



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition(MD)Nos.14737, 14790, 13416, 10299, 9617 to 9621 and
13562 of 2016

and

Connected Miscellaneous Petitions

S.NAGASUBRAMANIAN	... PETITIONER in WP(MD) No.14737 of 2016
SATHIYAMOORTHY	... PETITIONER in WP(MD) No.14790 of 2016
K.CHARLES JEBARAJ	... PETITIONER in WP(MD) No.13416 of 2016
K.MANOCHARAN	... PETITIONER in WP(MD) No.10299 of 2016
M.RAJENDRAN	... PETITIONER in WP(MD) No.9617 of 2016
A.IRULAPPAN	... PETITIONER in WP(MD) No.9618 of 2016
G.BALASUBRAMANIAN	... PETITIONER in WP(MD) No.9619 of 2016
TMT.M.SAINAS BEGAM	... PETITIONER in WP(MD) No.9620 of 2016
S.CHANDRAN	... PETITIONER in WP(MD) No.9621 of 2016
A.ARULANATHAM	... PETITIONER in WP(MD) No.13562 of 2016

vs.

1 THE JOINT REGISTRAR,
COOPERATIVE SOCIETIES, MADURAI.

2 THE SECRETARY
MELUR COOPERATIVE SOCIETY,
MELUR MADURAI DISTRICT. ...RESPONDENTS in WP(MD)No.14737 of 2016

1 THE JOINT REGISTRAR OF COOPERATIVE SOCIETIES,
MADURAI DISTRICT, MADURAI

2 THE SECRETARY,
M.D.SPL.47, PRIMARY AGRICULTURAL COOPERATIVE,
CREDIT SOCIETY,S.MEENAKSHIPURAM,
SOWDARPATTI POST, TIRUMANGALAM TALUK,
MADURAI DISTRICT. ... RESPONDENTS in WP(MD) No.14790 of 2016

1 THE MANAGING DIRECTOR,
TAMIL NADU CO-OPERATIVE MILK PRODUCERS,
FEDERATION LTD. AAVIN ILLAM MADHAVARAM
MILK COLONY CHENNAI - 600 051.



2 THE GENERAL MANAGER,
TIRUNELVELI DISTRICT CO OPERATIVE
MILK PRODUCERS UNION LIMITED,
TIRUNELVELI -7. ... RESPONDENT(s) in WP(MD) No.13416 of 2016

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1 THE GOVERNMENT OF TAMILNADU,
REP. BY ITS SECRETARY TO GOVERNMENT,
ANIMAL HUSBANDRY DAIRYING AND FISHERIES DEPARTMENT,
FORT.ST.GEORGE,
CHENNAI -600 009

2 THE COMMISSIONER OF MILK PRODUCTION
AND DAIRY DEVELOPMENT,
MADHAVAM MILK COLONY,
MADHAVARAM, CHENNAI- 600 051.

3 TAMIL NADU CO-OPERATIVE MILK PRODUCERS FEDERATION LTD.
REP. BY ITS MANAGING DIRECTOR,
MADHAVARAM MILK COLONY,
MADHAVARAM, CHENNAI-600 051

4 THE GENERAL MANAGER,
MADURAI DISTRICT CO-OPERATIVE
MILK PRODUCERS UNION LTD.
SATHAMANGALAM,
MADURAI-625 020 ... RESPONDENTS in WP(MD) No.10299, 9617 TO
9621 AND 13562 of 2016

Prayer in WP(MD) No.14737 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, directing the respondents to allow the petitioner to work as a sales man in the 2nd respondent society up to the age of 60 years with all benefits.

Prayer in WP(MD) No.14790 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and Mandamus to call for the records pertaining to the order of the 2nd respondent passed in his proceedings Nil dated 06.08.2016 and quash the same as illegal and consequently directing the respondents to allow the petitioner to work as salesman in the 2nd respondent society up to the age of his 60 years falling on 31.08.2018 with all benefits.

Prayer in WP(MD) No.13416 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to allow the petitioner to work as Selection Grade



Senior Factory Assistant up to the age of completion of 60 years. i.e., 31.07.18 and pay all service and monetary benefits.

