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W.A.No.3557 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.3557 of 2024

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Animal Husbandry, Diarying & Fisheries Department
Fort St. George, Chennai – 9.
 2. The Director
Animal Husbandry and Veterinary Services
Veterinary Hospital Complex Building
Saidapet, Chennai – 600 035.
 3. The Regional Joint Director
Animal Husbandry Department
Dharmapuri District.
 4. The Assistant Director (AH)
Animal Husbandry Department
Dharmapuri.
- .. Appellants

Vs.

S.Thomas .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent, against
the order in W.P.No.27200 of 2021 dated 07.11.2023.

For the Appellants : Mr.S.Yashwanth
Additional Government Pleader

For the Respondent : Mr.S.Gunasekaran



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JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court by order dated 07.11.2023 made in W.P.No.27200 of 2021.

2.1. The respondent herein, namely, *S.Thomas*, was the writ petitioner, who in fact, had been engaged as a Daily Wage Casual Laborer in the year 1981 at District Livestock Farm, Hosur, of the appellant Department. After several years of service, he has been appointed on regular basis by issuance of G.O.(Ms).No.19, Animal Husbandry, Dairying and Fisheries (AH6) Department dated 21.02.2007, whereby, he was appointed as Animal Husbandry Assistant at Veterinary Hospital, Dharmapuri.

2.2. Thereafter, along with the respondent/writ petitioner, several similarly placed persons, who had been appointed on regular basis by virtue of G.O.(Ms).No.19 with effect from 21.02.2007, have been requesting for regularizing their services. The Government, having considered their requests, came forward to issue G.O.(Ms).No.173, Animal Husbandry, Dairying and Fisheries (AH6) Department dated 10.07.2013 and such a regularization has been



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made with effect from the date of the said Government Order, that is from 10.07.2013.

2.3. It is to be noted that though appointments on regular basis were made under G.O.(Ms).No.19, Animal Husbandry, Dairying and Fisheries (AH6) Department with effect from 21.02.2007, the regularization has come into effect only from 10.07.2013 by virtue of G.O.(Ms).No.173.

2.4. In that circumstances, some of them like the respondent/writ petitioner suffered with said order in G.O.(Ms).No.173, which has given a deferred regularization with effect from 10.07.2013 and not from the year 2007, approached the Writ Court by filing writ petitions in W.P.(MD)Nos.8002 & 10988 of 2016. These writ petitions came to be disposed vide separate orders dated 25.04.2016 and 22.06.2016 respectively, whereby, the Madurai Bench of this Court has given directions to the appellant Department to consider the request of the respective petitioners in light of the orders which have already been passed in G.O.Ms.No.49, Animal Husbandry Dairying and Fisheries Department dated 20.02.2013 and G.O.Ms.No.185 dated 22.09.2015 and pass orders on merits and in accordance with law within a time frame.



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2.5. Pursuant to the said orders, the issue had been considered by the Department, that is the Animal Husbandry Department, where a recommendatory report had been issued by the Director of Animal Husbandry and Veterinary Services vide letters dated 29.04.2016, 13.06.2016, 02.08.2016 and 25.04.2017. By these letters, recommendation has been made by the Director for fifteen such persons, who are parties to the aforesaid writ petitions who have been working as Animal Husbandry Assistants, since have been appointed from 21.02.2007, can be regularized with effect from the date of their initial appointment, that is from 21.02.2007.

2.6. The said recommendatory report received from the Director of Animal Husbandry and Veterinary Services, having been considered, the Government has come forward to accept the report and pass a Government Order in G.O.(Ms).No.58, Animal Husbandry, Dairying and Fisheries (AH6) Department dated 20.03.2018, whereby, the services of the fifteen such Animal Husbandry Assistants, who had been appointed under G.O.(Ms).No.19 and had been regularized only from 10.07.2013 by virtue of G.O.(Ms).No.173, stood regularized with effect from the original date of appointment, that is from 21.02.2007.



