

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.15439 of 2014

and

M.P.No.1 of 2014

1.K.Murugesan
2.M.Vijayakumar
3.K.Azhagarsamy
4.S.Veeramani
5.T.Viswanathan
6.G.Swamyraj
7.G.Veeramani
8.O.Viswanathan
9.P.Ganesan
10.R.Sivalingam
11.S.Shanmugasundaram
12.P.Thangaraj
13.B.Sethuraja
14.C.Ganesan
15.M.Tamilselvan
16.E.Meiyalagan

... Petitioners

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St. George,
Chennai-600 009.

2.The Registrar of Co-operative Societies,
170, E.V.R.Periyar Road,
Kilpauk,
Chennai-600 010.

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the second respondent's proceedings in Rc.No.41406/2009/EM3 dated 31.05.2013 to quash the same insofar as the petitioners are concerned and consequently direct the respondents to effect the date of reappointment retrospectively with all notional, service and continuity benefits including seniority and qualifying

services for grant of pension and other benefits thereto.

For Petitioners .. Ms.N.R.Jasmine Padma

For Respondents .. Mr.A.Zakkir Hussain,
Addl. Govt. Pleader

ORDER

The petitioners have approached this Court seeking the following relief:

'To issue a writ of certiorarified mandamus to call for the records relating to the second respondent's proceedings in Rc.No.41406/2009/EM3 dated 31.05.2013 to quash the same insofar as the petitioners are concerned and consequently direct the respondents to effect the date of reappointment retrospectively with all notional, service and continuity benefits including seniority and qualifying services for grant of pension and other benefits thereto'.

2. The case of the petitioners is as follows:

The petitioners have originally aggrieved that the benefit of G.O.(Ms).No.445, Finance (Audit) Department dated 20.12.2005 had not been primarily extended in their favour for the purpose of regularisation of services in terms of the said Government Order. According to them, the persons whose services were regularised in terms of the said Government Order are similarly placed persons like the petitioners herein. As the said benefit was not granted to them, when the petitioners sought to claim the parity, the same was rejected. The petitioners were therefore constrained to approach this court in W.P.No.25223 of 2008 and WP.No.11322 of 2009, asserting that the rejection orders are discriminatory and arbitrary. This Court, by a common order dated 27.01.2010 allowed writ petitions by setting aside the Government Order, with a direction to re-appoint the petitioners as Junior Inspectors. The operative portion of the common order dated 27.01.2010, passed by the learned Single Judge of this Court, in paragraph Nos.10, 11 & 12 are extracted below:

'10. Therefore, once the Government had taken a decision to regularise the services of the Junior Inspectors in Audit Department by passing G.O.Ms.No.445, they ought to have extended the same benefit to the petitioners also. In fact Mr.C.Thirupathi and Mr.S.Velu were petitioners along with the present writ petitioners in the earlier round

of litigation in W.P.No.28269 of 2006. Therefore, if these two persons could be granted the benefit under G.O.Ms.Nos.158 & 153 respectively, there is no ground to deny the relief to the petitioners. It would be relevant to note that the first respondent in D.O. letter dated 29.05.2008 addressed to the Secretary of TNPSC requested the Secretary to move the Commission immediately and obtain its concurrence for regularisation of the petitioners. Therefore, upto that stage, the Government in principle took a decision to extend the benefit of the earlier Government orders to the petitioners also, but were awaiting the concurrence of TNPSC. In such circumstances, it is too late in the day for the first respondent to now contend that the benefit granted to others was because they had benefit of stay in the earlier writ petition and that the TNPSC has not granted concurrence could hardly be stated to be a ground to deny the relief to the petitioners. Further, no reasons have been assigned as to on what basis TNPSC declined to grant concurrence.

11. Therefore, I am of the clear view that the impugned orders are arbitrary and unreasonable and totally discriminatory.

12. In the result, the above writ petitions are allowed and the impugned orders are set aside and the respondents are directed to reappoint the petitioners as Junior Inspectors as has been done in the case of Thiru.C.Thirupathi in G.O.Ms.(D) No.158 dated 22.05.2007 and in the case of Thiru S.Velu in G.O.Ms.No.153, dated 13.08.2008 within a period of three months from the date of receipt of a copy of this order''.

The learned single Judge has clearly held that the petitioners therein, who are petitioners herein, are entitled to similar treatment as that of all the employees, who had been extended the benefit of G.O.No.445, Finance (Audit) Department dated 20.12.2005. The learned single Judge was also pleased to observe that in the same department two other employees namely Mr.C.Thirupathi and Mr.S.Velu, were granted similar benefits under G.O.Ms.(D) No.158 dated 22.05.2007 & G.O.Ms.No.153, dated 13.08.2008 respectively.