Prayer in WP(MD) No.10299 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to Direct the Respondents to allow the Petitioner to work as Selection Grade Mazdoor under the 4th Respondent, Madurai District Co-operative Milk Producers Union Ltd., Sathamangalam, Madurai, up to the age of 60 years with all attendant and monetary benefits.

Prayer in WP(MD) No.9617 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus direct the respondents to allow the petitioner to work as Selection Grade Mazdoor under the 4th respondent, Madurai District co-operative Milk Producers Union Ltd., Sathamangalam, Madurai up to the age of 60 years with all attendant and monetary benefits and to pass any other further or other orders as this Honble Curt may deem fit.

Prayer in WP(MD) No.9618 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus direct the respondents to allow the petitioner to work as Selection Grade Mazdoor under the 4th respondent, Madurai District co-operative Milk Producers Union Ltd., Sathamangalam, Madurai up to the age of 60 years with all attendant and monetary benefits and to pass any other further or other orders as this Hon'ble Curt may deem fit.

Prayer in WP(MD) No.9619 of 2016:

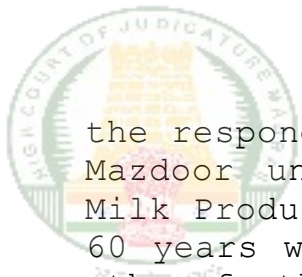
Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus direct the respondents to allow the petitioner to work as Selection Grade Mazdoor under the 4th respondent, Madurai District co-operative Milk Producers Union Ltd., Sathamangalam, Madurai up to the age of 60 years with all attendant and monetary benefits and to pass any other further or other orders as this Honble Curt may deem fit.

Prayer in WP(MD) No.9620 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus direct the respondents to allow the petitioner to work as Selection Grade Mazdoor under the 4th respondent, Madurai District co-operative Milk Producers Union Ltd., Sathamangalam, Madurai up to the age of 60 years with all attendant and monetary benefits and to pass any other further or other orders as this Hon'ble Curt may deem fit.

Prayer in WP(MD) No.9621 of 2016:

<https://hcservices.ecourts.gov.in/hcservices/> Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus direct



the respondents to allow the petitioner to work as Selection Grade Mazdoor under the 4th respondent, Madurai District co-operative Milk Producers Union Ltd., Sathamangalam, Madurai up to the age of 60 years with all attendant and monetary benefits and to pass any other further or other orders as this Hon'ble Court may deem fit.

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Prayer in WP(MD) No.13562 of 2016:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus to call for the records relating to impugned order passed by the 4th respondent in his proceedings in Na.Ka.No.664/Pa. Ku3/2016-1 dated 27.04.2016 and quash the same as illegal and consequently direct the respondents to allow the petitioner to continue in service as Special Senior Mazdoor till he reaches the age 60 prescribed for the basic service.

Appearance of the counsel for the petitioner:-

Mr.K.Muthumalai (WP.14737/16)
Mr.T.Lenin Kumar (WP.14790/16)
Mr.H.Arumugam (WP.13416/16)
Mr.M.Saravanakumar (WP.10299, 9617 to 9621/16)
Mr.N.AnandaKumar (WP.13562/16)

Appearance of the counsel for the respondents:-

Mr.Murugan, Government Advocate
(WP.10299, 9617 to 9621 & 13562/16)
Mr.Aayiram K.Selvakumar, Government Advocate
(WP.13416/16)
Mr.R.Anandharaj, Government Advocate
(WP.14737 & 14790/16)
Mr.T.S.Mohammed Mohideen,
Additional Government Pleader
(For the 2nd respondent in WP.14737/16)

COMMON ORDER

Writ Petition(MD)Nos.14737, 13416, 10299 and 9617 to 9621 of 2016 have been filed seeking issuance of a Writ of Mandamus, directing the respective respondents to allow the respective petitioners to work as Salesman, Selection Grade Senior Factory Assistant and Selection Grade Mazdoor respectively, in the respective respondent's Co-operative Society upto the age of 60 years, with all service and monetary benefits.