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2.7 In order to understand better, the relevant portion of the said Government Order in G.O.Ms.No.58 dated 23.03.2018 is extracted hereunder:

"3. The Hon'ble Madurai Bench of Madras High Court in its order dated 25.04.2016 and 22.06.2016 has passed order as follows:-

"Considering the limited relief sought for by the petitioners, this Court, without going into the merits of the claim of the petitioners, directs the first respondent to consider the representation of the petitioner, dated 07.03.2016 and 20.4.2016 in the light of G.O. (Ms).No.49, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 20.02.2013 and in G.O.(Ms). No. 185, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated. 22.09.2015 and pass orders on the same on merits and in accordance with law within a period of eight/six weeks from the date of receipt of a copy of this order"

4. Thiru. T. Syed Noor Basha has also filed W.P. (MD) No. 17966 of 2016 with a prayer to call for the records pertaining to the G.O.(Ms).No. 19. Animal Husbandry, Dairying and Fisheries (AH6) Department, dated.21.02.2007 issued by the first respondent and the consequential G.O. (Ms). No. 173, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 10.07.2013 issued by the first respondent and quasi. the same as illegal in so far as it seeks to deprive the continuous past services of the petitioner, consequently directing the respondents 1 and 2 to extend all the benefits of the G.O. (Ms).No. 116, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 07.05. 1997 and the consequential G.O.(Ms).No:17, Animal Husbandry, Dairying and



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Fisheries (AH6) Department, dated.03.02.2004 on par with the similarly placed employees, who are the beneficiaries in the said Government Order's and pass such further or other order as this Hon'ble Court.

5. The Director of Animal Husbandry and Veterinary Services in the letter fourth read above has stated that the following 15 Animal Husbandry Assistants whose services were already regularized in the Government order second read above have requested to regularize their services with effect from the date of their joining in the regular post of Animal Husbandry Assistants i.e. with effect from 21.02.2007 as was to similarly placed employees in G.O.(Ms).No.116, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 07.05.1997.

Sl.No.	Name
1.	J.Sundar
2.	C.Sigappi
3.	S.Veerammal
4.	C.Thaiyalnayagi
5.	M.Anjalai
6.	K.Meenal
7.	C.Meenatchi
8.	G.Dhanasekaran
9.	K.Arumugam
10.	V.Balasubramanian (retired)
11.	S.Parvathi (retired)
12.	A.Sathaiah (retired)
13.	V.Shanmugavel (retired)
14.	T.Syed Noor Basha
15.	K.Dharmalingam



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The Director of Animal Husbandry and Veterinary Services has therefore requested the Government to regularize the services of the 15 Animal Husbandry Assistant's from the date of their regular appointment as Animal Husbandry Assistants i.e., with effect from 21.02.2007.

6. The Government after careful examination decided to implement the orders of the Hon'ble Madurai Bench of Madras High Court, dated 25.04.2016 passed in W.P(MD). No. 8002 of 2016 and dated 22.06.2016 in W.P(MD). No. 10988 of 2016 and to regularize the services of the 15 Animal Husbandry Assistants mentioned in para 5 above from the date of their joining as Animal Husbandry Assistant i.e. with effect from 21.02.2007 and as was done in similar case to Tvl. S. Mathiyazhagan and M. Thiyagarajan, Animal Husbandry Assistants vide G.O.(Ms). No.49, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 20.2.2013 and G.O. (Ms). No.185, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 22.9.2015 respectively by relaxing Section 28(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 in favour of the individuals and issue orders accordingly."

2.8. Only in this context, the present respondent/writ petitioner approached the Writ Court by filing the aforesaid writ petition, seeking a mandamus to extend the benefit of regularization with effect from the original date of appointment by extending the benefit as has been given in light of G.O.(Ms).No.58 dated 20.03.2018. The said prayer was allowed by the Writ Court through the impugned order dated 07.11.2023.



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3.1. Assailing the said order, *Mr.S.Yashwanth*, learned Additional Government Pleader appearing for the appellant Department would contend that it is not with regard to only fifteen or sixteen people who are covered under the said Government Order, but there are about fifty to sixty people who have been initially engaged as casual workers and subsequently, because of their long service as casual workers, the Government has come forward to appoint them on regular basis with effect from the year 2007.

