdoor on 16.06.1986. On 08.08.1989, his time scale of pay was fixed. Subsequently, on 19.02.1996, he was promoted as a Pump Operator and thereafter, on 05.12.1997, he was promoted to the post of Junior Assistant. The petitioner herein possesses S.S.L.C., qualification.

3. The case of the petitioner is that when he was initially appointed on compassionate grounds on 16.06.1986, he was entitled to be appointed to the post of Junior Assistant and therefore, he would be entitled to be regularized with effect from 16.06.1986 onwards.

4. The learned Additional Government Pleader placed reliance on the counter affidavit and submitted that, at the time of his original compassionate appointment, there were no vacancies to the post of Junior Assistant and therefore, the petitioner could not be accommodated in the post of Junior Assistant. Since he was promoted to the post of Junior Assistant on 05.12.1997, his services came to be regularized from that date onwards.

5. The impugned order is liable to be quashed, on the ground that it is contrary to the Government Orders in G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989, as well as G.O.Ms.No.1179, Personnel and Administrative Reforms Department, dated 17.10.1979. As per G.O.Ms.No.1499, a dependant, appointed to a lower post on compassionate grounds, but possesses the qualification required for the post of Junior Assistant at the time of his initial appointment to a lower post, may be appointed as a Junior Assistant/Typist. This concession is allowed only to those who have been appointed to any lower post like that of the petitioner herein, who was appointed as a Mazdoor. It is further stated in the Government Order that the appointing authority, in no circumstances, should appoint a dependant to a lower post, when the dependant possesses the qualification required to the post of Junior Assistant, on the ground of non-availability of vacancy in the office or department or the dependants not willing to work in other departments. In these circumstances, the procedure contemplated under G.O.Ms.No.1179 dated 17.10.1979 requires to be followed.

6. G.O.Ms.No.1179 provides that, when a dependant of the deceased Government servant cannot be appointed in the department where the deceased Government servant worked, the names of such dependants of the deceased Government servant, who is qualified, should be furnished to the Collector of the



Districts concerned, for the purpose of maintaining a list and sponsor them whenever suitable vacancy arises.

7. The procedure adopted by the respondents in regularizing the petitioner's services is against G.O.Ms.No.1499, dated 03.08.1989 and G.O.Ms.No.1179, dated 17.10.1979, which mandates that the dependant should be appointed on compassionate appointment either in the department in which the deceased Government servant was employed or in case there are no vacancies, they ought to have furnished a list of the dependants to the Collector concerned, for the purpose of appointment, whenever suitable vacancies arise. This procedure was not followed by the respondents. Owing to their fault, they cannot now claim that the petitioner would be entitled for regularization only from the date on which he was promoted to the post of Junior Assistant. Consequently, it requires to be held that the petitioner herein would be entitled for regularization from 16.06.1986, when he was initially appointed to the post of a temporary Mazdoor.

8. In similar circumstances, this Court, in the case of C.Prabakaran and another Vs. The Secretary to Government, Department of Commercial Taxes and Registration passed in W.P. (MD) Nos.13354 & 13355 of 2013 dated 06.12.2018, had placed reliance on G.O.Ms.No.1499 and granted similar relief. It is submitted by the learned counsel for the petitioner that the directions issued in the aforesaid order came to be implemented by the Government.

9. This apart, the respondents contend that the petitioner would not be entitled for regularization from the date of his initial appointment is that, on the date of the petitioner's original appointment, there were no vacancies. However, such a statement seems to be in contradiction to the counter affidavit filed by the third respondent herein dated 29.11.2021. As per paragraph 6 of the counter, out of the 13 vacancies allotted by the Tamil Nadu Public Service Commission, 9 Junior Assistants were appointed upto 13.04.1986 and one Junior Assistant was appointed on 09.06.1986. Apparently, 3 posts of Junior Assistants were available on the date when the petitioner was appointed on compassionate grounds and he was also fully qualified to hold the post of Junior Assistant. Hence, the statement that there were no vacancies as on the date when the petitioner was appointed, seems to be factually incorrect.

10. In the light of the above observations and findings, the impugned order passed by the third respondent dated 23.09.2005 is quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, granting notional



promotion to the petitioner to the post of Junior Assistant with effect from 16.06.1986 and regularize his services from 16.06.1986 onwards, together with all consequential service and monetary benefits, within a period of six (6) weeks from the date of receipt of a copy of this order.

11. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary,
Animal Husbandry Department,
Fort St. George, Chennai - 9.
2. The Commissioner for Milk Production
and Diary Development,
Madhavaram, Chennai - 51.
3. The Deputy Commissioner for Milk (Cooperation)
Milk Production and Diary Development,
Madhavaram, Chennai - 51.

+1cc to M/s.L.Chandrakumar, Advocate, S.R.No.17231

+1cc to the Government Pleader, S.R.No.17783

W.P.No.15057 of 2011

PMK(CO)

RLP(29/03/2022)