

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 6.2.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.29539 of 2011

A.Chellamariappan

... Petitioner

versus

1.The Registrar of Coop. Societies,
N.V.N.Maligai, Kilpauk, Chennai 10.

2.The Addl. Registrar of Coop. Societies,
(Marketing, Planning and Development),
N.V.N.Maligai, Kilpauk, Chennai 10.

3.The Management of Kilpauk Women's
Consumers Coop. Stores Ltd., XNC 668,
rep. By its Special Officer,
No.37, Mandapam Road,
Kilpauk, Chennai 10.

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.53502/2010/Sa.Pa.1 dated 21.9.2010 passed by the 2nd respondent herein and quash the same and consequently direct the 3rd respondent to consider the petitioners case for regularization of service in the post of ration shop packer in the 3rd respondent society with all attendant benefits from the date of regularization.

For petitioner

Mr.T.Sundaravadanam

For respondents 1 and 2

Ms.T.P.Savitha, Government Advocate

For 3rd respondent

Mr.R.Karunagaran

O R D E R

This Writ Petition is directed against the order dated 21 September 2010, on the file of the 2nd respondent rejecting the case of the petitioner for regularization.

2. The petitioner was appointed as ration shop packer on 15 March 1993, by the then Special Officer of Kilpauk Women's Consumer Coop. Stores Ltd. The petitioner was given consolidated wages. The appointment was made by following regular process of selection and it

was within the cadre strength sanctioned by the Registrar of Cooperative Societies. The petitioner made several representations requesting the authorities to regularize his services. Finally, the petitioner filed a Writ Petition in W.P.No.14044 of 2010, to direct the first respondent to consider his revision petition. This Court passed an order dated 5 July 2010 directing the respondent to consider the revision petition and pass orders within a period of 8 weeks.

3. The first respondent forwarded the papers to the second respondent to take follow up action in the matter, pursuant to the orders passed by this Court. The second respondent rejected the claim for regularization primarily on the ground that appointment was not made through employment exchange. The said order is challenged in this Writ Petition.

4. The third respondent filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition. According to the third respondent, the petitioner was temporarily appointed as ration shop packer on consolidated pay. The appointment was not made through employment exchange. Since the employment exchange was not consulted, it was an irregular appointment. The third respondent admitted that the petitioner is still working as an employee of the society.

5. The learned counsel for the petitioner contended that the first respondent has passed several orders, regularizing services of employees like the petitioner. According to the learned counsel, the petitioner is also similarly situated and as such, the second respondent erred in rejecting the request for regularization. The learned counsel placed reliance on an earlier order passed by the first respondent in support of his contention that under similar circumstances, service of another salesman was regularized.

6. I have also heard the learned Government Advocate on behalf of the respondents.

7. There is no dispute that the petitioner was appointed as ration shop packer by the third respondent. The appointment was made against a sanctioned post. The counter affidavit filed by the third respondent clearly shows that there was no violation of the cadre strength by appointing the petitioner. The fact that the petitioner was not sponsored by the employment exchange appears to be the reason which made the second respondent to reject the request made by him for regularization.

8. The Supreme Court in Excise Supdt. v. K.B.N. Visweshwara Rao, (1996) 6 SCC 216, clearly held that the appointing authority should advertise the post besides calling upon the employment exchange to sponsor candidates. Sponsorship through employment exchange is one among the many mode of calling for applications. Merely because name

of the petitioner was not sponsored by employment exchange, it cannot be said that it was an irregular appointment. It was neither an illegal appointment nor an irregular appointment. The second respondent has no case that the third respondent violated the procedure and appointed the petitioner through back door. Even the third respondent admitted that the selection process was undertaken by him to appoint the petitioner. Such being the position, the second respondent erred in rejecting the request made by the petitioner for regularization.

9. The Supreme Court in *State of Karnataka v. Umadevi*, (2006) 4 SCC 1, directed the authorities to consider the case of employees for regularization, in case they have completed ten years of service. The relevant observation reads thus :-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

10. The petitioner in this case has completed 22 years of service. He is still working on consolidated pay. This aspect was not considered by the revisional authority. I am therefore of the view

that the matter requires fresh consideration by the second respondent.

11. In the result, the impugned order is set aside. The second respondent is directed to consider the case of the petitioner for regularization in the light of the law declared by the Supreme Court in Uma Devi and taking into account the order passed by the first respondent dated ***14th September 2009**. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

12. The Writ Petition is allowed. No costs. Consequently, M.P.No.1/2011 is closed.

Sd/-

Assistant Registrar

24.2.2015

*Corrected as per order dated 30.3.2015
made herein

Sd/-

Assistant Registrar

1.4.2015

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar of Coop. Societies,
N.V.N.Maligai, Kilpauk, Chennai 10.

2.The Addl. Registrar of Coop. Societies,
(Marketing, Planning and Development),
N.V.N.Maligai, Kilpauk, Chennai 10.

3.The Management of Kilpauk Women's
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rep. By its Special Officer,
No.37, Mandapam Road,
Kilpauk, Chennai 10.

to be substituted
for the order already
despatched on 2.3.2015

1 cc to Government Pleader, Sr.No.17653/15

1 cc to Mr. T.Sundaravadanam, Advocate, SR.No.6522

W.P.No.29539 of 2011

ug(co)

pmk.24.2.2015

pmk.1.4.2015