3.2. Even at the time of issuing G.O.(Ms).No.19, under which they have been appointed in the year 2007, it has been made clear that their services would be regularized only after getting necessary relaxation of Rules from the Government. This has been made clear in paragraph 3 of the said Government Order dated 21.02.2007. Subsequently, such a relaxation had been made only by issuance of G.O.(Ms).No.173, Animal Husbandry, Diarying and fisheries Department dated 10.07.2013.

3.3. Therefore, only from that date, that is from 10.07.2013, since they became eligible for regularization, such regularization has



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been given only from 10.07.2013. Learned Additional Government Pleader would also submit that when that being the position, some of the incumbents, like the respondent/writ petitioner, numbering 15, filed two writ petitions before the Madurai Bench of this Court, where, though they have challenged the Government Orders in G.O.(Ms).No.19 as well as G.O.(Ms).No.173, no quashment has been made by the Court and only directions have been given to consider their representation in light of G.O.(Ms).No.49 and G.O.(Ms).No.185 of the same Department issued already.

3.4. In this context, the learned Additional Government Pleader would contend that insofar as the issuance of G.O.(Ms).No.49 and G.O.(Ms).No.185 in respect of one *S.Mathiazhagan* and *M.Thiyagarajan* is concerned, they were in a different footing and therefore, the benefit that has been extended to these two people under the aforesaid Government Orders cannot be extended to these fifteen persons.

3.5. Nevertheless, the Government since has come forward to accept the recommendation of the Director and issued G.O.(Ms).No.58, whereby the services of the fifteen persons as mentioned in paragraph 5 of G.O.Ms.No.58, since has been



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regularized with effect from 21.02.2007, the same benefit cannot be expected to be extended to all such persons.

3.6. He would also submit that one of such persons namely, *T.Syed Noor Basha* has also filed W.P.(MD)No.17966 of 2016 and in respect of who's case, the Department filed an intra-Court appeal in W.A. (MD)No.1337 of 2021, where, a Division Bench of this Court at Madurai stayed the order passed by the Writ Court. In respect of the similarly placed persons like the said *T.Syed Noor Basha*, the Government has also filed intra-Court appeal, where an interim order of stay has been passed by the Court.

3.7. When that being so, it cannot be stated that the import of G.O.(Ms).No.58 dated 20.03.2018 has concluded and therefore, similar benefit has to be extended to all such persons like the present respondent/writ petitioner. Similar writ petition filed and allowed by the Writ Court in W.P.(MD)No.183 of 2009 dated 13.11.2019 at the Madurai Bench of this Court, filed by five persons, has also been stayed in an intra-Court appeal filed by the State in W.A.(MD)No.1102 of 2021.



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3.8. Therefore, citing these orders, the learned Additional Government Pleader would contend that the benefit that has been extended to fifteen persons under G.O.(Ms).No.58 dated 20.03.2018 cannot be automatically extended to persons like the present respondent/writ petitioner and therefore, the Mandamus sought by the writ petitioner in the instant writ petition ought not to have been allowed by the Writ Court. Therefore, the impugned order is flawed because of the pendency of the intra-Court appeals, where the order passed by the Writ Court since has been stayed and unless a decision is made by the Division Bench in these pending writ appeals, such benefit cannot be extended to any persons like the respondent/writ petitioner. Hence, the learned Additional Government Pleader seeks indulgence of this Court.

4.1. We have also heard *Mr.S.Gunasekaran*, learned counsel for the respondent/writ petitioner who would submit that under G.O.(Ms).No.58, where fifteen persons have been given such benefit, which includes the said *T.Syed Noor Basha*, it is only on the basis of pick and choose method in respect of one or two cases, such intra-Court appeals have been filed and interim orders have been obtained. Whereas, in respect of all others, the benefit, as has been extended under G.O.(Ms).No.58, has become untouched and



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therefore, those people have been enjoying such benefit of regularization with effect from the date of initial appointment.

4.2. He would also contend that apart from these persons, some more persons, numbering about eight people, have been given such regularization by extending the benefit, as has been granted through G.O.(Ms).No.58, under G.O.(Ms).No.35, Animal Husbandry, Dairying and Fisheries (AH6) Department dated 10.03.2023. Citing these Government Orders, the learned counsel appearing for the respondent/writ petitioner would seek indulgence of this Court to dismiss the appeal.

