



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 06.01.2022

DELIVERED ON: 04.02.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.2613 of 2009

Dr.I.S.Jaya Singh

.. Petitioner

vs.

1.The State represented by

The Secretary to Government,
Animal Husbandry and Fisheries
(Poultry) Department, Secretariat,
Fort St.George, Chennai-600 009.

2.The Commissioner,

Animal Husbandry & Veterinary Services,
Central Office Building, Block-II,
Chennai-600 006.

3.The Managing Director (I/c),

The Tamilnadu Poultry Devt. Corporation Ltd.,
Office of the Commissioner of Animal Husbandry
& Veterinary Services,
Central Office Building, Block-II,
Chennai-600 006.

4.The Deputy Secretary to Government,

Animal Husbandry, Dairying and
Fisheries (Poul) Department, Secretariat,
Fort St.George, Chennai-600 009.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for records relating to the impugned proceedings of the 3rd respondent in Roc.No.654/E-Tapco/2001-4 dated 27.10.2008 and the impugned proceedings of the 4th respondent in Letter No.21060/Poul/2008-2 dated 09.01.2009, quash the same and direct the respondents to reinstate the petitioner in service with backwages in the cadre of Joint Director in the Animal Husbandry Department.



WEB COPY

For Petitioner : Mr.V.Selvaraj,
for M/s.Devason and Sagar
For Respondents : Mr.P.Anandakumar,
Government Advocate

O R D E R

The petitioner, challenging the impugned proceedings of the third respondent dated 27.10.2008 and the impugned proceedings of the fourth respondent dated 09.01.2009, in and by which the petitioner was retrenched with due compensation with effect from 29.12.2000 and for a consequential direction to the respondents to reinstate the petitioner in service with backwages in the cadre of Joint Director in the Animal Husbandry Department.

2. The case of the petitioner briefly narrated are as follows:

2.1. The petitioner was working as Senior Manager in the Tamil Nadu Poultry Development Corporation and he was suspended from service on 19.05.1998. A charge memo was served on the petitioner on 05.06.1998, for which the petitioner had submitted his explanation dated 08.07.1998 and the third respondent / disciplinary authority, having not satisfied with the explanation submitted by the petitioner, had passed an order dated 29.12.2000, dismissing the petitioner from service. As against the order of dismissal, the petitioner preferred an appeal before the first respondent, who vide order dated 08.02.2005, had ordered reinstatement and for initiation of denovo disciplinary proceedings from the stage at which the flaw crept in.

2.2. The Government of Tamil Nadu passed G.O.(Ms)No.86, Animal Husbandry & Fisheries (TAPCO) Department dated 19.04.1999, after careful of all pertinent aspects, have decided to close down the operation of TAPCO Ltd without detriment to the interest of the Government and as well as employees of the Corporation and accordingly directed that the Noon Meal Egg supervision work performed by TAPCO be transferred to the Department of Animal Husbandry along with the staff attached with that work and the Managing Director of TAPCO shall initiate action in this regard by invoking the provisions available. Challenging the same, a Writ Petition was filed by the Tamil Nadu Poultry Development Corporation All Employees Union against transfer of Noon Meal Egg Supervision staff to Animal Husbandry Department and this Court, vide judgment dated 23.02.2000, has



declared para (4) of the Government Order as unconstitutional to the extent that the Government Order directed the enbloc absorption of 141 persons placed in charge or associated with the supply, distribution or supervision of eggs to the Noon Meal Scheme. This Court further directed to adopt a fair procedure and follow the rule of seniority or such other fair procedure while absorbing required number of TAPCO employees as Government Servants. As per the judgment of this Court, the Managing Director of TAPCO was requested to prepare a seniority list of all employees of TAPCO based on their dates of joining in the present category and also to formulate a scheme to absorb required number of employees in the Department of Animal Husbandry for supervision of Noon Meal Programme Egg supply work.