1.1.Writ Petition(MD)Nos.14790 and 13562 of 2016 have been filed by the petitioners, challenging the impugned orders dated 06.08.2016 and 27.04.2016, passed by the respondents 2 and 4 respectively, relieving the petitioners from service, on the ground that they have attained the age of superannuation of 58 years, to quash the same, with a consequential direction to the



respondents to allow them to work as Salesman and Special Senior Mazdoor in the respective respondent's Co-operative Society upto the age of 60 years with all service and monetary benefits.

1.2. Since the issue raised in all these writ petitions is common, all the writ petitions are disposed of by this common order.

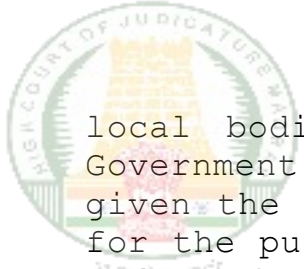
2. It is the common claim of the petitioners in all these cases that since the posts in which they are working namely, Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively, fall under the classes and categories of Government servants under the Special Rules for the Tamil Nadu Basic Service which will form Section 19 in Volume-III of Service Manual, they are entitled to continue in service upto the age of 60 years.

3. Placing reliance upon Bylaw No.12 of the Model Bylaws relating to Service Conditions of the Employees of the Co-operative Societies, it has been contended on behalf of the petitioners that in the matter of age of retirement from the service of the society, the rules applicable to the Government servants shall be followed, therefore, the first proviso to Rule 56(1)(a) of the Fundamental Rules would apply to the case of the petitioners, which states that all basic servants shall retire on attaining the age of sixty years.

4. It is further contended that the petitioners are neither officers of the concerned Co-operative Societies nor their posts come under the definition of the word, 'Officer', as defined under Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, therefore, they are entitled to continue in service upto the age of 60 years.

5. Referring to 97th Amendment to Article 226 of the Constitution of India, it is further contended that after Part IX-B was inserted by Constitution (Ninety-seventh Amendment) Act, 2011, with effect from 15.02.2012, there is a constitutional requirement now to incorporate the Co-operative Societies to promote the ideal of "Each for all and all for Each", therefore, the Co-operative Societies have now been given an elevated status on account of the abovesaid amendment.

6. It is also submitted that the Apex Court in **Vipulbhai M. Chaudhary vs. Gujarat Coop. Milk Marketing Fedn. Ltd. [2015(3) Scale 841]**, has clearly held that the whole concept of co-operatives has undergone a major change on account of ninety seventh amendment, because the Co-operative Societies are conferred a constitutional status by 97th Amendment. The statement of objects and reasons would show that the Constitution wanted the



local bodies to function as vibrant democratic units of self-Government and after two decades, Co-operative Societies were given the constitutional status by including them under Part IX-B for the purpose of ensuring their autonomy, democratic functioning and professional management. Therefore, a Co-operative Society registered under the Co-operative Societies Act is amenable to Writ jurisdiction under Article 226 of the Constitution. On this basis, it was further contended that in the face of Part IX-B of the Constitution, it cannot be contended that the writ petition is not maintainable against Co-operative Societies.

7. Again, coming to the merits of the cases, it has been contended that Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, 1988, clearly says that in the matter of appointment and retirement of the co-operative employees, the rules applicable to the Government servant shall be followed, therefore the first proviso to Rule 56(1)(a) of the Fundamental Rules of the Tamil Nadu Government, stating that all basic servants shall retire on attaining the age of 60 years alone would apply to the case of the petitioners, because the posts in which the petitioners are working namely, Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively, fall under the Tamil Nadu Basic Service.

8. Adding further, it has been contended that when Rule 56(1)(a) of the Fundamental Rules classifies two categories of Government servants namely, Government servants who are treated as in superior service shall retire from service on attaining the age of 58 years and Government servants who are treated as in basic service shall retire from service on attaining the age of 60 years, there cannot be any quarrel that the petitioners being Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively, which are not treated as superior service, are entitled to continue in service upto the age of 60 years, as per Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, 1988, read with first proviso to Rule 56(1)(a) of the Fundamental Rules.

