

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. No. 30987 of 2016

&

W.M.P. Nos. 26866, 26867 & 29185 of 2016

S. Matheswaran ..Petitioner

Vs.

1. The Deputy Director,
Handlooms Textiles,
Salem, Salem District.
2. The President/Managing Director,
S.876, Mallur Handloom Weavers
Co-operative Production &
Sales Society Limited,
Mallur - 636 203, Salem District.Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records relating to the impugned order of the 1st respondent in Na.Ka.No. 3753/2014/G dated 30.07.2016 and quash the same.

For Petitioner :: Mr.P. Rajendran

For Respondents :: Mr.L.P. Shanmugasundaram,
Special Govt. Pleader
(Co-op.)

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O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner was appointed as Manager in the service of the 2nd respondent Society on daily wages basis on 11.07.2009 and he claims that he has been working since then, without any break. The petitioner would further state that he has passed B.Com and also got Diploma in Co-operation and in the year 2013, he made a request for regularisation of his service and it was sympathetically considered by the Administrator/Inspector of Handlooms, and accordingly, his services were regularised by means of a resolution passed with effect from 01.01.2013 and subsequently, a settlement came into being under Section 18(1) of the Industrial Disputes Act, 1947 on 01.03.2013 providing for fixation of his salary in the time scale of pay Rs.6375-17508125-200-10125-225-12375. However, to the shock and surprise of the petitioner, the 1st respondent issued the impugned memo dated 30.07.2016 to the 2nd respondent, stating among other things, that regularisation of the services of the petitioner is contrary to the relevant Rules and norms and so also the settlement under Section 18(1) of the Industrial Disputes Act, 1947 and therefore, directed the 2nd respondent to take appropriate action against the petitioner, in accordance with law and submit a report. Challenging the legality of the same, the petitioner has come forward with the present writ petition.

3. Mr. P. Rajendran, learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that it is not even the case of the 1st respondent that the petitioner got regularisation of his service through illegal means or backdoor entry and taking into consideration of the fact that the petitioner is qualified to hold the post and his unblemished service, the Administrator/Inspector of Handlooms, thought it fit to regularise the services of the petitioner with effect from 01.01.2013 and also revise his salary, in accordance with the settlement reached under Section 18(1) of the Industrial Disputes Act, 1947. But, all on a sudden, the 1st respondent has directed the 2nd respondent to take appropriate action, which would ultimately result in termination of the petitioner from service. Apprehending such an eventuality, the petitioner has approached this Court and therefore, the learned counsel prays for appropriate orders.

4. Per contra, Mr. L.P. Shanmugasundaram, learned Special Government Pleader (Co-operatives) appearing for the respondents, has drawn the attention of this Court to the counter affidavit and would submit that, admittedly, the regularisation of the petitioner, is in clear contravention of Rule 149(2) of Tamil Nadu Co-operative Societies Rules, 1988 as

well as G.O.Ms. No. 86, Co-operation, Food and Consumer Protection Department dated 12.03.2001 and also the judgment rendered by the Division Bench of this Court reported in 2002 4 CTC 385 (L. Justin V. Registrar of Co-operative Societies) and as such, the 1st respondent has directed the 2nd respondent to take appropriate action. It is only an internal communication and the petitioner cannot have any grievance and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. A perusal of the counter affidavit filed by the 2nd respondent, would disclose, among other things, that it is not even their case that the petitioner got regularisation of his service through unlawful or illegal means. The fact remains that the petitioner is a B.Com Degree Holder and has got Diploma in Co-operation. Taking into consideration, the service rendered by the petitioner, the competent authority thought it fit to regularise his service and accordingly, passed a resolution regularising the service of the petitioner with effect from 01.01.2013 and thereafter, a settlement was also reached under Section 18(1) of the Industrial Disputes Act, 1947, with regard to time scale of pay of the petitioner. However, the 1st respondent expressed a view that the regularisation of the petitioner is contrary to the norms as well as the judgment rendered by the Division Bench of this Court reported in 2002 4 CTC 385 and therefore, directed the 2nd respondent to take appropriate action. The apprehension expressed by the petitioner is in the light of the direction issued by the Superior Officer, namely, the 1st respondent, the 2nd respondent is bound to take action and in that event, either his service may be terminated or his time scale of pay may be refixed and this Court finds some substance in the apprehension expressed by the petitioner.

7. Admittedly, it is not even the case of the 2nd respondent that the petitioner got regularisation of his service through unlawful or illegal means or by way of deception or fraud. No doubt, it is open to the 2nd respondent to take appropriate action against the petitioner, in the light of the relevant norms and regulations. But, till such time, the service conditions of the petitioner shall not be disturbed.

8. In the result, the writ petition is disposed of and if the 2nd respondent is of the view that the regularisation of the petitioner is not in accordance with the relevant norms and regulations, he shall put the petitioner on notice, specifically, citing the reasons and after conducting an enquiry, strictly in accordance with law, shall pass orders, as

expeditiously as possible and till such time, the service conditions of the petitioner shall remain unaltered. No costs. Connected W.M.Ps are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

nv
To

1. The Deputy Director,
Handlooms Textiles,
Salem, Salem District.
2. The President/Managing Director,
S.876, Mallur Handloom Weavers
Co-operative Production &
Sales Society Limited,
Mallur - 636 203, Salem District.

+1cc to Mr.L.P. Shanmuga Sundaram, Advocate, S.R.No.274
+1cc to the Government Pleader, S.R.No.206

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md(23/01/2017)

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