2.3. In compliance of the order passed by this Court, the Government has passed G.O.(Ms)No.91, Animal Husbandry and Fisheries (TAPCO) Department dated 06.06.2000, wherein the Government, after careful consideration of the proposals of the Managing Director, TAPCO, has directed the transfer of 139 posts, under 16 categories and the appointment of these posts will be under the following conditions:

i.Except the personnel on whom disciplinary action is pending and who are on long leave, others will be appointed on the basis of seniority.

ii.If the personnel who are being transferred to the Animal Husbandry Department do not have the required qualification of age, education, sponsored by the Employment Exchange or Special Training, these qualifications will be relaxed before their regular appointment. The Director of Veterinary Services is requested to send necessary proposals in this regard.

iii.These personnel will be considered as Government Servants only on the dates of their joining in the Department of Animal Husbandry on transfer. The transfer will be with immediate effect.

iv.Their pay and allowances will be refixed with effect from the date of joining in the Department.

v.The seniority will be fixed below the seniority of the personnel of the Department of Animal Husbandry working on that date, in that category.

vi.The leave earned by the personnel in the Tamil Nadu



WEB COPY

Poultry Department Corporation Limited shall be transferred to the Department of Animal Husbandry.

vii.The Employees Provident Fund Account will be transferred to the General Provident Fund and a new Account will be opened.

viii.The Group Insurance Scheme will be closed and transferred to the Government.

ix.Their services will be regularized from the dates of their joining in the Department of Animal Husbandry.

x.The personnel working in the Department of Animal Husbandry already will be transferred back to the Tamil Nadu Poultry Development Corporation Limited with immediate effect.

xi.The services rendered in the Department of Animal Husbandry from 9.7.99 till the date of retransfer for to the Tamil Nadu Poultry Development Corporation Limited will be treated as services rendered continuously in the Tamil Nadu Poultry Development Corporation Limited.

xii.The personnel transferred to the Animal Husbandry Department will be subject to the final orders, to be issued in the disciplinary cases pending against them. (emphasis supplied).

Along with the said Government Order, Annexure-I has been appended containing the list of Posts in TAPCO which were re-designated in Animal Husbandry Department, wherein the post of Senior Manager in TAPCO has been re-designated as Joint Director of Animal Husbandry Department.

2.4. The petitioner, who was working as Senior Manager in TAPCO got transferred to the re-designated post of Joint Director of Animal Husbandry Department, but at the time of absorption by the Government in the Animal Husbandry Department, disciplinary proceeding initiated by the respondent was pending. Therefore, TAPCO had proceeded with the disciplinary proceedings against the petitioner and the Managing Director (TAPCO) / third respondent had passed an order dated 29.12.2000 by imposing the punishment of dismissal from service on the petitioner. Challenging the order of dismissal, the petitioner preferred an appeal before the first respondent / Government and vide order



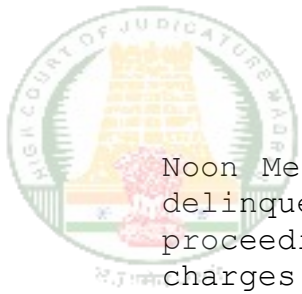
dated 08.02.2005, the appellate authority has passed an order by setting aside the dismissal order passed by the third respondent and directed that the petitioner be reinstated into service in TAPCO and to re-initiate disciplinary proceedings denovo from the stage at which the flaw has crept in and to pass orders on the merits of the case. Subsequent to the above said order, the petitioner had retired from service, by attaining the age of superannuation.

2.5. Based on the order passed by the appellate authority, the petitioner has sent a representation to the Commissioner and Director of Veterinary Services dated 20.03.2005, requesting to give appointment to the petitioner as Joint Director of Animal Husbandry Department, vide Annexure II of the Government Order in G.O.Ms.No.91 dated 06.06.2000. The petitioner thereafter sent various reminders dated 11.08.2005, 02.02.2006 and 01.03.2006. On 09.01.2009, the fourth respondent has passed an order dated 09.01.2009, based on the proposal sent by the Government dated 11.02.2008, by allowing the following three persons to go on VRS with effect from 29.12.2000 after all the disciplinary proceedings against them, namely Tmt.Jasmine Christilda (Ex. Assistant), Thiru Shanmuga Sundaram (Ex.Superintendent) and Thiru A.J.Michal Alex (Ex. Field Officer) and that the petitioner has been directed to be retrenched with due compensation with effect from 29.12.2000. Challenging the order passed by the respondents 3 and 4 dated 27.10.2008 and 09.01.2009, the petitioner has filed the present writ petition.