9. In W.P.(MD)Nos.14737 and 9621 of 2016, separate counter affidavits have been filed. On behalf of the respondents in W.P.(MD)Nos.10299, 9617 to 9621 & 13562/16 Mr.Murugan, learned Government Advocate; for the respondents in W.P.(MD)No.13416/16, Mr.Aayiram K.Selvakumar, learned Government Advocate, Mr.R.Anandharaj, learned Government Advocate for the respondents in W.P.(MD)Nos.14737 & 14790/16 and Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader for the 2nd respondent in W.P.(MD)No.14737/16, made following submissions.



It is submitted that the respondents/Co-operative Societies have been registered under the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder, therefore, no Writ will lie against the Co-operative Society.

10. Adding further, it is submitted that the petitioners are working as Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively. According to the respondents, the post of Salesman is not listed under the classes and categories of Tamil Nadu Basic Service and the said post is being filled up through promotion from the feeder category post of 'Packer' as well as by direct recruitment, thus the said post does not come under the Tamil Nadu Basic Service. Further, the post of Senior Factory Assistant in Co-operative Societies, is governed by the Standing Orders under the Factories Act. With regard to the age of retirement from the services of the Co-operative Societies, Bylaw No.10(3) of the Society says that the rules applicable to Tamil Nadu Government Servant shall be followed, therefore, when the petitioners do not come under the Basic Service, their retirement age is only 58 and not 60. hence, the petitioners have no *locus* to file the present writ petitions.

11. It is further contended that it is a well settled proposition of law that a Co-operative Society is not a 'State ' or 'Instrumentality' nor discharging 'public duty' as such not attracted by Article 12 of the Constitution of India. Besides, as per the Larger Bench decision of this Court in the case of **Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal**, reported in **2006 (6) CTC 689**, no Writ is maintainable against Co-operative Societies. The same view has been reiterated by the Supreme Court in **U.P State Spinning Co-operative Limited vs. R.S.Pandey and another**, reported in **2006 SCC (L & S 78)**. For these reasons, it is pleaded, the writ petitions are liable to be dismissed *in limine*.

Heard the learned counsel for the parties and perused the materials available on record.

12. The first contention made on behalf of the respondents that Writ against Co-operative Societies is not maintainable, is no longer entertainable, in view of 97th Amendment to Article 226 of the Constitution of India, came into force with effect from 15.02.2012, by which, Co-operative Societies have been given constitutional status, by including them under Part IX-B of the Constitution. While dealing with the subsequent status of the Co-operative Societies pursuant to 97th Amendment, the Apex Court in **Vipulbhai M. Chaudhary's case** (cited supra), has clearly and categorically held that Co-operative Societies having been conferred a constitutional status by 97th Amendment, the whole concept of co-operatives has undergone a major change. It is,



therefore, necessary to extract below paragraphs 10, 11, 12, 15, 16 & 28 of the said judgment:-

"10. Article 43B of the Constitution of India provides for promotion of cooperative societies:

"43B. The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies."

(Emphasis supplied)

11. Part IXB of the Constitution of India is titled as "The Cooperative Societies". A few provisions would be relevant for our consideration.

Article 243ZH(b) defines "board":

"243ZH(b) "board" means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to;"

(Emphasis supplied)

Article 243ZH(c) defines "cooperative society":

"243ZH(c) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;"

.....

Article 243ZT provides for continuance of the existing laws: "243ZT. Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety Seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.'."

(Emphasis supplied)

12. Thus, by 12.01.2013, all laws on cooperative societies were bound to be restructured in consonance with the Ninety Seventh Amendment of the Constitution of India and, in any case, any provision in the Act or Rules or Bye-laws otherwise inconsistent with the Constitution will be inoperative thereafter. Articles 43B and 243ZT are mandates to all the States and the competent authorities to structure cooperative societies as conceived in the Constitution of India, if not already there. Therefore, we have to see whether the Act, Rules or Bye-laws contain any provision for democratic functioning.



