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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.513 of 2022
and CMP.No.3703 of 2022

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. ... Appellants/Respondent

Vs

R. Thulasiraman ... Respondent/Petitioner

Prayer:Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 22.06.2021 made in WP.No.16821 of 2015 and allow the Writ Appeal.

Prayer in WP.No.16821 of 2015 : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the 1st respondent made in Letter No.28541/nt/ep//4(1)/2014-4, dated 27.4.2015 and quash the same consequently directing the 1st and 2nd respondents to treat the earlier services rendered by the petitioner from 27.8.1981 to 4.8.1984 as Junior Assistant in the respondent department and the break period from 5.8.1984 to 22.5.1992 for the purpose of promotion all other service and attendant benefits.

For Appellants : Mrs.V.Yamuna Devi

Special Govt.Pleader

For Respondent : Mrs.A.V.Bharathi
for M/s.Santhanamani



JUDGMENT

S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

Instant writ appeal is directed against the order dated 22.06.2021 made in W.P.No.16821 of 2015.

2. It is the case of the writ petitioner that his father late G.Ramachandran who was a Foreman in Agricultural Engineering Department, Government of Tamil Nadu, died while in service, pursuant to which, the writ petitioner/respondent herein made a representation to consider for compassionate appointment. Even though his brother was employed in the Military services, the Government has appointed the writ petitioner/respondent herein on 27.08.1981. Though G.O.Ms.No.988, Labour and Employment Department, dated 02.05.1981 was implemented for compassionate appointment with effect from 05.05.1982, the case of the writ petitioner/respondent herein was considered for compassionate appointment and as per the said G.O., one person in the family alone would be entitled to compassionate appointment. On coming to know that the brother of the writ petitioner was employed in the Military services, the services of the petitioner were disengaged and the writ petitioner was removed from service with effect from 04.08.1984.

3. It is further case of the writ petitioner that he made several representations to consider his case for re-appointment and during that time, the Government issued a G.O.1044 Labour & Employment Department dated 23.11.1990 and the relevant G.O. is extracted as below:-

GOVERNMENT OF TAMILNADU
ABSTRACT

Public Services - Employment assistance to families of deceased Government servants - Procedure of recruitment - further instructions - Amendment to G.O.Ms.No.998, Labour and Employment Dept. dt : 02.05.1981 - issued.

LABOUR AND EMPLOYMENT DEPARTMENT.

G.O.Ms.No.1044

Dated : 23.11.90
Read :-

G.O.Ms.No.998, Labour and Employment, dt : 2.5.81.
Order :-



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The following amendment shall be issued to the G.O.Ms.No.998, Labour and Employment, dated 2.5.81.

AMENDMENT

The following paragraph shall be incorporated as para 3(1) in G.O.Ms.No.998, Labour and Employment, dated 2.5.1981.

'3(1) 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'.

- by order of the Governor -

Sd/- M.Kumaravelu,
Deputy Secretary to Government.

4. It is also the case of the writ petitioner that pursuant to the said notification, the writ petitioner was given employment afresh with effect from 22.05.1992. Accepting the contention of the writ petitioner, the learned single Judge has held that there was a removal order passed against the writ petitioner in 1984 and in the light of the G.O. dated 23.11.1990, the writ petitioner has been re-appointed in service and granted all the promotional benefits with effect from 1981 which shall be taken into account for the purpose of pension and promotion / notional benefits, but, however no arrears need to be paid as the writ petitioner had only two years of service on the date of passing the order. Aggrieved by the same, the State has preferred this appeal.

5. Mrs.Bharathi, learned counsel appearing for the respondent vehemently contended that when G.O.(Ms).No.1044, Labour and Employment Department dated 23.11.1990 has specifically incorporated the provisions regarding the eligibility of one other person/dependant for compassionate appointment based on which, the writ petitioner was given reappointment on 23.11.1990 with effect from 23.11.1992, the writ petitioner is entitled to the benefits. She further contended that since the aforesaid provision is deemed to have come into effect from 02.05.1981, all the benefits have got to be extended to the writ petitioner.

6. The learned Special Government Pleader appearing for the Appellants submitted that the terminal order passed in the year



1984 has not been challenged and as such, it is not open to the writ petitioner to ask for retrospective regularisation of his service. She further submitted that based on the revised notification dated 23.11.1990 he was re-appointed on compassionate ground and the writ petitioner has no right to claim benefit based on the amended notification.

7. Heard both parties and perused the materials available on record.

8. The issue in this case revolves around as to whether G.O.Ms.No.1044 dated 23.11.1990 incorporating the Clause 3 (1) can be given retrospective effect or not. A reading of the amendment would make it very clear that the provision has been incorporated in the G.O. and it has no retrospective effect at all. If such retrospective effect is given, it will amount to opening a pandora box and several litigations will mushroom. Though the writ petitioner was removed from service on the ground of his brother's employment in Military service based on the subsequent amendment he has been re-inducted into service as fresher with effect from 22.05.1992.

9. In the present case on hand, as the petitioner was employed with effect from 27.08.1981 and there is no averment that the writ petitioner has suppressed the fact about his brother's employment, we are of the view that in the light of the G.O. dated 23.11.1990, the petitioner shall be entitled to past services to be considered with effect from 1981 in the present post in which he has been employed as Junior Assistant. However, the order of the learned Single Judge insofar as it grants the relief of considering the case of the petitioner for notional promotion on par with his Juniors does not hold good. For the risk of repetition, we make it very clear that the entire past services with effect from 27.08.1981 shall be counted only for the purpose of pension and other terminal benefits in the post of Junior Assistant.

10. Writ Appeal is disposed of in the above terms. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

dpq



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 Mrs.A.V.Bharathi, Advocate SR.No.16607

+1cc to Government Pleader SR.No.17028

W.A.No.513 of 2022

NK(CO)
GMY(11/04/2022)