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W.P.No.27819 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.27819 of 2021
and
W.M.P.Nos.29390 & 29392 of 2021
17990 of 2023

S.Muthuvel,
Animal Husbandry Assistant.
Veterinary Dispensary,
Athani, Gobichettipalayam.
Erode District.

...

Petitioner

versus

- 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.

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 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 23.04.2012 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 : Mr.P.Nethaji

For Respondent Nos.1 to 4 & 6 : Mr.G.Nanmaran
Special Government Pleader

For Respondent No.5 : Mrs.J.Sreevidhya
Standing Counsel



ORDER

The petitioner has filed this petition seeking 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 and consequential order of the 4th respondent in Na.Ka.No.2117/A1/2021 dated 03.12.2021 and quash the same and 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 23.04.2012 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.

2. Heard Mr.P.Nethaji, learned counsel for the petitioner, Mr.G.Nanmaran, learned Special Government Pleader for the respondents 1 to 4 & 6, Mrs.J.Sreevidhya, learned Standing Counsel for the 5th respondent and perused the materials available on record.



3. The petitioner has been appointed in the year 1987 as Casual Labourer in Animal Husbandry Department and considering his long services, he has been appointed as an Assistant on 16.06.1999. The petitioner's services have been regularised only on 28.08.2008 *vide* G.O.(Ms).117, Animal Husbandry, Dairying and Fisheries (AH7) Department with effect from the date of issuance of Government Order.

4. Mr.P.Nethaji, learned counsel for the petitioner submitted that the petitioner's services should have been regularised with effect from 16.06.1999 and not from 28.08.2008. The petitioner has given an intimation that his GPF Account is going to be closed and he has to submit an application for the closure of the same. He further submitted that an identical situation has been already considered by this Court in W.A.No.1271 of 2012 wherein the date of regularisation has been given effect from the date of appointment and hence the petitioner should also be given with the same benefit.

5. Mr.P.Nethaji, learned counsel for the petitioner has attracted the attention of this Court to the order of the Writ Petition in W.P.No.216 of



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2022 dated 28.11.2023 [C.Krishnan Vs. State of Tamil Nadu, Rep. by its Secretary, Animal Husbandry, Dairy and Fisheries Department and others], wherein it is held as under:-

“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 W.P.No.22168 of 2009 granting similar relief, which was confirmed in W.A.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).117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.08.2008 and on the file of the 4th respondent in proceedings



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1.Na.ka.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



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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



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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.”



6. Mr.G.Nanmaran, learned Special Government Pleader for the respondents 1 to 4 & 6 submitted that the petitioner cannot take advantage of the order passed in pursuant to someone's Writ Petition and the petitioner who has been quiet for all these days had filed this Writ Petition without any valid grounds.

7. Mr.G.Nanmaran, learned Special Government Pleader for the respondents further submitted that one Rajendran and Krishnan are working in the same division. Out of them, Rajendran had filed W.P.No.33164 of 2019 and challenged G.O.(Ms).No.117/2008 dated 28.08.2008 and the same was dismissed on 26.11.2019. This petitioner is also on the similar footing, as both were appointed on daily wagers and subsequently appointed as temporary basis under G.O.(Ms).117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.08.2008. Hence the petitioner cannot claim the regularisation of service any time before 28.08.2008.

8. It is upto Rajendran to challenge the order of dismissal passed in W.P.No.33164 of 2019 on the basis of the order passed in W.P.No.216 of 2022. The learned single Judge while passing the order in W.P.No.216 of



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2022 has relied upon the earlier judgments rendered in this regard in W.A.No.1887 of 2019 [*State of Tamil Nadu, Animal Husbandry, Dairy and Fisheries Department Vs. V.Vilvanathan*] dated 14.02.2023 and passed the order by granting the relief of regularisation with effect from the date of appointment in the year 1999.

9. In fact, in the earlier W.P.No.22168 of 2009 the similar relief has been granted and that has been confirmed in W.A.No.2861 of 2018 dated 21.12.2018. In the said order, it has also been observed that in yet another case 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*], the services of the employees of Public Works Department were regularised from the date of their initial appointment and on completion of 10 years of service as casual labourers / NMRs and all the service and monetary benefits including the arrears of pay was also extended to the concerned employees.

10. Since the benefit of granting regularisation from the date of completion of 10 years of service has been given continuously and that has



been adopted in various subsequent cases and the same has been implemented by the Government as well, this petitioner cannot be placed in any different position, so as to deprive him to get the benefit of old pension scheme.

11. The petitioner's entry into service can be construed from the date of his appointment i.e. 16.06.1999. The order dated 16.06.1999 itself has been passed by taking into account the petitioner's long service as a daily wager. While regularising the petitioner's past services, the regularisation ought to have been given effect from 16.06.1999 instead of the order of issuance of the Government Order in G.O.(Ms).117, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 28.08.2008. In this regard, it is relevant to extract the relevant following paragraphs in W.P.No.216 of 2022 dated 28.11.2023:-

“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,



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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 order passed in this regard cannot be sustained.”

12. The petitioner in the above said Writ Petition is also working in the same Department and he is exactly, a similarly placed person. Hence, I find no difficulty to extend the benefit of the favourable findings rendered in the above order for the case of the petitioner also.



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In view of the above stated reasons, this Writ Petition is **allowed** and the impugned order dated 03.12.2021 is set aside and the respondents are directed to issue a fresh order for regularising the service of the petitioner with effect from 16.06.1999, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.12.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

1. The Secretary,
State of Tamil Nadu,
Animal Husbandry, Dairy
and Fisheries Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Animal Husbandry
and Veterinary Services,
Veterinary Hospital Campus,
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R.N.MANJULA, J.

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