

W.P.(MD)No.11599 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On :11.05.2023
Pronounced On :02.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.11599 of 2023
and
W.M.P.(MD).No.10080 of 2023

- 1.Dr.V.Selvendran
- 2.Dr.K.Vijayabaskar
- 3.Dr.P.Chinnamaruthupandy
- 4.Dr.M.P.Karunakaran
- 5.Dr.C.Karuppuchamy
- 6.Dr.K.Ragu
- 7.Dr.S.Balamurugan
- 8.Dr.A.R.R.Bapuji
- 9.Dr.K.Selvam
- 10.Dr.G.Kameshkannan
- 11.Dr.Rajamohan Paramasivam
- 12.Dr.M.Suresh



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13.Dr.M.R.Ramakrishnan

14.Dr.V.Thanikaivel

15.Dr.S.Dhanabal

16.Dr.C.Boopathi

17.Dr.N.Murugarajan

18.Dr.V.Asir Edwin

19.Dr.P.Sureshkumar

20.Dr.R.Balasubramanian

... Petitioners

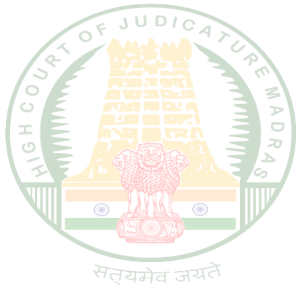
Vs.

1.The Government of Tamil Nadu,
Rep by the Principal Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Secretariat, Chennai.

2.The Director,
Office of Animal Husbandry and Veterinary Services,
No.571, Anna Salai, Nandhanam,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents herein to consider the claim of the petitioners for allowing them to continue in the post of Veterinary Assistant Surgeon with pay protection (regular time scale of pay) alone till the date of their retirement on attaining the age of superannuation, without even retirement or pensionary benefits and to pass appropriate orders.



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For Petitioners : Mr.M.Ravi

For Respondents : Mr.R.Baskaran

Additional Advocate General assisted by

: Mr.V.Nirmal Kumar

Government Advocate

ORDER

The writ petitioners had filed this writ petition for a Mandamus to direct the respondents to allow the petitioners to continue in the post of Veterinary Assistant Surgeon with pay protection (regular time scale of pay) alone till the date of their retirement on attaining the age of superannuation, without even retirement and terminal benefits and pass orders appropriately.

2. The brief facts as stated in the affidavit are that the petitioners have acquired B.V.Sc., degree and they registered their names in the Professional Executive Employment Exchange. During the year 2011, the Government appointed 843 Veterinary Assistant Surgeons through Employment Exchange and their appointments are under Rule 10 (a) (i) of the State Subordinate Service Rules by following the rules of roster.



3. The petitioners were under the impression that they would be regularized upon clearing the Special Qualifying Examinations that would be conducted by Tamil Nadu Public Service Commission. Considering the peculiar circumstances, in which the petitioners were appointed, the Government issued G.O.Ms.No.104 dated 20.05.2014, Animal Husbandry, Dairying and Fisheries (AH-7) Department and took a policy decision to undergo Special Qualifying Examination so that the petitioners' services would be regularized. Unfortunately, instead of issuing separate notification, a common notification was issued from the open market candidates to participate in the competitive examination and for the temporary appointees to participate in the Special Qualifying Examination and the same has resulted in challenging by the open market candidates and the litigations ended up against the writ petitioners.

4. In fact, the Government intended to protect the interest of the writ petitioners. Hence, the Government came out with the policy decision to protect their interest. Accordingly, the petitioners preferred an interim application before the Supreme Court for suitable relief enabling regularization of service after obtaining concurrence from the Tamil Nadu Public Service Commission. In view of the



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peculiar circumstances, wherein 573 posts of Veterinary Assistant Surgeons were filled up through employment exchange, after following the rule of roster, the consistent decision of the Government, the petitioners were under the impression that they would be regularized. However, the Hon'ble Supreme Court was declining to accept the proposal to regularize the services of the petitioners and other 573 similarly placed persons upon clearing the competitive examination with the occurrence of the Tamil Nadu Public Service Commission.

5. The further case of the petitioners is that they have demonstrated and established the eligibility and suitability for the regular appointment by their actual and physical services put in for more than a decade. Since there were more disadvantageous position, where they have to compete with youngsters that too after the change in curriculum for more than two times and lack of time for theoretical preparation, in view of continuous services in the said post resulting in depriving them from a “Level Playing Field”. Youngsters from the open market, who had recently equipped themselves with theoretical knowledge in tune with the recent curriculum will definitely push the petitioners in a disadvantageous position.