5. We have given our anxious consideration to the aforesaid rival submissions made by the respective learned counsel appearing for the parties and have perused the materials placed before this Court.

6.1. Insofar as the case of the respondent/writ petitioner is concerned, admittedly, the respondent/writ petitioner was appointed by virtue of G.O.(Ms).No.19 dated 21.02.2007. Subsequently, when the issue of regularization had come up by issuance of G.O.(Ms).No.173 dated 10.07.2013, such a



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regularization had been made only with effect from 10.07.2013 and not from 21.02.2007.

6.2. The persons similarly placed like the respondent/writ petitioner approached the Writ Court, as stated *supra*, by filing two writ petitions, where, directions have been given to give the benefit by considering their representation in light of G.O.(Ms).No.49 as well as G.O.(Ms).No.185 issued by Animal Husbandry, Dairying and Fisheries (AH6) Department.

6.3. In paragraph 6 of G.O.(Ms).No.58 dated 20.03.2018, the Government has stated that as has been done in similar cases to *Tvl. S. Mathiyazhagan* and *M. Thiyagarajan* by issuance of G.O.(Ms).No.49 and G.O.(Ms).No.185 dated 20.02.2013 and 22.09.2015 respectively, such benefit could be extended to fifteen persons, who had been appointed and regularized with effect from the year 2013 by virtue of G.O.(Ms).No.173.

6.4. Accordingly, the fifteen persons, who had been covered under the same G.O.(Ms).No.19 as well as G.O.(Ms).No.173, since have been given the benefit under G.O.(Ms).No.158, the writ petitioner/respondent, who is one such person seeking the benefit



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under G.O.(Ms).No.19 as well as G.O.(Ms).No.173, certainly would be entitled to seek same benefit, which he has sought by filing a writ petition, seeking directions by way of mandamus, which in fact has been considered in such a perspective, and based on the Government Orders, was allowed by the Writ Court, of course, correctly.

6.5. Insofar as the arguments that have been advanced by the learned Additional Government Pleader appearing for the appellant State, that in respect of some of the orders that have been passed by the Writ Court, where intra-Court appeals have been filed and interim orders have been granted against the learned Single Judge order and since those appeals are pending, the present benefit that has been sought to be extended to the present writ petitioner ought not to have been made, is concerned, we are not impressed with the same. The reason being that the very pendency of the writ appeal itself has become either infructuous or otios for the reason being that the Government has come forward to issue G.O.(Ms).No.58 dated 20.03.2018, where detailed discussion has been made as to how and why these people are regularized with effect from the date of original appointment.



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6.6. When the fifteen people who are similarly placed like the respondent/writ petitioner, who are given the benefit of G.O.(Ms).No.58, we do not find any reason why such benefit was not extended to the present respondent. More over, very recently in the year 2024, as we have stated *supra*, the Government has come forward to issue a further Government Order, whereby the services of at least 8 such candidates have been regularized with effect from the initial appointment, that is under G.O.(Ms).No.35 dated 10.03.2024.

6.7. The continuous and consistent stand of the Government in this regard is whoever have been appointed on regular basis by virtue of G.O.(Ms).No.19 and regularized by virtue of G.O.(Ms).No.173 are entitled to get the benefit of regularization with effect from the date of appointment, that is from 2007 as per G.O.(Ms).No.19. That position cannot be altered in one or two cases by way of pick and choose method, in our considered view, cannot be sustained.

7.1. Resultantly, for all the aforesaid discussions and reasons, the order passed by the learned Single Judge is to be sustained and accordingly, the same stands sustained and as a sequel, the writ



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appeal fails and hence it is dismissed.

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7.2. There shall be a direction to the appellant department to implement the order of the learned Single Judge, which is impugned herein and extend such benefit to the respondent/writ petitioner within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, C.M.P.No.27579 of 2024 is closed.

(R.S.K., J.) (C.S.N, J)
09.12.2024

Neutral Citation: Yes

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R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

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