
(2013) 04 MAD CK 0288

In the Madras High Court

Case No : Writ Petition No's. 8531, 8812 and 20021 of 2005 and WPMP No. 9214, 9516 of 2005 in Writ Petition No's. 8531, 8812 of 2005

V. Kalidass and Others

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 3 LLJ 431

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Gowrishankar for G. Jermiah, for the Appellant; S.V. Duraisolaimalai, AGP, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—W.P. Nos. 8531/2005, 8812/2005 and 20021/2005 are filed seeking a common relief.

(i) Writ Petition No. 8531/2005 is filed by four petitioners, namely, (1) V. Kalidass (2) V. Yadavan, (3) P.K. Kuselan and (4) G. Jayasankar for issuance of a writ of Certiorarified mandamus calling for the records of the 2nd respondent-the Commissioner for Milk Production and Dairy Development in his proceedings Rc. No. 15217/2004/M2 dated 20.12.2004 and the proceedings of the 3rd respondent-the Special Officer, Vellore-Tiruvannamalai District Co-operative Milk Producer's Union in Ref. No. 8120/P & A. 1/2004 dt. 21.12.2004 and quash the same and direct the respondents to regularise the petitioners service as per G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998.

(ii) Writ Petition No. 8812/2005 is filed by six petitioners, namely, (1) C. Panchatcharam, (2) P. Pitchimutthu, (3) R. Tamilselvam, (4) P. Manoharan, (5) V. Kumar and (6) B. Arul for issuance of a writ of Certiorarified mandamus calling for the records of the 2nd respondent in his proceedings Rc. No. 15727/2004/M2

dated 20.12.2004 and the proceedings of the 3rd respondent in Ref. No. 8431/P & A. 1/2004 dt. 21.12.2004 and quash the same and direct the respondents to regularise the petitioners' service as per G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998.

(iii) Writ Petition No. 20021/2005 is filed by D. Venkatesan and (2) S. Kandasamy for issuance of a writ of Certiorarified mandamus calling for the records of the 2nd respondent in his proceedings Rc. No. 14718/2004/M2 dated 29.12.2004 and quash the same and direct the respondents to regularise the petitioner's service as per G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998.

(i) Mr. S. Gowrishankar, learned counsel appearing for the petitioners submitted that the writ petitioners were recruited to the third respondent society in the year 1995. As they had registered their names in the District Employment Exchange with S.S.L.C. failed qualification after their initial appointment as casual employees they completed 480 days in a block period of two years. Therefore, the second respondent recommended to the first respondent-the Secretary to Government, Animal Husbandry and Fisheries Department to regularize the services of 46 technical persons and 64 casual labourers. The names of the petitioners were also found in the abovesaid recommendation. The first respondent after careful examination of the proposal submitted by the second respondent, issued G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998 in which the first respondent issued a direction regularizing the services of the persons listed in Annexure I and II to the abovesaid order. The learned counsel also pleaded that while passing the abovesaid order, the first respondent was fully conscious of the fact that all the petitioners possessed the prescribed qualification and the requisite age limit for the reason that they were appointed through the Employment Exchange. Their names were also found in Annexure II to the G.O., as casual labourers. But the respondents 2 and 3 did not take any efforts to implement the G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998. As a result, the petitioners submitted a representation to the 2nd respondent seeking regularization of their services, but the 2nd respondent has not taken any steps to regularize their services. Therefore, the petitioners filed W.P. No. 18063/2004 for issuance of a writ of mandamus to dispose of their representation on the basis of G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998. This court, while considering the case of the petitioners by order dated 14.07.2004 directed the respondents to consider the petitioners' representation and dispose of the same on or before 31.08.2004. Subsequently, when the order was not complied with, Contempt Petition No. 1031/2004 was filed. Only thereafter, the respondents 2 and 3 by the impugned order rejected the request of the petitioners for regularization, wrongly placing reliance in para 19 of the judgment of the Division Bench of this Court dated 24.10.2002 made in W.A. Nos. 2501/2001 and 2502 of 2001 and batch.

(ii) Learned counsel appearing for the petitioners also submitted that in spite of the direction given by this Court to consider the case of the petitioners in the light of G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.04.1998, the respondents 2 and 3 instead of considering the case of the petitioners in terms of para 18 of the said judgment which is applicable to them, wrongly applied para 19. Further, the learned counsel submitted that the judgment relied on by the respondents would not apply to them.