15. The cooperative societies having been conferred a constitutional status by the Ninety Seventh Amendment, the whole concept of cooperatives has undergone a major change. In 1993, the local self-governments, viz., panchayats and municipalities were also given constitutional status under Parts IX and IXA of the Constitution of India by the 73rd and 74th Amendments. The Statement of Objects and Reasons would show that the Constitution wanted the local bodies to function as vibrant democratic units of self-government. After two decades, cooperative societies were given the constitutional status by including them under Part IXB. The main object for the said amendment was also to ensure "their autonomy, democratic functioning and professional management".

16. The National Policy on Cooperatives announced in March 2002 has recognized democracy, equality, equity and solidarity as values of cooperatives. Cooperative society has been declared as a democratic institution. Democratic principles have all through been recognized as one of the cooperative principles though the constitutional affirmation of those principles came only in 2012.

28. Where the Constitution has conceived a particular structure on certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. ... "The job of the Supreme Court is not to expound the meaning of the constitution but to provide it with meaning"[6]. The reference obviously is to United States Supreme Court. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so. ... "It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express"[7]. According to Lord Mersey in Thompson (Pauper) v. Goold and Co.[8]... "It is a strong thing to read into an Act or Parliament words, which are not there, and in the absence of clear necessity, it is wrong to do". In the case of cooperative societies, after the Ninety Seventh Amendment, it has become a clear or strong necessity to do the strong thing of reading into the legislation, the constitutional mandate of the cooperative societies to be governed as



democratic institutions. ... "The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity"[9].''

13. Again, the Hon'ble Apex Court in ***Usha Bharti vs. State of Uttar Pradesh***, reported in **2014 (7) SCC 663**, has reiterated that once a Co-operative Society is conferred a constitutional status, it should rise to constitutional aspirations as a democratic institution. It is, therefore, necessary to extract the relevant portion thereof as under:-

''..... Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243ZT has given a period of one year to frame/reframe the statutes in consonance with Part IXB and thereafter, i.e., with effect from 12.01.2013, those provisions which are inconsistent with Part IXB, cease to operate.''

14. The above ruling of the Apex Court makes it clear that Co-operative Societies having been conferred a constitutional status by 97th Amendment, the whole concept of co-operatives has undergone a major change, therefore, the contention made on behalf of the respondents that the present writ petitions filed against the respondents' Co-operative Societies, are not maintainable both on law and on facts, is wholly misconceived.

15. The second contention made on behalf of the respondents that the employees working in Co-operative Societies are governed by the provisions of the Factories Act, and under the Factories Act, the retirement age of the employees is only 58 years, further, the special Bylaws for the employees of TCMPF was formulated by the Tamil Nadu Co-operative Milk Producers' Federation Limited, which is registered by the competent authority with effect from 11.01.2008 under Section 11(5) of the Act, is also liable to be rejected, as it is bereft of any merit for two reasons. Firstly, it is the admitted case of the respondents in paragraph 9 of the counter affidavit filed in W.P(MD)9621/16 that considering the retirement age of 60 years to Office Assistants working in Government coming under the Basic Service in Ministerial cadre, the retirement age of office assistants working in Milk Co-operative Federation and District Unions, has been raised from 58 to 60 with effect from 01.04.2013 in accordance



with Rule 149(3) of the Tamil Nadu Co-operative Societies Act, 1983, which shows that the retirement age of Office Assistants working in Milk Co-operative Federation and District Unions, has been raised from 58 to 60 years with effect from 01.04.2013 as per Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, therefore, there is no deviation or departure from the norms fixed by the Government with regard to the age of retirement. However, their case is, the age of retirement of Salesman and other employees has to be fixed only at 58 requires careful examination of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, which is given as under:-

''149.Conditions of service of paid officers and servants of Societies.-- (1) Every Society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Government, a Special by-law covering the service conditions of its employees. The special by-law shall, inter alia, prescribe the following:

(i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.

(ii) The method of recruitment for each such posts.

(iii) The scale of pay and allowances for each such posts.

(iv) Conditions of probation for each such posts.