3. The second respondent has filed a detailed counter affidavit and additional counter affidavit stating as follows:

3.1. The first respondent has issued a letter dated 11.02.2008, stating that after dropping of all the disciplinary cases pending against 3 persons viz., Tvl. Jasmine Christalda, V.Shanmuga Sundaram and L.J.Michael Alex, they may be allowed to go on voluntary retirement service and Dr.I.S.Jayasingh may be retrenched with due compensation and the same was approved in the 176th Board Meeting of TAPCO held on 29.02.2008. Accordingly, the petitioner was requested to receive the sum of Rs.1,40,395/- as compensation and Rs.85,131/- as gratuity as resolved by the Board of Directors in the 176th meeting held on 29.02.2008.

3.2. Initially, disciplinary proceedings were initiated against the petitioner, Dr.I.A.Jayasingh, Senior Manager and one J.Irudhayaraj, Ex-Field Officer of TAPCO on the allegation of committing certain irregularities in the purchase of eggs to



Noon Meal Centres and after following usual procedures, the co-delinquent Irudhayaraj was dismissed from TAPCO, vide proceedings dated 19.01.2001 and in respect of the petitioner, charges have been kept pending for the reason that the petitioner had already been dismissed and hence, further action was stopped in the case of the petitioner.

3.3. The post of Joint Director and Additional Director as mentioned in G.O.Ms.No.91, Animal Husbandry Department & Fisheries (TAPCO) Department dated 06.06.2000 shall be filled up by deployment, only from Animal Husbandry Department and the petitioner Dr.I.S.Jayasingh, formerly Senior Manager, TAPCO (dismissed) was not included in the said Government Order for transfer of Animal Husbandry Department and hence, he cannot be absorbed in the Animal Husbandry Department.

3.4. Though the first respondent have ordered to reinstate the petitioner formerly Senior Manager, TAPCO, the Government subsequently considering the closure of TAPCO w.e.f. 29.12.2000 and no posts are in existence and liquidation process is underway and there is no source of income, the Government have ordered to pay the retrenchment compensation to the above individual.

3.5. Eventhough the first respondent ordered to set aside the dismissal order and ordered reinstatement the petitioner in TAPCO with full backwages and also ordered denovo disciplinary proceedings from the stage the flaw crept in and to pass orders based on the merits of the case, since the respondent Corporation was already closed, no further action could not be pursued and when the subsequent direction issued by the Government dated 11.02.2008 is in force, the petitioner cannot take advantage of the earlier direction issued by the Government on 08.02.2005 and therefore, prayed for dismissal of the writ petition.

4. Mr.V.Selvaraj, learned counsel for the petitioner would submit that the petitioner's name was included in the Government Order in G.O.(Ms)No.91, Animal Husbandry and Fisheries (TAPCO) Department dated 06.06.2000 in respect of transfer of 139 posts in 16 categories and on account of pendency of disciplinary proceedings, the petitioner, who served as Senior Manager in TAPCO, was not absorbed in the Animal Husbandry Department as Joint Director and however, the punishment imposed by the Managing Director, TAPCO dated 29.12.2000 was set aside by the first respondent/appellate authority on 08.02.2005 by directing the petitioner to be



reinstated into service and also for initiation of denovo enquiry. Therefore, the order passed by the first respondent would literally construe that the petitioner was reinstated into service as Joint Director of Animal Husbandry Department. The learned counsel for the petitioner would further contend that the impugned orders passed by the respondents 3 and 4 by allowing the petitioner to go on VRS and to be retrenched with due compensation with effect from 29.12.2000 is highly arbitrary, without any justification and the petitioner did not file any application for VRS and in view of the order of the appellate authority / first respondent dated 08.02.2005 directing the respondents to reinstate the petitioner into service with full backwages, the third respondent cannot pass an order for retrenchment, thereby nullifying the order of the first respondent/appellate authority dated 08.02.2005. It is further contended by the learned counsel for the petitioner that all the persons mentioned in 16 categories covered by G.O.Ms.No.91 dated 06.06.2000 were transferred and now working with the Animal Husbandry Department and as per the said Government Order, the petitioner ought to have been transferred and posted as Joint Director of Animal Husbandry Department in the Office of the Director of Veterinary Services, Chennai and therefore, prays for appropriate orders.

