

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.3251 of 2004

And

W.P.M.P.No.3781 of 2004

C.M.Devika

... Petitioner

Vs.

1.Joint Registrar of Co-op. Societies,
Chennai Region,
Tanfed Building, St.Mary's Road,
Mandaveli, Chennai - 600 028.

2.The Administrator,
The Govt. Telecommunication
Employees Co-operative Society Ltd.,
112 A, Sembudoss St.,
Chennai - 600 001.

3.Union of India
Rep. By Secretary to Government
Dept. of Agriculture and Cooperation
Ministry of Agriculture and Cooperation,
Krishi Bhavan, Dr.Rajendraprasad Road,
New Delhi - 110 001.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records of the second respondent in connection with the impugned proceedings No.R.C.62/98 dated 21.02.2003 communicated by the 2nd respondent in his letter No.R.C.62/98 dated 10.02.2004 and quash the same and consequently forbear the respondents from terminating the petitioner from service of the Telecommunication employees cooperative Society Ltd., Chennai.

For Petitioner : M/s.M.Sriram

For Respondents : Mr.Jayaprakash Narayanan for R1
Mr.Madhana Gopal Rao for R3
SCGSC

***For Respondent**

No.2 : Mr.P.Satheesh Kumar

O R D E R

This writ petition has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the entire records of the second respondent in connection with the impugned proceedings No.R.C.62/98 dated 21.02.2003 communicated by the second respondent in his letter No.R.C.62/98 dated 10.02.2004 and quash the same and consequently, forbear the respondents from terminating the petitioner from service of the Telecommunication Employees Cooperative Society Limited, Chennai.

2.The brief facts of the case are as follows: The petitioner was appointed as Ledger Clerk on 02.02.1998 in the regular vacancy and after completion of one year of satisfactory service in the post of Ledger Clerk was confirmed in accordance with the By-Law No.65(6)(1) of the Society with effect from 03.02.1999. Thereafter, on 18.07.2002, the first respondent noticed some irregularities in the recruitment of some staffs including the petitioner.

3.For the sake of convenience, irregularity no.3 is extracted hereunder:

'IRREGULARITY NO:3

Board resolution.674, dated: 20.08.1997 constituted three members staff selection committee with the President of the society as its Chairman.

According to bylaw 65(5) of the society, "No" person shall be appointed to the service of the society if, he has on the date on which he assumes charge of the post, attained the age of 30 years provided that in the case of a person who is already employed in another cooperative institutions and had joined the services before he attained his 30th year the restrictions as regards the age of entry shall not apply". But against the provision following 4 candidates were appointed in December 1997 by the board.

Sl. No.	Name	Date of Birth	Age	Date of joining in Duty
1	C.M.Devika, Ledger Clerk	11.12.1967	30	02.02.98
2	N.Maruthappaa, Ledger Clerk	06.07.1965	32	23.01.98
3	O.R.Dhanasekaran, Receipt Clerk	01.06.1967	30	07.01.98
		(years completed)		
4	S.Gopalakrishnan, Receipt Clerk	16.07.1966	31	07.01.98

4. Admittedly, the petitioner born on 11.12.1967 at the age of 30 years, joined the service on 02.02.1998 and the irregularity noticed by the first respondent is that the petitioner is over aged by 53 days. Therefore, after noticing the irregularities, the first respondent removed the petitioner from the society. The said order was challenged in W.P.Nos.29447 and 32394 of 2002 along with the another similarly placed person and this Court vide order dated 23.08.2002, held as follows:

"(i) Both the above writ petitions are allowed;

(ii) the order of the first respondent in Reference No.Lr.Rc.4821/2002/C3, dated 18.7.2002 and the consequential order passed by the second respondent in Reference Rc.No.420/2000, dated 24.7.2002 are quashed, in so far as the petitioners are concerned.

(iii) The respondents are directed to reinstate the petitioners in their capacities from which they were removed from out of service by the orders impugned with backwages and all consequential and monetary benefits.

(iv) However, the respondents are at liberty to initiate fresh proceedings against the petitioners in compliance of the legal provisions as contemplated by the Bye-laws and the other governing Rules and Procedures if necessary."

5. Thereafter, on 23.12.2002, a show cause notice was issued to the petitioner, as per direction no.(iv) of the order passed in W.P.Nos.29447 and 32394 of 2002, calling upon her to show cause as to why her appointment as a Ledger Clerk should not be cancelled. Thereafter, the petitioner challenged the said show cause notice along with the other similarly placed persons in W.P.Nos.213 of 2003 etc., batch. wherein, the learned counsel who appeared for the second respondent therein represented that enquiry was already completed and final orders were also passed and hence, no relief as sought for can be granted and further contended that the writ petitions could not be entertained as it challenges only the show cause notice. This Court after hearing the arguments advanced by the learned counsels, on 23.12.2012, has held as follows:

"8. In the abovesaid circumstances, I am inclined to dispose of the above writ petitions with the following directions:

(a) The second respondent in the writ petitions is directed to serve copy of the final orders passed in respect of each petitioner, within a period of three weeks from the date of receipt of a copy of this Order.

(b) The second respondent shall maintain an order of status quo for a further period of three weeks thereafter for the

purpose of enabling the petitioners to take appropriate action as against the said orders if they are adverse to them in accordance with law."

