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WA No. 1474 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.1474 of 2023
and
CMP.No.14217 of 2023

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 Deputy Secretary to Government
Animal Husbandry, Dairying and
Fisheries (Poul) Department, Secretariat
Fort St. George, Chennai - 600 009
- Appellants

Versus

1. Dr. I.S. Jaya Singh
2. The Managing Director (i/c),
The Tamilnadu Poultry Development Corporation Ltd.,
Office of the Commissioner of Animal Husbandry
& Veterinary Services, Central Office Building,
Block - II, Chennai - 600 006

.. Respondents



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Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 04.02.2022 made in WP.No.2613 of 2009.

For Appellants : Mr. Silambannan,
Additional Advocate General
assisted by Mrs. Mythreye Chandru
Special Government Pleader

For Respondents : Mr. Selvaraj
for M/s. Devadason and Sagar for R1

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellants have preferred this intra-court appeal, as against the order dated 04.02.2022 passed by the learned Judge in W.P. No.2613 of 2009.

2. The first respondent herein has filed the aforesaid writ petition seeking to issue a Writ of Certiorarified Mandamus to quash the order dated 27.10.2008 of the third respondent and the consequential proceedings dated 09.01.2009 of the fourth respondent therein and consequently direct the appellants/Department to reinstate him in service as Joint Director of the Animal Husbandry Department with all consequential benefits.

3. As per the averments in the writ petition No. 2613 of 2009, the first respondent was working as Senior Manager in Tamil Nadu Poultry



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Development Corporation Limited (in short TAPCO). During the course of his employment, he was suspended from service on 19.05.1998. Subsequently, on 05.06.1998, a charge memo was issued to him for which he submitted his explanation on 08.07.1998. Thereafter, an order dated 29.12.2000 was passed by the Managing Director of Tamil Nadu Poultry Development Corporation Limited, second respondent in this appeal, dismissing the first respondent from service. Aggrieved by the same, the first respondent filed an appeal before the Government and it was allowed on 08.02.2005 directing the department to reinstate the first respondent in service and to conduct a de-novo enquiry. In the meantime, the Government passed an order in G.O. Ms. No.86, Animal Husbandry and Fisheries Department dated 19.04.1999 ordering closure of TAPCO and the employees employed thereof were ordered to be transferred to the Animal Husbandary Department. As per the order of closure and consequent transfer of the employees to the Animal Husbandary Department, the posts held by the employees in the erstwhile TAPCO were re-designated. As far as the post of Senior Manager held by the first respondent in TAPCO is concerned, it was re-designated as Joint Director of Animal Husbandry. According to the first respondent, in view of the order dated 08.02.2005 passed by the Government, allowing the appeal preferred by him, he is entitled to be reinstated in service as Joint Director of Animal Husbandry, but no order was



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passed thereof. The first respondent therefore submitted a representation dated

20.03.2005 seeking to reinstate him in service, however, it was not considered.

While the first respondent was anticipating for an order permitting him to join duty as Joint Director of Animal Husbandry, an order dated 27.10.2008 was passed by the second respondent in this appeal, retrenching him from service. Thereafter, the Government vide order dated 09.01.2009, *inter alia* directed that the first respondent be retrenched with due compensation with effect from 29.12.2000. Challenging the order dated 27.10.2008 of the second respondent in this appeal and the consequential order dated 09.01.2009 of the third respondent in this appeal, the first respondent herein has filed the aforesaid writ petition.

4. A counter affidavit was filed by the second respondent in the writ petition/second appellant herein, stating *inter alia* that even though the appeal filed by the writ petitioner/first respondent as against the order of dismissal, was set aside by the Government, it was directed that a de-novo enquiry shall be conducted from the stage at which the flaw was committed. However, TAPCO, where the first respondent-writ petitioner was employed, was ordered to be closed and in view of the closure of TAPCO, the de-novo enquiry, as directed by the appellate authority, could not be conducted and consequently,



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the question of reinstating the delinquent does not arise. It was further stated that the disciplinary proceedings was conducted as against the first respondent-writ petitioner as well as four others. Subsequently, the Government passed an order dated 09.01.2009 and proposed to permit three persons to go on voluntary retirement with effect from 29.12.2000. Insofar as the writ petitioner/first respondent is concerned, he was ordered to be retrenched with effect from 29.12.2000. Accordingly, the orders, which were impugned in the writ petition, were passed, based on the directions given by the Government. It was also stated that after closure of the erstwhile TAPCO, 139 employees employed thereon under various categories were ordered to be transferred to the Department of Animal Husbandry to look after the noon meal egg supply supervision and monitory work hitherto performed by them in TAPCO. In the list of 139 employees transferred to the Animal Husbandry Department, the post held by the writ petitioner - Senior Manager, was not included. Even though the Government set aside the order of dismissal passed against the writ petitioner- first respondent, taking note of the closure of the erstwhile TAPCO, the Government itself ordered to retrench the writ petitioner. Accordingly, the writ petitioner was requested to receive the retrenchment compensation as per the Rules, but he did not turn up to receive the amount. In any event, considering the closure of the erstwhile TAPCO and taking note of the fact that



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the order of dismissal passed against the first respondent- writ petitioner was set aside on technicalities to conduct a fresh denovo enquiry, the Government thought it fit to retrench him from service. Therefore, the appellants would justify the passing of the orders, which were impugned in the writ petition, and prayed for dismissal of the writ petition.