5. Mr.P.Anandakumar, learned Government Advocate for the respondents would submit that the writ petitioner filed an appeal before the first respondent challenging the order of punishment and it was allowed in favour of the petitioner and he was ordered to be reinstated into service and on account of closure of TAPCO, some of the employees were allowed to go on VRS after dropping of all the charges against them and the respondents have paid due compensation to the retrenched employees and the petitioner is also one among the aforesaid employees who were allowed to retire and entitled for retrenchment compensation with effect from 29.12.2000 as per the decision of the Board. It is also contended by the learned Government Advocate that the Appellate Authority has not fully exonerated the petitioner from all the charges, but remanded the matter to the third respondent for initiation of denovo disciplinary proceedings from the stage where flaw has crept in and therefore, the petitioner has not been reinstated as Joint Director of Animal Husbandry Department and hence, the impugned order of the respondents are perfectly valid in law. The learned Government Advocate for the respondents has also drawn the attention of this Court to the additional counter affidavit of the second respondent wherein in para 17 it has been stated that according to the Special Rules for the Tamil Nadu Animal



Husbandry Service, an officer is eligible to hold the post of Joint Director only by promotion from the category of Deputy Director of Animal Husbandry and also should have experience in the Tamil Nadu Animal Husbandry for a total period of 10 years, of which not less than 5 years in A or B Group posts and experience in the field of investigation control, prevention and eradication of livestock diseases in the Animal Husbandry Department for a period of not less than 5 years and since the petitioner did not comply the above criteria as mentioned in the Special Rules, the petitioner cannot be considered for the post of Joint Director of Animal Husbandry and therefore, prays for dismissal of this writ petition.

6. This Court has considered the submissions made and also perused the materials available on record.

7. The undisputed fact remains that the petitioner was working as Senior Manager in TAPCO and he faced disciplinary proceedings along with one J.Irudayaraj for committing certain irregularities in the purchase of eggs to Noon Meal Centres and the charges were proved against the petitioner and he was imposed with punishment of dismissal from service, vide order of the third respondent dated 29.12.2000. As against the order of dismissal, the petitioner preferred an appeal before the first respondent and vide order dated 08.02.2005, the first respondent/appellate authority directed reinstatement of the petitioner into service and also ordered initiation of denovo disciplinary proceedings from the stage where flaw has crept in.

8. As regards the co-delinquent J.Irudayaraj is concerned, challenging the order of dismissal, he had filed a writ petition in W.P.No.8796 of 2011 and this Court, vide order dated 08.02.2011, had set aside the impugned order on the ground of violation of principles of natural justice and directed the respondents to reinstate him in service and if he had already retired, settle all the service and monetary benefits, as if he was not dismissed from service within a stipulated period. In pursuant to the order passed by this Court, the said Irudayaraj had been given all service benefits, as if he retired from service from Animal Husbandry Department.

9. The primordial contention made by the petitioner is that in view of the order of the appellate Authority / first respondent dated 08.02.2005 directing respondents to reinstate the petitioner into service with full backwages, the third respondent cannot pass the impugned order for retrenchment, thereby nullifying the appellate authority order dated 08.02.2005.



10. TAPCO and the Animal Husbandry Department, both comes under the control of the first respondent / appellate authority and after the closure of TAPCO, the employees worked therein were allowed to be transferred to Animal Husbandry Department vide G.O.(Ms)No.91, Animal Husbandry and Fisheries (TAPCO) Department dated 06.06.2000 and in Annexure I appended to the said Government Order, the posts in TAPCO and the corresponding re-designation of posts in Animal Husbandry Department have been specifically indicated, by which the post of Senior Manager in TAPCO was re-designated as Joint Director in the Animal Husbandry Department.