6.The learned counsel for the petitioner submitted that as directed by this Court in W.P.Nos.213 of 2003 etc., batch straight away, the respondent passed the impugned order without conducting the enquiry and removed the petitioner from service. He further submitted that based on the directions, final order was issued to the petitioner, against which, the present writ petition is filed.

7.The learned counsel for the petitioner further submitted that the By-Law No.65(5) gives concession to the Backward Class Community by relaxing the age limit by three years on par with the Central Government Employees and without applying the said bye-law and without extending the concession, the respondent passed the impugned order removing the persons like the petitioner from the employment.

8.The learned counsel for the petitioner further submitted that even after the removal from service, by virtue of the interim order granted by this Court on 18.02.2004 in W.P.M.P.No.3781 of 2004 in W.P.No.3251 of 2004, the petitioner continues to be in employment and till date, she is in service and the impugned order of removal was not given effect. He further submitted that in similar type of cases, this Hon'ble Court has extended the benefit of relaxing the age limit. In support of his submissions, the learned counsel relied upon the order of this Court dated 05.01.2012 made in W.P.No.3350 of 2004.

9.Heard both sides.

10.Now, the only point for consideration in this writ petition is whether the petitioner is entitled to the benefit of relaxation of 53 days.

11.It is useful to extract hereunder the relevant portion of the By-Law No.65(5) as follows:

"No person shall be appointed to the service of the society if he has on the date on which he assumes charge of the post, attained the age of 30 years provided that in the case of a person who is already employed in another co-operative institution and had joined its services before he attained his 30th year the restrictions as regards the age at entry shall not apply. Provided that in the case of the persons who belongs to SC, ST and BC the age relaxation shall be applicable to the Central Government Employees and as amended from time to time. Provided also that in the case of ex-army man trained in a co-

operative institute and possessing the qualification prescribed the period of war service shall be deducted in computing the maximum age of entry. Provided further that in special cases, it shall be competent to the Board of Directors of the society to relax the maximum age at entry prescribed above with the permission of the Registrar."

12.The very same issue was raised in W.P.No.3350 of 2004 and this Court vide order dated 05.01.2012 has held as follows:

"5.There is no controversy before this court that as on the date of appointment, the petitioner had completed 30 years of age, but not completed 33 years of age. It is also not in dispute that he belongs to Vanniya Kula Kshatriya Community. It is needless, point out that previously, even in the State of Tamil Nadu, the community was classified as a Backward class. Subsequently, the Government of Tamil Nadu, a sub classification among backward class communities as Most Backward class communities. It further needless to point out that the people belonging to Most Backward Community are comparatively Backward than the people belonging to the other communities, which fall within the other Backward Classes'. When the exemption is given to the other backward class communities, who are better placed than the people belonging to the most backward class communities, I am unable to understand as to why the said exemption should not be given to the Most Backward class people. As has been pointed out in the affidavit filed in support of the petition, the Government of India, Ministry of Social Welfare under Resolution No.12011/68/93-BCC [C] dated 10.09.1993 published in the Gazette of India, Extraordinary, Part I, Section I, No.186 dated 13.09.1993, shown Vanniya Kula Kshatriya Community as Serial Number 157 within the 'other backward classes' list. Therefore, there can be no doubt that the petitioner belongs to OSC and so, he is entitled for relaxation of 3 years of age. Though it is true that in the Community Certificate issued by the Tamil Nadu Government, the petitioner has been shown as Most Backward community, the same should be treated as Backward Class community Certificate for the purpose of employment in the Central Government organizations. In my considered opinion, the second respondent has mistaken the above legal position while passing the impugned order. Thus, the impugned order cannot be sustained and the same deserves to be interfered with."

13.Mr.Madhana Gopal Rao, the learned Senior Central Government Standing Counsel appearing for the third respondent also does not dispute the order of this Court dated 05.01.2012 made in W.P.No.3350 of 2004.

14.Hence, this Court is inclined to grant the very same relief to the petitioner herein as was granted to the similarly

situated persons vide order dated 05.01.2012 made in W.P.No.3350 of 2004.

15.The writ petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

*16.It is now brought to the notice of this Court by the learned counsel appearing for the second respondent that the impugned proceedings of the second respondent dated 21.02.2003 has been dropped vide Board Resolution dated 26.05.2017. He has also produced the copy of the Board Resolution. The same is taken on record.

***Corrected as per order dated 18/8/2017 made in WP.No.3251/2004 and WPMP.3781/04.**

sd/-
Assistant Registrar(CCC)
Dated:1/9/2017

Sd/-
Assistant Registrar(CCC)
Dated:12/7/2017

//True Copy//

Sub Assistant Registrar

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To

1.Joint Registrar of Co-op. Societies,
Chennai Region,
Tanfed Building, St.Mary's Road,
Mandaveli, Chennai - 600 028.

To be substituted
the order already
despatched on
28/7/2017

2.The Secretary to Government
Union of India
Dept. of Agriculture and Cooperation
Ministry of Agriculture and Cooperation,
Krishi Bhavan, Dr.Rajendraprasad Road,
New Delhi - 110 001.

+1cc to M/s.M.Sriram, Advocate SR.No.45986
+1cc to M/s.J.Madhanagopala Rao, Advocate SR.No.45686
***+1cc to Mr.P.Satheesh Kumar, Advocate sr.59891**

W.P.No.3251 of 2004 And
W.P.M.P.No.3781 of 2004

PPA(CO)
GN(14/07/2017)
ss(1/9/2017)