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6. In view of the fact that the notification was issued beyond the time limit prescribed by the Hon'ble Supreme Court, there were other infirmities such as sudden introduction of Tamil eligibility test etc., which would cause serious prejudice to the in-service candidates, some of the writ petitioners had preferred W.P. (MD).No.27798 of 2022 and the same was dismissed, against which, W.A.No.1514 of 2022 was filed stating that because of delay in issuance of notification atleast more than 500 persons have become eligible from open market and thereby caused more damages to the petitioners. However, without accepting the contention of the petitioners, the said appeal was dismissed with liberty to approach the Supreme Court. Therefore, the petitioners have come up with a new proposal that they ought to have been permitted to continue in the said post till their retirement and they are eligible only for time scale of pay without any terminal benefits and pensionary benefits.

7. The respondents represented by the learned Additional Advocate General submitted that the notification of the Government is to regularize the petitioners' services. Hence, the claim of the petitioners was considered and the Government has filed a miscellaneous petition before the Supreme Court to regularize their services.

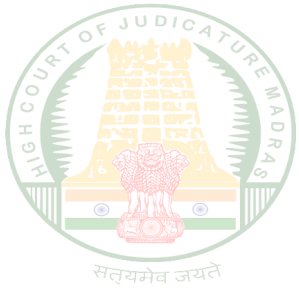


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However, the Hon'ble Supreme Court declined the proposal of the Government as well as declined the prayer of the writ petitioners and has taken into consideration the fact that the petitioners were in service for more than 10 years and directed the Government to give weightage to the writ petitioners. Hence, the Government has taken a policy decision as per the said direction to grant 50 marks to the in-service candidates and also granted age relaxations. For this contention, the learned counsel for the petitioners would submit that even though 50 marks is granted to the in-service candidates, the syllabus had changed for two times. Therefore, the petitioners would not be in a position to compete with the youngsters. Moreover, there was lack of time to prepare from the new syllabus due to their continuous service in the post. Since the petitioners were in-service candidates, they were not granted sufficient time to prepare for theory as well as practical and hence, there is difficulty in passing such examination.

8. The learned counsel appearing for the respondents relied on the judgment rendered by the Hon'ble Supreme Court, wherein it is stated as extracted here under:

(ii) As far as 573 appointees under Rule 10A (many of whom are appellants before this Court) are concerned, we are of the view that they should not be permitted to be regularized in the manner proposed by the State. However, we grant the relief in the



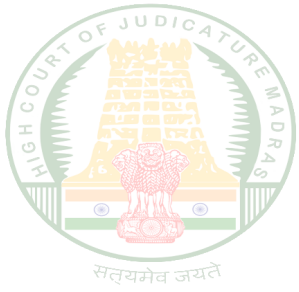
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following manner:

(a) the appellant-State in Civil Appeal Nos. 4353-54/2016 will proceed to notify vacancies including the vacancies held by the appellants before us as also all the Rule 10A appointees.

(b) The appointees under Rule 10A will be granted the benefit of upper age relaxation so that they are entitled to apply and be considered with anybody else who is eligible to apply and applies.

(c) The appointees under Rule 10A including the appellants before us will be afforded weightage of marks towards weightage of experience in the selection process. The weightage will consist of marks at the rate of 5 marks for every year, which is subject to a maximum of 50 marks. This, we are ordering on the basis of the submissions of Mr.Jaideep Gupta, learned senior counsel, that as far as the scheme of recruitment process is concerned, the selection is made on the basis of written examination which consists of a total of 500 marks, split up into two papers, of which, in one paper, the maximum marks is 300 and for the second paper, the maximum marks is 200. The recruitment procedure, according to Mr.Jaideep Gupta, also entails a viva voce for which the maximum marks is 70. Therefore, we proceed on the basis that the total marks on the basis of which selection is to be made is 570.



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(d) Mr.V.K.Shukla, learned senior counsel, in I.A.No.46554/2022 submitted that his clients had applied pursuant to the notification issued in the year 2019 and they find their place in the reserve list. They are not claiming to be appointees under Rule 10(a) (i).

As far as the said persons are concerned, it is for them to work out their remedies in accordance with law with reference to them being in the reserve list. It is, in fact, submitted by Mr.V.K.Shukla, learned senior counsel, that a writ petition filed at their instance has been dismissed on the score that the matter is pending consideration before this Court. We leave it open for the clients represented by Mr.V.K.Shukla, learned senior counsel to work out their remedies in accordance with law.

In view of the directions which we have passed, the impugned judgment will stand modified accordingly in the above terms.

The appellants (the appointees under Rule 10 (a) (i) shall be permitted to continue. The recruitment process should be concluded by the Tamil Nadu Public Service Commission on or before 31.12.2022. The Public Service Commission will issue the advertisement within one month thereafter.

In the notification inviting applications, the Public Service Commission shall specifically indicate that Rule 10A appointees (573 in number) will be granted the benefit of relaxation from age and also the addition of weightage of marks towards their experience in terms of the order passed by this Court.



