



W.P.No.216 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.216 of 2022

&

W.M.P.Nos.246 and 247 of 2022

C.Krishnan

...Petitioner

-Vs-

1. State of Tamil Nadu
Rep. By its Secretary
Animal Husbandry, Dairy and Fisheries Department
Fort St.George
Chennai – 600 009
2. The Director of Animal Husbandry and Veterinary Services
Veterinary Hospital Campus
Nandanam
Chennai – 600 035
3. The Regional Joint Director
Animal Husbandry Department
Erode, Erode District
4. The Assistant Director
Animal Husbandry Department
Gobichettipalayam Division
Erode District



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5. The Principal Accountant General (Accounts & Entitlements)

AG's Office Complex

361, Anna Salai, Teynampet

Chennai – 600 018

6. The Director of Treasuries and Accounts

Panakal Building

Saidapet

Chennai – 600 015

...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 of the 1st respondent in G.O.Ms.No.117 dated 28.08.2008 so far as regularizing the services of the petitioner with effect from 28.08.2008 is concerned and consequential order of the 4th respondent in Na.Ka.No.2117/A1/2021 dated 03.12.2021 and quash the same and accordingly direct the respondents to regularize the services of the petitioner with effect from 01.07.1999 in accordance with the judgment of the Hon'ble Division Bench in W.A.No.1271 of 2012 dated 23.04.2014 and Government orders implementing the same in G.O.Ms.No.49 dated 20.02.2013 and G.O.Ms.No.185 dated 22.09.2015 and accordingly continued the petitioner only under the Old Pension Scheme.

For Petitioner : Ms.A.Pramila

For Respondents : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.M.Bindran
Addl. Govt. Pleader for R1 to R4
Mr.V.Arunachalesh



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for Ms.J.Sree Vidya
Standing Counsel for R5
R6 served (No Appearance)

ORDER

The petitioner herein had originally joined the respondent Department on a daily wages basis. On completion of ten years of service, he had sought for regularization of his services. The issue went upto the Tamil Nadu Administrative Tribunal and by virtue of orders passed therein in O.A.No.1363 of 2000, directions were issued to the respondents to consider the petitioner's request for regularization. Accordingly, the first respondent herein had passed orders, regularizing the petitioner's services through G.O.Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.08.2008, with effect from the date of the Government Order. Challenging the same, the present writ petition has been filed, insofar it relates to the date of regularization.

2. According to the learned counsel for the petitioner, since the petitioner's services were regularized in accordance with the orders of the Tribunal and such regularization should revert back to the date of his original appointment and not from the date of the Government Order. The learned



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counsel also placed reliance on cases of similar employees whose services have been regularized from the date of original appointment as well as the orders passed by Hon'ble Division Bench as well as Hon'ble single Judges of this Court.

3. Per contra, the learned Additional Advocate General placed reliance on the averments in the counter affidavit and submitted that orders passed in identical cases would apply only to the concerned individual and the petitioner cannot take advantage of such orders. The learned Additional Advocate General also submitted that the petitioner would not be entitled to monetary benefits in view of similar order being passed in W.P.No.12086 of 2020 [*C.Chinappa Vs. The Government of Tamil Nadu, Animal Husbandry, Dairy and Fisheries Department*] dated 28.06.2023 wherein the arrears of pay was denied while regularization was ordered and therefore, the petitioner is not entitled for any arrears of pay.

4. This is not an isolated case wherein the employees have approached this Court seeking for regularization from the date of initial appointment of their services. An Hon'ble Division Bench of this Court had passed an order in W.A.No.1887 of 2019 [*State of Tamil Nadu, Animal Husbandry, Dairy and Fisheries Department Vs. V.Vilvanathan*] dated 14.02.2023, upholding



the orders of the learned single Judge whereby the regularization was granted from the date of initial appointment, together with all service and monetary benefits. In the said decision of the Hon'ble Division Bench, reliance was placed on an earlier and similar order passed by this Court in WP.No.22168 of 2009 granting similar relief, which was confirmed in WA.No.2861 of 2018 dated 21.12.2018. The order passed in V.Vilvanathan's case read as follows:

"The prayer in the Writ Petition reads as follows:

"The prayer in the writ petition is for a Writ of certiorarified mandamus calling for the records on the file of the 1st respondent in G.O.Ms.No.117, Animal Husbandry Dairying and Fisheries (AH7) Department, dated 28.8.08 and on the file of the 4th respondent in proceedings 1.NaKa.No.3895/A/08-1 dated 19.09.2008, 2.Na.Ka.No.3895/A/2008, dated 07.10.2008 and 3. Na.Ka.No.3895/A/08-2, dated 07.10.2008 quash the same and direct the respondents to regularize the services of the petitioner with effect from 20.08.1998 the date of joining in the regular post as Animal Husbandry Assistant and direct the respondents to sanction increment with effect from 01.07.1999 with all consequential service and monetary benefits."

