



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.23182 of 2019

and

W.M.P. (MD) No.19906 of 2019

WEB COPY

S.Durgaiswamy

... Petitioner

vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government
Animal Husbandry, Dairying &
Fisheries Department
St.George Fort, Chennai-9

2.The Director of Animal Husbandry &
Veterinary Services
O/o.the Directorate of Animal Husbandry &
Veterinary Services
DMS Building, Thenapet
Chennai-35

3.The Regional Joint Director
Animal Husbandry Department
Thirunelveli, Thirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.13964/N.1/2019, dated 04.10.2019 and quash the same as illegal and consequential to direct the first respondent to regularize the service of the petitioner w.e.f. 17.02.2000 i.e., from the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment w.e.f., 17.02.2001 with all consequential service and monetary benefits taking into account of order made in W.A.No.1271 of 2012, dated 23.04.2014 and in the light of G.O.Ms.No.185, Animal Husbandry, Dairying and Fisheries (AH6) Department dated 22.09.2015 and in the light of the order made in W.P.(MD) No.18885 to 18887 of 2016, dated 03.10.2016 and in the light of G.O.Ms.No.38, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 05.03.2018 to similarly placed person within the period stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.A.K.Manikkam
Special Government Pleader



O R D E R

The order of rejection, dated 04.10.2019, passed by the second respondent, rejecting the claim of retrospective regularization is under challenge in this writ petition and a direction is sought for to regularize the services of the petitioner with effect from 17.02.2000 the date on which he was appointed as Animal Husbandry Assistant.

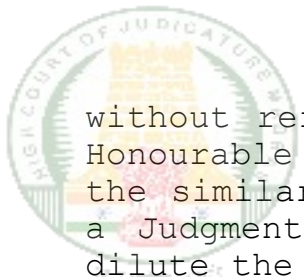
2. The case of the petitioner is that the benefit of retrospective regularization was granted to similarly placed persons, who were engaged on temporary basis and hence, such benefit of retrospective regularization is to be granted to him.

3. The petitioner was appointed as Casual Labour on 17.03.1989 in the respondent - Department. He worked as such till 16.02.2000. Thereafter, the third respondent appointed the petitioner as Animal Husbandry Assistant on temporary basis at Veterinary Hospital, Srivaikundam, Tuticorin District, on 17.02.2000, in the regular time scale of pay. The Government issued G.O.Ms.No.117, dated 28.08.2008 to regularize the service of 163 persons, who were working as Animal Husbandry Assistants in various Institutions in the respondent - Department. Accordingly, the petitioner's service was regularized with effect from the date of issuance of the said Government Order i.e. from 28.08.2008. The similarly placed person, like the petitioner herein, approached this Court by filing W.P.No.26962 of 2008 challenging the said Government Order granting regularization. The said writ petition was dismissed and the writ appeal filed by the employee in W.A.No.1271 of 2012 was allowed and the Honourable Supreme Court confirmed the Judgment passed in the writ appeal and based on that the benefit of retrospective regularization of service was granted to the petitioner, who filed the writ appeal. Based on the said Judgment of the Supreme Court, the other employees started to claim the benefit at a later point of time, without even originally challenging the Government Order granting regularization of service.

4. The learned counsel for the petitioner states that the benefit of order passed in W.A.No.1271 of 2012 is to be extended to all the similarly placed persons.

5. To be noted, the respondents considered the issues and rejected the claim by relying on the decision of the Constitution Bench in the case of **Secretary, State of Karnataka and others vs. Umadevi and others**, reported in (2006) 4 SCC 1 and the Judgment of this Court in W.A.No.847 of 2018 [**The State of Tamil Nadu vs. R.Panneerselvam**].

6. This Court is of the considered opinion that the benefit that was extended even though Court orders in favour of one person,



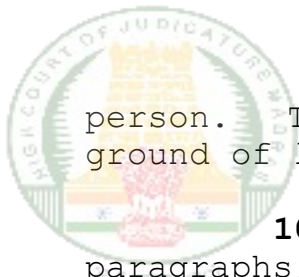
without reference to the decision of the Constitution Bench of the Honourable Supreme Court, cannot be cited as a precedent to grant the similar benefit to other persons. The mistake even crept-in in a Judgment cannot be allowed to continue in perpetuity so as to dilute the legal principles set out by the Honourable Supreme Court. Therefore, citing one decision granted in favour of one employee, wherein there was no adjudication of the principles laid down by the Constitution Bench of the Honourable Supreme Court, cannot be considered as a precedent for the purpose of granting the similar relief to all other employees, who were otherwise appointed on irregular basis and not in consonance with the Recruitment Rules in force.

7. Now, the irregular and illegal appointments are completely governed under the principles laid down by the Constitution Bench in **Umadevi**'s case (supra). The scope of one-time benefit under Para-53 of the said decision cannot be extended for an indefinite period. In such an event, the very principles laid down by the Constitution Bench will be defeated and the Constitution Bench never intended for such continuation in Paragraph No.53. That exactly is the reason why the Constitution Bench in Paragraph No.54 unequivocally reiterated as follows:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

8. Therefore, citing an order, which is not in consonance with the decision of the Constitution Bench of the Apex Court, cannot be followed as a precedent for granting the relief in respect of other persons. In other words, the legal principles settled cannot be deviated merely because in one case, the relief was granted. This being the established legal principle to be followed, by citing one person, the other person cannot seek such a claim, which would amount to miscarriage of justice and it will lead to unjust enrichment.

9. In the present case, the legal principles were followed by the respondents and they have categorically stated the principles followed by them for rejection of the claim of the petitioner for retrospective regularization in the counter affidavit. This apart, the Government Order granting regularization of service was passed in the year 2008. The petitioner was not a party in W.A.No.1271 of 2012. The petitioner filed the present writ petition after a lapse of many years, without challenging the original regularization order issued in G.O.Ms.No.117, dated 28.08.2008 and therefore, he accepted the regularization order and continued in service for several years. Thus, now he cannot turn around and claim retrospective regularization based on the order passed in respect of another



person. Thus, the writ petition is liable to be rejected on the ground of laches.

10. For all the reasons stated in the aforementioned paragraphs, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Secretary to Government,
Animal Husbandry, Dairying &
Fisheries Department,
State of Tamil Nadu,
St.George Fort, Chennai-9.

2.The Director of Animal Husbandry &
Veterinary Services,
O/o.the Directorate of Animal Husbandry &
Veterinary Services,
DMS Building, Thenapet,
Chennai-35.

3.The Regional Joint Director,
Animal Husbandry Department,
Thirunelveli, Thirunelveli District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-6374[F] dated
16/02/2022)

+1 CC to M/s.SPL GP (SR-6499[F] dated 16/02/2022)

W.P. (MD) No.23182 of 2019

and

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SB (CO)

KB (25.02.2022) 4P 6C