3. As against the order passed by the learned single Judge of this Court, an appeal was filed in W.A.Nos.2390 & 2008 of 2010. The said writ appeals came to be dismissed vide order dated 05.01.2011 & 18.01.2011 respectively. The operative portion of the order dated 05.01.2011 passed by the Division Bench of this Court in Writ Appeal No.2390 of 2010, in

paragraph No.7, is extracted below:

'7. On a careful perusal of the order passed by the learned single Judge, we are of the view that the learned single Judge has given cogent reasons for arriving at such a conclusion and we find no illegality or infirmity in the order passed by the learned single Judge. Therefore, we see no reason to interfere with the well considered and merited order passed by the learned single Judge. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, CMP.No.1 of 2010 is closed'.

The order passed by the Division Bench of this Court is clear and conclusive. In pursuance of the order passed by the learned Single Judge and the Division Bench of this Court as stated supra, the impugned order dated 31.05.2013 was passed by the second respondent, appointing the petitioners as Junior Inspectors with effect from the date of issuance of the order. The said impugned proceedings, insofar as it appoints the petitioners as Junior Assistants from the date of the issuance of the order dated 31.05.2013 is put to challenge before this Court.

4. Ms.N.R.Jasmine Padma, the learned counsel for the petitioners would submit that vide impugned proceedings dated 31.05.2013, the second respondent sought to discriminate the two sets of similarly placed employees, wherein, one set of employees working in the Audit Department had been granted regularisation in terms of G.O.445, Finance (Audit) Department dated 20.12.2005 and these petitioners were granted regularisation only from the date of issuance of the impugned proceedings.

5.The learned counsel for the petitioners would also submit that the learned single Judge of this Court, who passed an order earlier in the writ proceedings of these petitioners had categorically held in paragraph No.10 of the order as extracted supra that two of the persons namely Mr.C.Thirupathi and Mr.S.Velu, working in the same Department as that of the petitioners had been granted benefit in terms of G.O.No.445, Finance (Audit) Department dated 20.12.2005. Such event, the learned single Judge had held that the petitioners were also entitled to the same treatment and the same benefit also to be extended to them. However, the learned counsel would submit that pursuant to the direction of the learned Single Judge, which was confirmed by the Division Bench of this Court, by a well considered order, the second respondent has passed impugned proceedings to mete out discriminatory treatment to the petitioners, which order to say the least is violative of

Articles 14 & 16 of the Constitution of India.

6. Upon notice, Mr.A.Zakkir Hussain, the learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit. The learned Additional Government Pleader would submit that the service conditions of the Junior Inspectors, who are working in the Audit and Co-operative Departments are different and therefore, G.O.No.445, Finance (Audit) Department dated 20.12.2005 cannot be pressed into the service in respect of the petitioners herein.

7. Such contention put forth by the learned Additional Government Pleader cannot be countenanced both in law and on facts, for the simple reason that the issue was considered by the learned single Judge and the Division Bench of this Court as stated supra and this Court has come to the conclusion that the present petitioners are also entitled to be treated on par with the other persons, who are covered under G.O.No.445, Finance (Audit) Department dated 20.12.2005 and also the other two employees namely Mr.C.Thirupathi and Mr.S.Velu, whose services were also regularised in terms of the said Government Order.

8. This Court, upon considering the submissions made by the learned counsel for the petitioners and upon perusing the pleadings and the materials placed on record entirely agree with the contention that the impugned proceedings is nothing but a clear attempt made by the second respondent, to treat the equals as unequals and the same in violation of Articles 14 & 16 of the Constitution of India. This Court is also further agree with the learned counsel for the petitioners that the impugned proceedings is contrary to the order passed by the learned single Judge of this Court, which was upheld in the writ appeals as aforesaid. In any event, this Court, is of the considered view that the petitioners herein, being similarly placed like the petitioners/Junior Inspectors, who were conferred with the benefit of G.O.445, Finance (Audit) Department dated 20.12.2005, cannot be treated differently. Such treatment per se smacks of malafides, arbitrariness and cannot stand the test of judicial scrutiny of this Court. For the aforesaid reasons, this Court has no hesitation in allowing the writ petition. Therefore, the impugned order passed by the second respondent in Rc.No.41406/2009/EM3 dated 31.05.2013 is set aside. The second respondent is directed to grant the benefit of regularisation to all the petitioners covered under impugned proceedings in terms of G.O.No.445, Finance (Audit) Department dated 20.12.2005 and also on par with two other employees namely Mr.C.Thirupathi and Mr.S.Velu, with all attendant benefits as granted to them. Such exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order.

9. The writ petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dn

To

- 1.The Secretary to Govt
Co-operation, Food and Consumer
Protection Department,
Fort St. George,
Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
170, E.V.R.Periyar Road,
Kilpauk,
Chennai-600 010.

+1 cc to Mr.L.Chandrakumar Advocate sr 69583

W.P.No.15439 of 2014

kgk(co)
aa09/11/2017

WEB COPY