2. The facts are not in dispute. The respondent was appointed as a casual labourer on 26.12.1987. Having completed 10 years of service as casual labourer, the respondent was entitled to regularisation. Pursuant to the orders of the State Administrative Tribunal, the second appellant passed orders on 20.08.1998, regularising the services of the respondent as Animal Husbandry Assistant. Since subsequently the Government



orders attempted to take away the right of the respondent, the respondent approached this Court with the above prayer.

3. The Writ court had relied upon the order made by it in WP.No.22168 of 2009 and allowed the Writ Petition based on the conclusion on terms as indicated in Paragraphs 14 and 15 of the order in WP.No.22168 of 2009. The said paragraphs read as follows:

"14. Therefore, this Court has no hesitation to hold that the denial of the benefits of regularising of the services of the petitioner from the date of appointment or the date actually the petitioner was brought into time scale of pay, is totally unsustainable in law and therefore, the contentions made in this regard on behalf of the respondents are liable to be rejected and accordingly, is rejected.

15. In the result, the writ petition is allowed. The respondents are directed to regularise the service of the petitioner from the date of appointment or the date on which the petitioner was brought into time scale of pay. Once the petitioner is entitled to get his service regularised as above, needless to say that the petitioner shall also be eligible to get all service benefits including periodical increment in pay. Therefore, the respondents are directed to calculate the said pay difference, pay arrears after calculating increment to be paid to the petitioner and pay the same to the petitioner. All the aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs."

4. When this appeal was taken up for hearing the learned counsel appearing for the respondent has produced the judgment of the Division Bench of this Court in WA.No.2861 of 2018 dated 21.12.2018. A perusal of the same shows that the said appeal was filed against the



order in WP.No.22168 of 2009, which has been relied upon by the Writ Court to allow this Writ Petition. We find from the judgment of the Division Bench that the appeal has been dismissed confirming the judgment of the Writ Court.

5. In view of the above, nothing remains to be adjudicated in this appeal and this appeal is also dismissed following the decision of the Division Bench of this Court in W.A.No.2861 of 2018. The Government will implement the order of the Writ Court within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed. “

5. I had an occasion to pass similar orders in W.P.No.30268 of 2022 [***T.David and others Vs. State of Tamil Nadu, Rep by its Secretary, Public Works Department and Others***], dated 08.11.2023 wherein the services of the employees of Public Works Department, were regularized from the date of their initial appointment and on completion of 10 years of service as causal labourers / NMRs and all the service and monetary benefits including the arrears of pay was also extended to the concerned employees.

6. When the Hon'ble Division Bench of this Court has already taken a view that such regularisation can be extended to a temporary / casual employees on completion of 10 years with effect from the date of their initial appointment, together with all the service and monetary benefits, merely



because another single Judge has denied the arrears of pay will not disentitle the petitioner to claim for such arrears of pay.

7. Though the petitioner claims that he was initially appointed in the year 1988, there is absolutely nothing on record to substantiate such a statement. As a matter of fact, when such a claim was also made before the Tamil Nadu Administrative Tribunal, the same was rejected in the order passed in O.A.No.1363 of 2000 dated 06.03.2000. However, the respondents herein have admitted that the petitioner was appointed as a Temporary Animal Husbandry Assistant on 16.06.1999. As such, the petitioner's entry into services of the respondent Department can be construed as 16.06.1999 and period of 10 years can be calculated therefrom. If such a calculation is made, the petitioner would be entitled to regularisation from 16.06.1999 onwards.

8. Pursuant to the order of regularisation, the respondents herein, had brought the petitioner under the New Pension Scheme even though he was all along under the Old Pension Scheme. Now that this Court has found that petitioner would be entitled to regularisation of his services from 1999, which is prior to the cut off date 01.04.2003, he would be entitled to be continued under the Old Pension Scheme and therefore, the consequential



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order passed in this regard cannot be sustained.

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9. For all the foregoing reasons, the writ petition stands allowed and the impugned order dated 03.12.2021 bearing reference Na.Ka.No.2117/A1/2021 is quashed. Consequently, there shall be a direction to the respondents to pass an appropriate orders, regularizing the services of the petitioner with effect from 16.06.1999 and thereby extend all the service and monetary benefits including arrears of pay therefrom. Such order shall be passed at least within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2023

Index:Yes
Internet:Yes
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To

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M.S.RAMESH,J.

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