(v) Duties and responsibilities for each such posts.

(vi) Leave of various kinds admissible and, the conditions thereto for each such posts.

(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

(viii) Conditions relating to acquisition and disposal of movable and immovable property:

Provided that a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

(2) No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the society and also of the affiliated societies, inviting



application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State:

Provided that the above stipulation shall not apply --

(i) to the appointment made on compassionate grounds;

(ii) for the absorption of surplus employees of other Co-operative Societies;

(iii) to the posts for which a Recruitment Bureau has been constituted under section 74 of the Act or in respect of which a common cadre of service has been constituted under section 75 of the Act.

(3) In matters of reservation for appointments and age for appointment and retirement, the rule applicable to the Government servants shall be followed.

(4) No person shall be appointed to the service of any society, if he has been found guilty of any offence involving moral turpitude. An employee shall cease to be as such in a society, if he is found guilty of any such offence.

(5) No person who is a near relative as specified in rule 63, of a member of the Board or of an officer of a society shall be appointed to any post in the service of such society. If a doubt arises as to whether a person is or is not a near relative of a member of the board or of an officer of a society, the board shall refer it to the Registrar for decision.

(6) No employee of a society shall contest or canvass or otherwise interfere or use his influence in connection with or take part in any election to any Legislature, Parliament or local authority or any institution constituted under any State or Central Act except with the previous permission of the Board.

(7) (a) No employee shall accept any employment or work elsewhere, whether honorary or otherwise except with the previous permission of the Board.

(b) No employee shall engage himself in any trade or business outside the scope of his duties either in his name or in the name of any member of his family or relative except with the previous permission of the Board.

(8) Nothing contained in this rule, except items (i), (v), and (viii) of sub rule (1) and the provision contained in sub rule (5) to (7) shall apply to Government servant deputed or a person deputed from any other institutions, to the services of any society.'



provision contained in sub rule (5) to (7) shall apply to Government servant.

17.A conjoint reading of Rule 149(3) clearly shows that in matters of reservation for appointments and age for appointment and retirement, the rule applicable to Government servants shall be followed, that means, Fundamental Rule 56(1)(a) which exclusively deals with the age of retirement of Government servants, will apply to all the employees of the co-operative societies. Therefore, FR 56(1)(a) is also requires to be examined, which is given as under:-

''56(1)Retirement on Superannuation.--(a)Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after the age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances.

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years:

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.''

18.As regards the further contention raised on behalf of the respondents that the posts of Salesman, Factory Assistant and Mazdoor are not included under the Special Rules for the Tamil Nadu Basic Service which will form Section 19 in Volume-III of Service Manual, it is relevant to extract the classes and categories of Government servants shown in Section-19 - Tamil Nadu Basic Service.

Class I: Category 1	-	Council Dubash for the Cabinet.
Category 2	-	Assistant Sergeant in the Secretariat.
Category 3	-	Chobdars.
Category 4	-	Duffadars.

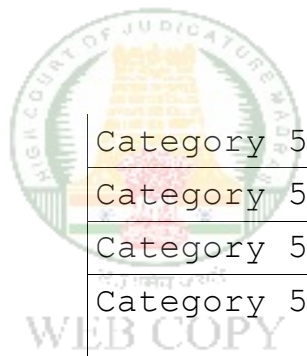


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Class II :	-	
Category 1	-	Head Chowkidars.
Category 2	-	Chowkidars.
Category 3	-	Jamadars other than those in the Medical and Police Departments. Assistant Durwans
Category 4	-	Durwans
Category 5	-	Assistant Durwans
Class III :	-	
Category 1	-	Messengers
Category 2	-	Copist Attenders
Category 3	-	Process Servers
Category 4	-	Attendants.
Category 5	-	Office Assistants
Category 6	-	Chainmen
Class IV :	-	
Category 1	-	Butlers
Category 2	-	Cooks
Category 3	-	Kitchen Attendants
Category 4	-	Table Attendants
Category 5	-	Bathmen
Category 6	-	Mazdoors
Category 7	-	Cleaners
Category 8	-	Sanitary Workers
Category 9	-	Gardeners
Category 10	-	Maistries
Category 11	-	Watchmen
Category 12	-	Sweepers
Category 13	-	Watermen
Category 14	-	Gate-Keepers
Category 15	-	Mechanics
Category 16	-	Fitters
Category 17	-	Painters
Category 18	-	Blacksmiths
Category 19	-	Carpenters
Category 20	-	Cartmen
Category 21	-	Cattlemen