5. The learned Judge, on considering the rival submissions, allowed the writ petition filed by the first respondent on 04.02.2022 with the following observations:-

" 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 qualification for the post of Joint Director in Animal Husbandry Department is totally unjustifiable and the same is rejected.

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



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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.

14. However, considering the fact that the petitioner was aged about 53 years at the time of filing the writ petition during the year 2009, as stated in his affidavit and he might have retired on attaining the age of superannuation during 2014 itself and that the co-delinquent, namely J.Irudayaraj was granted service benefits, as if he retired from service from Animal Husbandry Department, this Court is of the view that the petitioner is also entitled with all attendant service and terminal benefits from the date of dismissal till his date of retirement in the redesignated cadre of Joint Director of Animal Husbandry Department. The learned counsel for the petitioner also made a submission before this Court that the petitioner is now seeking notional promotion with all other other service and terminal benefits.

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.



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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.

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

6. The learned Additional Advocate General appearing for the appellants would vehemently contend that the disciplinary authority passed an order of dismissal against the first respondent-writ petitioner for certain proved delinquency. However, the appellate authority set aside the order of dismissal and directed to reinstate the first respondent and others in service with a condition that denovo enquiry shall be conducted from the stage where flaw was crept in. In other words, the order of dismissal was set aside on technicalities and not on merits. Further, the first respondent could not be accommodated in any post in the Animal Husbandry Department after closure of the erstwhile TAPCO inasmuch as the name of the first respondent was not included in the list of employees who were likely to be transferred from TAPCO to Animal Husbandry Department in G.O. Ms. No. 91, Animal Husbandry and Fisheries Department dated 06.06.2000. Taking note of the above circumstances, the Government, after obtaining prior permission from the Commissioner of Labour under Section 25 (o) of The Industrial Disputes



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Act, passed the order dated 09.01.2009 and retrenchment compensation was also offered to the first respondent. As far as the claim of the writ petitioner-first respondent that he is entitled to hold the post of Joint Director of Animal Husbandry is concerned, as per 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 the promotee is required to possess 10 years of experience in the Tamil Nadu Animal Husbandry Department, out of which five years experience is a must in the field of investigation, control, prevention and eradication of livestock diseases. Whereas, the first respondent did not held the post of Deputy Director of Animal Husbandry and therefore, he cannot claim such post as a matter of right. In any event, taking note of the closure of the erstwhile TAPCO, the Government has rightly passed the order dated 09.01.2009 to retrench the first respondent. However, the learned Judge, allowed the writ petition filed by the first respondent. Stating so, the learned Additional Advocate General prayed for allowing this appeal by setting aside the order of the learned Judge.

7. Per contra, the learned counsel for the first respondent submits that the Government passed an order dated 08.02.2005 setting aside the order



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of dismissal passed against the first respondent on 29.12.2000 with a direction to reinstate him in service. However, by citing the closure of TAPCO, the first respondent was not reinstated in service. As per the order dated 08.02.2005 passed by the Government it is deemed that the service of the first respondent in TAPCO is restored and he is entitled to continue in service. However, due to the laxity on the part of the appellants in not reinstating the first respondent in service, he cannot be penalised. It is further stated that in G.O. Ms. No. 91, Animal Husbandry and Fisheries Department dated 06.06.2000, 16 categories of posts in TAPCO were ordered to be transferred to Animal Husbandry Department, in which, in the second category of posts mentioned therein, the post held by the writ petitioner viz., Senior Manager was mentioned. Therefore, it is not as though the post held by the writ petitioner was not included to be transferred to the Animal Husbandry Department. The learned Judge, by taking note of the entire facts and circumstance of the case, has rightly allowed the writ petition. Therefore, the learned counsel prayed for dismissal of the appeal.

8. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel for the first respondent-writ petitioner and also perused the records.



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9. Admittedly, the writ petitioner was employed as Senior Manager in TAPCO and during the course of such employment, he was suspended from service on 19.05.1998 for certain alleged delinquencies. Subsequently, an order dated 29.12.2000 was passed dismissing the first respondent from service. Assailing the same, the first respondent filed an appeal before the Appellate Authority and it was allowed on 08.02.2005 with a specific direction to reinstate him in service. When the order dated 08.02.2005 was passed, setting aside the order of dismissal, it is deemed that the first respondent is reinstated in service and he is entitled to all consequential benefits. It is also an admitted fact that as directed by the Government in the order dated 08.02.2005, a denovo enquiry was not conducted, which cannot be put against the first respondent. While so, without giving effect to the order dated 08.02.2005 of the appellate authority, the first respondent was retrenched from service, without any reason. Taking note of the same, the learned Judge rightly held that the closure of TAPCO will not be a ground to disentitle the first respondent/writ petitioner from being reinstated and hence, the order of retrenchment passed against him is uncalled for and unjustifiable. We are in complete agreement with the conclusion reached by the learned Judge and therefore, the same warrants no interference.



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WEB COPY10. In such view of the matter, the Writ Appeal stands dismissed. As the first respondent had already reached the age of superannuation, as directed by the learned Judge, the appellants are directed to pay all the consequential benefits payable to him within a period of four weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J] [M.S.Q., J]

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Index : Yes / No
Internet : Yes / No

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To

The Managing Director (i/c),
The Tamilnadu Poultry Development Corporation Ltd.,
Office of the Commissioner of Animal Husbandry
& Veterinary Services, Central Office Building,
Block - II, Chennai - 600 006.



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