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WP.No.6427/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.6427/2016

- 1.M.Shivanna [Died]
- 2.S.Saradamma
- 3.S.Girish
- 4.S.Sindhu
- 5.S.Archana
- 6.S.Dharshan

... Petitioners

****Petitioners 2 to 6 substituted as LR's of
deceased sole petitioner vide order dated
05.09.2022 made in WMP.No.18227/2022
in WP.No.6427/2016**

Versus

- 1 The Government of Tamil Nadu
Rep.by its Principal Secretary Handlooms
Handicrafts Textiles and Khadi(G1)
Department Secretariat Chennai-600 009.
- 2 The Commissioner of
Sericulture Foulkes Compound Anaimeedu
Salem-638 001.
- 3 The Assistant Director
Sericulture Department Thalavadi Erode
District.

... Respondents



WP.No.6427/2016

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus Calling for the records of the first respondent herein in letter No.5164/G1/2015-7 dated 7.9.2015 and quash the same and consequently direct the first respondent herein to extend the benefits as ordered to similarly situated person in G.O.Ms.No.229 Handlooms, Handicrafts, Textiles and Khadi(G1) Department dated 1.11.2012 and in G.O.Ms.No.276 Handlooms Handicrafts Textiles and Khadi(G1) Department dated 17.12.2013 who have not passed the language test within the prescribed period to the petitioner also and confer all the benefits with due regards to petitioners seniority.

For Petitioner : Mr. R.S.Anandan

For Respondents : Mr.R.Needhi Perumal, GA

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking interference with an order dated 07.09.2015 in Letter No.5164/G1/2015-7 issued by the 1st respondent herein and to quash the same and to direct the first respondent herein to extend the benefits as ordered to similarly situated person in G.O.Ms.No.229



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Handlooms, Handicrafts, Textiles and Khadi(G1) Department dated 01.11.2012 and in G.O.Ms.No.276 Handlooms Handicrafts Textiles and Khadi(G1) Department dated 17.12.2013 who have not passed the language test within the prescribed period, to the petitioner also and confer all the benefits due to petitioner's seniority.

- (2) The sole petitioner who had unfortunately died during the course of the pendency of the writ petition and whose legal representatives have been substituted to prosecute the writ petition further, had joined the services as Casual Labour in 1979. He slowly moved up the ladder and was posted as Junior Inspector of Sericulture with effect from 01.06.1983. There was a necessity and obligation on the part of the petitioner since Tamil was not his mother tongue, to pass Tamil language test. He did not so qualify in that language test. He was therefore, discharged on 04.06.1993. He then qualified himself in Tamil language test. He then made an application seeking reconsideration. He also filed an Original Application in OA.No.1557/1997 before the Tamil Nadu Administrative Tribunal. As a matter of fact, he was joined in that litigation by another



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similarly placed individual A.Mohammed Sheriff, who also filed OA.No.1559/1997. Both the Original Applications were taken up together by the Tamil Nadu Administrative Tribunal and by a common order dated 04.03.1997, the respondents were directed to consider the representations given by the two applicants dated 27.11.1996 seeking reinstatement. It was directed that necessary orders should be passed on merits and if necessary, by relaxation of the Rules within a period of two months.

- (3) Consequent to that particular order, on consideration of representations, the Government passed G.O.Ms.No.156, Handlooms, Handicrafts, Textiles and Khadi [G1] Department, dated 25.07.1997. The said Government Order was with respect to both the petitioner M.Shivanna in the present writ petition and A.Mohammed Sheriff, the other individual. The operative portion of the said Government Order is as follows:-

"5.The Government have carefully examined the request of the Director of Sericulture and the relevant records. The post of Junior Inspector of Sericulture is not coming under the purview of the Tamil Nadu



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Public Service Commission and hence, the Rule 12A[b] of General Rules for Tamil Nadu State and Subordinate Service has to relaxed in favour of Tvl.M.Shivanna and A.Mohammed Sheriff. The Government have decided to reappoint Thiru M.Shivanna and Thiru A.Mohammed Sheriff in the Government Service as Junior Inspector of Sericulture in relaxation of the above Rules.

6.In exercise of the powers conferred by Rule 48 of General Rules for Tamil Nadu State and Subordinate Service contained in Part-II of the Tamil Nadu Service Manual Volume-I, 1987, the Governor of Tamil Nadu hereby relaxes the provisions of Rule 12A[b] of the said Rule in favour of Tvl.M.Shivanna and A.Mohammed Sheriff and reappoints them in Government services as Junior Inspector of Sericulture.

7.The Government direct that their appointment is to be treated as fresh appointment by direct recruitment. Their seniority will be counted only from the date of their reappointment and they will be allowed to draw only the minimum of the time scale of pay applicable to the post of Junior Inspector of



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Sericulture.

8.This order does not require the concurrence of Finance Department, vide G.O.Ms.No.1420, Finance Department, dated 14.11.73/

[BY ORDER OF THE GOVERNOR]

Sd/-----

[D.PRAKASH]

SPECIAL SECRETARY TO GOVERNMENT"

- (4) The petitioner and the other individual A.Mohammed Sheriff, who had been re-appointed as fresh appointees, submitted representations again claiming parity with others, who were similarly placed like them, but who had not been discharged, but for whom again, necessity to pass Tamil language test was relaxed. On the basis of consideration of the representations given by the petitioner and A.Mohammed Sheriff, the impugned Letter was issued independently to both. Both of them questioned the said letter, which is now impugned in the present writ petition. The petitioner had filed WP.No.6427/2016 while A.Mohammed Sheriff filed WP.No.6426/2016.