Category 22	-	Glaziers
Category 23	-	Packers
Category 24	-	Women Searchers
Category 25	-	Hospital Servants
Category 26	-	Dhobies
Category 27	-	Lascars
Category 28	-	Bearerers
Category 29	-	Barbers
Category 30	-	Syces
Category 31	-	Cooks-cum-Watermen
Category 32	-	Watchmen-cum-Sweepers
Category 33	-	Attender Boys
Category 34	-	Assistant Sweepers
Category 35	-	Ayahs
Category 36	-	Field Assistants
Category 37	-	Dusting Mazdoors
Category 38	-	Male Nursing Orderlies
Category 39	-	Gas House Cleaners
Category 40	-	Workshop Boys
Category 41	-	Medical Attendants
Category 42	-	Conductresses
Category 43	-	Assistant Cooks
Category 44	-	Masalchis
Category 44-A	-	Room Boys (inserted in G.O.Ms.No.41, P&AR (F) Dept. dt. 3.3.2000)
Category 45	-	Stretcher Bearer (inserted in G.O.Ms.No.65, P&AR (F) Dept. dt. 8.4.1999)
Category 45-A	-	Mate Boys. (inserted in G.O.Ms.No.241, P&AR (F) Dept. dt. 29.12.2000.
Category 46	-	Class Blower
Category 47	-	Waterman and Water woman
Category 48	-	Iceman
Category 49	-	Fireman
Category 50	-	Hammerman
Category 51	-	Mason
Category 52	-	Brick Layer in Medical Department



Category 53	-	Purveyor
Category 54	-	Garden Maistrics in Medical Department
Category 55	-	Head Maistry in Medical Department
Category 56	-	Maistry Assistant in Medical Department
Category 57	-	Latchies and Dhoby Latchies
Category 58	-	Hospital Worker
Category 59	-	Table Boy and Table Girl
Category 60	-	Dusting Boy
Category 61	-	Counter Boy
Category 62	-	Helper
Category 63	-	Women Helper
Category 64	-	Woman Servant and Table Woman
Category 65	-	Kitchen Woman and Servant
Category 66	-	Common Mess Servant
Category 67	-	Gate Peon
Category 68	-	Gurka Watchman
Category 69	-	Van Cleaner in Medical Department
Category 70	-	Electrical Cleaner
Category 71	-	Ambulance Cleaner in Medical Department
Category 72	-	Dhoby Cooly
Category 73	-	Tailar Cooly in Medical Department
Category 74	-	Disinfectant Coolies
Category 75	-	Drainage Maistries and Coolies
Category 76	-	Semi-skilled Laborers
Category 77	-	Unskilled Mechanic
Category 78	-	Nurse Quarters Servant
Category 79	-	Waterman-cum-Sweeper
Category 80	-	Waterman-cum-Watchman
Category 81	-	Peon-cum-Watchman
Category 82	-	Postmortem Attendant
Category 83	-	Gas Attendant
Category 84	-	Electro-Myography Attendant
Category 85	-	Junior Attender
Category 86	-	Gas Stocker



(Inserted in G.O.Ms.No.65, P&AR(F) Dept., Dated: 8-4-99 - w.e.f 25-6-1971)

'Class V: Any other person who is in basic service as defined in subsidiary definition (iii) under Fundamental Rule 9 and who has not been included in any other service. F.R. 9 (iii) reads as follows:

Basic Service includes all services in the following appointments unless declared by Government to be superior:-

a) Service as Office Assistant, Head Office Assistant, Chobdar or Duffadar;

b) Service in Posts the pay of which does not exceed Rs.750/-

All other service is superior.