11. The first respondent who has passed the G.O.(Ms)No.91 dated 06.06.2000 is the same authority who has dealt with the appeal filed by the petitioner and he might have been very much aware of the said Government Order, while passing orders in the appeal filed by the petitioner on 08.02.2005. The first respondent/appellate authority, while allowing the appeal filed by the petitioner, had directed reinstatement of the petitioner into service and further ordered denovo enquiry to be proceeded by the authority concerned, but the undisputed fact remains that at that time, TAPCO was not in existence and if the order of the first respondent/appellate authority had been given effect to, the petitioner should have been absorbed as Joint Director of Animal Husbandry Department. Admittedly, denovo enquiry was not proceeded against the petitioner and he was allowed to retire from service on attaining the age of superannuation without reinstatement into service and therefore, the petitioner has sent several representations to the second respondent for implementation of the order of the appellate authority/first respondent.

12. It is the stand of the respondents that under Special Rules for the Tamil Nadu Husbandry service, an officer is eligible to hold the post of Joint Director only by promotion from the category of Deputy Director of Animal Husbandry. But in the case on hand, at the time of absorption and transfer of various posts from TAPCO to Animal Husbandry Department, vide G.O.(Ms)No.91, Animal Husbandry & Fisheries (TAPCO) Department dated 06.06.2000, the said Government Order clearly stipulates that the post of Senior Manager in TAPCO has been re-designated as Joint Director in Animal Husbandry Department and as such, post of Joint Director cannot be treated as a promotional post at the time of absorption and it is only creation of equivalent post at the time of absorption / transfer through the aforesaid Government Order and therefore, the contention of the respondents that the petitioner did not possess the requisite



13. The second contention of the petitioner is that the petitioner was allowed to go on Voluntary Retirement from Service (VRS) on payment of retrenchment compensation, without any application being filed by him for VRS. The stand taken by the respondents is that TAPCO was closed and that similarly placed persons were allowed to retire on VRS. It is to be noted at this juncture that as per Clause (xii) of the condition imposed in G.O.(Ms)No.91, Animal Husbandry and Fisheries (TAPCO) Department dated 06.06.2000 "the personnel transferred to the Animal Husbandry Department will be subject to the final orders, to be issued in the disciplinary proceedings pending against them". But subsequently, the appeal filed by the petitioner before the first respondent had ended in favour of the petitioner by directing that the petitioner be reinstated into service. Therefore, the impugned orders passed by the respondents 3 and 4 directing that due to the closure of TAPCO, the petitioner is entitled only for retrenchment compensation is totally unsustainable and therefore, on that ground also, the impugned orders are liable to be set aside.

15. Accordingly, this Court directs the respondents 1 and 2 to grant notional benefits to the petitioner in the re-designated post of Joint Director of Animal Husbandry Department with effect from the date of his dismissal viz., 29.12.2000 and the period from the date of dismissal till his date of retirement shall be counted as duty period and the petitioner shall be conferred with all revised service and terminal benefits. The aforesaid exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



WEB COPY

16. In view of the reasons assigned above, the impugned proceedings of the third respondent in Roc.No.654/E-Tapco/2001-4 dated 27.10.2008 and the impugned proceedings of the fourth respondent in Letter No.21060/Poul/2008-2 dated 09.01.2009 are set aside. No costs.

17. This Writ Petition stands allowed with the above directions. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Animal Husbandry and Fisheries
(Poultry) Department, Secretariat,
Fort St.George, Chennai-600 009.
- 2.The Commissioner,
Animal Husbandry & Veterinary Services,
Central Office Building, Block-II,
Chennai-600 006.
- 3.The Managing Director (I/c),
The Tamilnadu Poultry Devt. Corporation Ltd.,
Office of the Commissioner of Animal Husbandry
& Veterinaries,
Central Office Building, Block-II,
Chennai-600 006.
- 4.The Deputy Secretary to Government,
Animal Husbandry, Dairying and
Fisheries (Poul) Department, Secretariat,
Fort St.George, Chennai-600 009.

+2cc to Mr.Devadason and Sagar, Advocate SR.No.7542

W.P.No.2613 of 2009

PMK(CO)
GN(17/02/2022)