- (5) It is stated by the learned counsel for the petitioner that though both



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the writ petitions had been taken up for consideration together, at the time when the writ petitions were so taken up, the petitioner had died and there was a necessity to file a miscellaneous petition to substitute the legal representatives to prosecute the writ petition further. The learned Single Judge had, therefore, examined the issues in WP.No.6426/2016 independently by an order dated 11.07.2022.

- (6) In the said order, the learned Single Judge had observed and held as follows:-

"5.The impugned order rejecting the claim of the Petitioner seeking parity with persons similarly placed to him is sought to be justified by the Respondents on making a specious distinction that the persons cited had remained in service but the Petitioner had been discharged and re-appointed with express condition of forfeiting past service. It must be pointed out at this stage that the discharge from service was an unilateral act of the employer over which the Petitioner did not have any control and the real grievance of discrimination meted out to the Petitioner arose only when relaxation of the rule for passing the



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Tamil Language Test within the prescribed period was granted to persons who had joined in service after him. It must be recapitulated here that there cannot be any estoppel against the fundamental rights of a citizen. At this juncture, reference has to be made to the ruling of the Hon'ble Supreme Court of India in State of Uttar Pradesh Vs. Arvind Kumar Srivastava [(2015) 1 SCC 347], where the legal position has been summarized in the following words:-

"22.1.Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not



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approach the Court earlier, they are not to be treated differently.?"

Viewed from that perspective, it is not possible to uphold the denial of the Respondents to extend the benefit of relaxation of the rule which had been granted in favour of persons similarly placed to the Petitioner in this case. It would follow as its corollary that the Petitioner would be entitled to be treated as having been continuously in service from the date of his initial appointment without any break and restoring his seniority with all attendant and consequential benefits. However, taking into account the fact that the discharge of the Petitioner from service had been occasioned on account of the obligation arising under the law not to retain him in service as he had not satisfied the prescribed condition within the stipulated time limit to hold the post to which he had been appointed till it was fulfilled, he would not be entitled to receive the monetary benefits alone during the period from 04.06.1993 to 07.10.1997 when he had not actually worked, and Learned Counsel for the Petitioner has



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also accepted the same and has made an endorsement to that effect in the court record.

6.In view of the foregoing discussion, the impugned Order No. 5164/ G1/2015~6 dated 07.09.2015 passed by the First Respondent is quashed and the First Respondent shall pass fresh orders on the representation dated 08.03.2015 made by the Petitioner to correct his service records with reference to the aforesaid conclusions arrived in this order and the differential amount of monetary benefits shall be paid to the Petitioner along with a working sheet showing its calculation under written acknowledgment and report of compliance shall be filed by 31.10.2022 before the Registrar (Judicial) of this Court in that regard.

In fine, the Writ Petition is ordered on the aforesaid terms. No costs."

- (7) The learned counsel claims that since the issue had already been addressed by a learned Single Judge, the petitioner who was similarly placed, should also be granted the same order.
- (8) On the side of the respondents, however it had been very strongly contended that the petitioner or the other individual, A.Mohammed



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Sheriff, cannot seek parity with those who had not been discharged from service. It is stated that the unique and distinct feature was that the petitioner and A.Mohammed Sheriff had been discharged from service and thereafter, they had been re-appointed by relaxing the Rules. It had been very specifically stated that re-appointment is considered as a fresh appointment and the previous orders of services could not be taken into consideration. It had also been stated that, that order still stands and has not been questioned in manner known to law and has not been set aside by any judicial order. The petitioner has given only representations and in the impugned letter, the Government Order in G.O.Ms.No.156, dated 25.07.1997, whereby the petitioner and A.Mohammed Sheriff were reappointed as fresh appointees, was only reiterated. The impugned letter cannot go beyond the Government Order. It is also contended that questioning the order in WP.No.6426/2016, dated 11.07.2022, the respondents have filed a Writ Appeal in WA.SR.No.73725/2023 which is pending with the Registry to be numbered.

(9) This Court therefore, had limited options. It may not be appropriate



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to distinguish the order already passed since it is now to be considered by the Division Bench. In order to maintain parity and consistency in views taken, the order of the learned Single Judge in WP.No.6426/2016 dated 11.07.2022, extracted supra, is retained and it is stated that the said order would also enure to the petitioner herein. However, it will always be subject to the final orders passed in the writ appeal whenever it is numbered and taken up for consideration which is now pending in WA.SR.No.73725/2023.

- (10) Placing that caveat, the writ petition stands **disposed of** on the same terms as WP.No.6426/2016. A direction is given to the respondents to make necessary corrections in the Service Records with reference to the period of service and issue fresh proceedings within a period of sixteen weeks from the date of receipt of a copy of this order. No costs.

01.09.2023

AP
Internet : Yes

To

- 1 The Principal Secretary,
Government of Tamil Nadu Handlooms



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Handicrafts Textiles and Khadi(G1)
Department Secretariat Chennai-600 009.

2 The Commissioner of
Sericulture Foulkes Compound Anaimeedu
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3 The Assistant Director
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C.V.KARTHIKEYAN, J.,

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