Explanation: The classification of the posts in the manner indicated above shall not preclude the incumbent of the posts from drawing pay in the scales which are applicable to them prior to coming into force of the Special Rules.'

19. Although the petitioners are correct in contending that Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, 1988, says that in the matter of appointment and retirement of the co-operative employees, the rules applicable to the Government servant shall be followed, therefore the first proviso to Rule 56 (1)(a) of the Fundamental Rules of the Tamil Nadu Government, stating that all basic servants shall retire on attaining the age of 60 years alone would apply to the case of the petitioners, as rightly contended on behalf of the respondents, the posts which the petitioners are holding namely, Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively, do not fall within the classes and categories of Government servants relating to Tamil Nadu Basic Service, as extracted supra. Further, Fundamental Rule 9(iii) shows that Basic Service includes all services in the following appointments unless declared by Government to be superior:-

a) Service as Office Assistant, Head Office Assistant, Chobdar or Duffadar;

b) Service in Posts the pay of which does not exceed Rs.750/-

All other service is superior.

20. Therefore, the petitioners who are working in the abovesaid posts which do not fall within the classes and categories of Basic Service, cannot seek a prayer to direct the respondents to allow them to work upto 60 years, as per Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, 1988, read with first proviso to Rule 56(1)(a) of the Fundamental Rules.



Accordingly, all the Writ Petitions are dismissed. No costs. Consequently, the interim orders granted, are vacated and all connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

nbi

To

- 1 THE JOINT REGISTRAR, COOPERATIVE SOCIETIES, MADURAI.
- 2 THE SECRETARY, MELUR COOPERATIVE SOCIETY,
MELUR MADURAI DISTRICT.
- 3 THE SECRETARY,
M.D.SPL.47, PRIMARY AGRICULTURAL COOPERATIVE,
CREDIT SOCIETY, S.MEENAKSHIPURAM,
SOWDARPATTI POST, TIRUMANGALAM TALUK,
MADURAI DISTRICT.
- 4 THE MANAGING DIRECTOR,
TAMIL NADU CO-OPERATIVE MILK PRODUCERS FEDERATION LTD.
AAVIN ILLAM MADHAVARAM
MILK COLONY CHENNAI - 600 051.
- 5 THE GENERAL MANAGER,
TIRUNELVELI DISTRICT CO OPERATIVE
MILK PRODUCERS UNION LIMITED,
TIRUNELVELI -7.
- 6 THE SECRETARY TO GOVERNMENT,
THE GOVERNMENT OF TAMILNADU,
ANIMAL HUSBANDRY DAIRYING AND FISHERIES DEPARTMENT,
FORT.ST.GEORGE, CHENNAI -600 009
- 7 THE COMMISSIONER OF MILK PRODUCTION
AND DAIRY DEVELOPMENT, MADHAVAM MILK COLONY,
MADHAVARAM, CHENNAI- 600 051.
- 8 THE MANAGING DIRECTOR,
TAMIL NADU CO-OPERATIVE MILK PRODUCERS FEDERATION LTD.
MADHAVARAM MILK COLONY,
MADHAVARAM, CHENNAI-600 051
- 9 THE GENERAL MANAGER,
MADURAI DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD.
SATHANAGALAM, MADURAI-625 020



+1CC to Mr.H.Arumugam, Advocate Sr.No.48328
+6CC to Mr.M.Saravana Kumar, Advocate Sr.No.48167, 48656
+1CC to Mr.N.Anandakumar, Advocate Sr.No.48775
+1CC to Mr.T.Lenin Kumra, Advocate Sr.No.48468
+1CC to Mr.T.S.Monamed Mohideen, Advocate Sr.No.48548
+1CC to Mr.K.Muthumalai, Advocate Sr.No.48740
+1CC to Mr.Aayiram K.Selvakumar, Advocate Sr.No.48625
+1CC to Spl.Govenrment Pleader Sr.No.48616

GJM/SS2/03.10.16-19p-23C

W.P (MD) Nos.14737, 14790, 13416,10299,
9617 to 9621 and 13562 of 2016
30.08.2016