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The appellants/Rule 10A appointees shall be permitted to continue.

In this regard, all the concerned departments working under the appellant (State) will report the vacancies including the 573 vacancies held by appointees under Rule 10A and any other vacancies available as per law, within a period of four weeks to the Tamil Nadu Public Service Commission.

Though all the Rule 10A appointees have not filed appeals, in facts, we do think that this order of benefit of continuance of all appointees of Rule 10A can be extended to all persons appointed (573 appointees under Rule 10 (a) (i)). Therefore, the benefit of continuance till the selection is complete will extend to even those who have not filed appeals but who are part of 573 persons appointed under Rule 10A.

The appellants/10A appointees shall be allowed to continue till the process of selection is completed.

9. When the Hon'ble Supreme Court has issued such a direction after considering the plight of the 573 candidates, this Court is of the view that there is no question of modifying the said direction issued by the Hon'ble Supreme Court on this issue. When the respondents have come out with a policy decision to grant 50 marks for the in-service candidates, now the petitioners would be in a better position compared to the youngsters from open market. Therefore, this Court is of the



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considered opinion that the petitioners shall compete in the examination. After granting the weightage of 50 marks, if the in-service candidates are passed, they would continue in the service.

10. However the Learned Senior Counsel for the petitioner submitted the government may consider to retain the 20 writ petitioners alone, if they failed in the examination. The Government may pay the salary alone (time scale of pay) and the said 20 writ petitioners would give up the retirement and terminal benefits. Since some of the petitioners are more than 50 years, at this age they cannot seek any public employment. They are having family to support, they have to support the elders, some of the writ petitioners' children are studying. Moreover, if at this age they lose their job, it would have social stigma to the entire family. The Learned Senior Counsel further submitted that this concession would be beneficial to the Government also, since the Government would be benefited financially, since the said 20 writ petitioners are given up their terminal and retirement benefits. The said concession is attractive and any Court would grant such relief, provided if the litigation arises for the first time. Unfortunately, the earlier round of litigation went upto Hon'ble Supreme Court and the petitioners had lost. The writ petitioners have

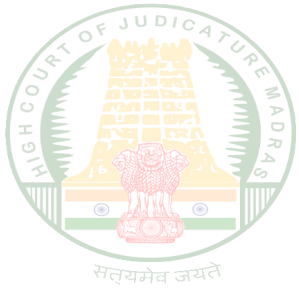


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an option to go before the Government and the Government may consider to continue such candidates till their retirement. In fact, the government had come forward to regularize their services based on the Special Qualifying Examination. But the Hon'ble Supreme Court has declined the concession granted by the government. At this juncture the Learned Additional Advocate General submitted now the Government also not in a position to consider the claim of the petitioners, since the Government's proposal was also declined by the Hon'ble Supreme Court. Therefore, this Court is of the considered opinion that it would be appropriate to approach the Hon'ble Supreme Court for such direction.

11. Losing a job, that too after serving for more than 10 years would be stressful in many ways and can impact several aspects of life. It not only leads to uncertainty, financial loss, job search stress but also impacts self-esteem negatively and in many cases trigger identity crisis. Such can be the impact that a person may feel uncomfortable mingling with other people, attending social events or even talking to their family members fearing judgment from them. Prolonged unemployment can even be more devastating as after remaining jobless for a considerable period of time, a person becomes hopeless, pessimistic and



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demotivated which over a period of time can affect their personality. Therefore, this Court is of the considered opinion that the present 20 writ petitioners and any persons above the age of 45, ought to be considered for continue in the service until their retirement with only time scale of pay without any retirement and terminal benefits. The petitioners shall submit an application along with affidavit to give up the retirement and terminal benefits before the government as well as before the Hon'ble Supreme Court. Until the outcome of the results before the Hon'ble Supreme Court the present 20 writ petitioners may be allowed to continue in service.

12. With the above observations and direction, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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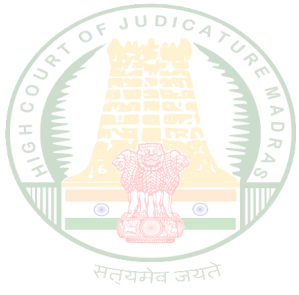
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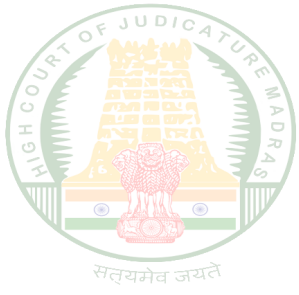


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To

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The Government of Tamil Nadu,
Animal Husbandry, Dairying and Fisheries Department,
Secretariat, Chennai.
- 2.The Director,
Office of Animal Husbandry and Veterinary Services,
No.571, Anna Salai, Nandhanam,
Chennai.



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S.SRIMATHY, J

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