2. Mr. S.V. Duraisolaimalai, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the case of the petitioners has been properly considered by the first respondent in their G.O. (2D) No. 137, Animal Husbandry, Dairying and Fisheries (M.P. II) Department, 28.09.2007 stating that the service of 55 casual labourers who possesses the required age and educational qualifications and have completed 480 days within a period of 24 calendar months, be regularized at the entry level post with effect from 12.3.2001 as in the case of employees of Co-operative Societies in the light of the orders issued in G.O.Ms. No. 86, Co-operation, Food and Consumer Protection Department, dated 12.3.2001 by downgrading 35 posts, namely, 8 posts of Drivers, 22 posts of Technicians, 3 posts of Technicians (Lab) and 2 posts of Executive (Typist) as Junior Factory Assistants. Further, the Commissioner for Milk Production and Dairy Development also has been directed to upgrade these posts when the need for filling these posts (by promotion/transfer of service) arises, by reducing equivalent number in the cadre of Junior Factory Assistant. Therefore, when the case of the petitioners has been considered for regularization at the entry level post with effect from 12.3.2001, the petitioners cannot ask for the service benefits particularly, when the Government has come forward to give the monetary benefits from the date of issuance of the G.O. (2D) No. 137, Animal Husbandry, Dairying and Fisheries (M.P. II) Department, dated 28.09.2007.

3. (i) This Court is not able to subscribe the contentions made by Mr. S.V. Duraisolaimalai, learned Additional Government Pleader appearing for the respondents. The reason being, admittedly, the petitioners having joined in the year 1995 sponsored through District Employment Exchange, their services were fully utilized from the date of their entry into service. Hence, it must also be mentioned herein that as could be seen in the G.O. (2D) No. 137, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007, all these petitioners have completed their 480 days of continuous employment within a period of 24 calendar months. Besides, the first respondent, while passing G.O. (2D) No. 137, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007 was also satisfied with the age and educational qualifications possessed by all the petitioners. The G.O. (2D) No. 137, dated 28.09.2007 further states that they are entitled to have the relaxation from the application of the rule of reservation as provided in rule 149(3) of Tamil Nadu Co-operative Societies Rules 1988 since they have been in employment from 1995. The petitioners and their serial numbers shown in Annexure-I to G.O. (2D) No.

137, Animal Husbandry, Dairying and Fisheries (M.P. II) Department, dated 28.09.2007 are as follows:

A close reading of the above table clearly shows the correct picture as presented by the learned counsel for the petitioner that they have been continuously working for the past 12 years on the date of passing the order of regularisation. Moreover, in the matter of regularisation when the State Government has been consistently following G.O.Ms. No. 22, Personnel and Administrative Reforms Department, dated 28.02.2006 which gives regularisation to persons like the petitioners herein on completion of 10 years of continuous service, not following the uniformity in the present case, cannot be accepted.

(ii) One another vital fact needs to be mentioned herein is even at the time of passing the earlier G.O.Ms. No. 75, Animal Husbandry and Fisheries (M.P. II) Department, dated 21.4.1998, the first respondent has duly considered the case of the petitioners by properly including their names as casual employees to be regularized in the services of Cooperative Societies. But, unfortunately, when the case of the petitioners were directed to be considered by this Court in W.P. No. 18063/2004 dated 14.07.2004, instead of considering the case of the petitioners in the light of para 18 of the judgment of the Division Bench passed by this Court in W.A. Nos. 2501 and 2502 of 2001 and batch dated 24.10.2002 (L. Justine and Another v. The Registrar of Coop. Societies, Chennai-10 and Two Others), wrongly relying upon paragraph 19 of the said judgment, the respondent erroneously rejected the case of the petitioners by the impugned order, hence, it is more relevant to extract para 19 sub-clause (vi) of the said judgment hereunder.

(vi) that no cooperative staff member appointed subsequent to G.O.Ms. No. 86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001 otherwise than through employment exchange shall be continued in service and their services shall be terminated forthwith.

The abovesaid paragraph clearly shows that no cooperative staff member appointed subsequent to G.O.Ms. No. 86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001 otherwise than through employment exchange shall be continued in service and their services shall be terminated forthwith. Since all the case of the petitioners are falling under para 19(vi) of the judgment, the first respondent while passing the G.O. (2d) No. 137, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007 having accepted the case of the petitioners that they joined in 1995 and they have completed 480 days of service within a period of 24 calendar months, along with their age and educational qualifications, should have regularized their services and while regularizing the services with effect from 12.3.2001, arbitrarily cannot postpone the disbursement of monetary benefits from the date of issuance of G.O. (2D) No. 137, dated 28.9.2007, thereby denying the benefits of 12 long years of service. Therefore, this court while agreeing with the stand taken by the first respondent for issuing G.O. (2D) No. 137. Animal Husbandry, Dairying and

Fisheries (M.P. II) Department, dated 28.09.2007 in terms of paragraph 19(vi) of the judgment of the Division Bench of this Court in L. Justine v. Registrar of Co-op, Societies, Chennai-10 (supra) case, hereby holds that the first respondent should not have deprived the monetary benefits to the petitioners by giving only from the date of issuance of the G.O. Dated 28.9.2007.

(iii) Therefore, this Court accepting the date of regularization as 12.3.2001, by quashing the G.O. only in respect of denial of monetary benefits to the petitioners, directs the respondents 1, 2 and 3 to give the monetary benefits from the date of regularization, namely, 12.3.2001. This exercise should be done within a period of 3 months from the date of receipt of a copy of this order.

With this observation, Writ Petition Nos. 8531/2005, 8812/2005 and 20021/2005 stand allowed. No costs. Consequently, connected pending M.Ps. are closed.