



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.P.(MD)No.4041 of 2013
and M.P.(MD) No.2 of 2013

S.Raja

... Petitioner

Vs.

1.The Regional Joint Director of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram.

2.The Special Officer,
Q 1276 District Electricity Scheme Employees
Cooperative Thrift & Credit Society Ltd.,
New Street,
Vellipattinam,
Ramanathapuram.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order passed by the 1st respondent in Na.Ka.711/2012/Se.Pa.Revision Petition No.3/2012 dated 18.02.2013 and Sanga Na.Ka.No.1/2011 dated 03.11.2011 passed by the 2nd respondent, quash the same and consequently direct the respondents to reinstate the petitioner with arrears of salary and all monetary benefits from the date of termination till the date of his reinstatement.

For Petitioner :Mr.C.Jegannathan

For 1st Respondent :Mr.V.Muruganantham
Additional Government Pleader

For 2nd Respondent :Mr.J.Gunaseelan Muthiah

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order passed by the 1st respondent in Na.Ka.711/2012/Se.Pa.Revision Petition No.3/2012 dated 18.02.2013, and Sanga Na.Ka.No.1/2011 dated 03.11.2011 passed by the 2nd

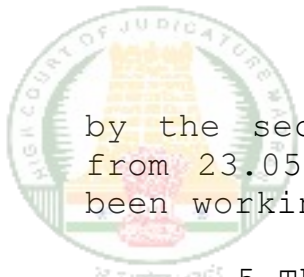


respondent, quash the same and consequently direct the respondents to reinstate the petitioner with arrears of salary and all monetary benefits from the date of termination till the date of his reinstatement.

2. The petitioner joined in the services of the second respondent Society as a Clerk on 23.05.2005 in the scale of pay. Prior to that the petitioner had been appointed and his service was engaged by the second respondent society from 03.08.1997 and subsequently, he had been terminated from the said service as small clerk and he had been worked in the capacity, while his services was dispensed with by the Society. Thereafter, he requested for reappointment/ reemployment and he had been given reappointment by the proceedings of the Society, by which he had been appointed on 23.05.2005 and on the said post, he has been working for more than 6 ½ years. While so, the second respondent Society had issued a Show Cause Notice dated 01.10.2011, against the petitioner, whereby explanation was called for from the petitioner as to why his services should not be terminated on the ground that his name was not initially sponsored by the Employment Exchange. As against the said Show Cause Notice, the petitioner had given his explanation. However, the second respondent by the impugned order dated 03.11.2011, has abruptly terminated the service of the petitioner on the reason that his initial appointment was made without his name being sponsored by the Employment Exchange, therefore, the said appointment is in violation of Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988. As against the said order of termination, the petitioner had preferred a revision before the first respondent on 25.01.2012. The first respondent after having considered the revision of the petitioner had passed his order dated 18.02.2013, whereby he has confirmed the order of the second respondent, terminating the services of the petitioner. Challenging both the orders, the present writ petition has been filed with the aforesaid prayer.

3. Heard both sides.

4. The learned counsel appearing for the petitioner would state that though the petitioner had been initially appointed as Small Clerk at the second respondent Society on 03.08.1997 and had been working as such for four years continuously, his service was terminated in September, 2001 by the Society for want of cadre strength. Subsequently, the cadre strength had been fixed in respect of Cooperative Societies based on the volume of financial transaction undertaken by the Society, by G.O.Ms.No.89 dated 16.05.2000. Accordingly, since the cadre strength is available to the second respondent society and since the petitioner had already served for more than four years, taking into account the experience of the petitioner, the second respondent Society once again took the services of the petitioner. By proceedings issued



by the second respondent, the petitioner was taken into service from 23.05.2005 as Clerk and in that capacity the petitioner had been working for 6 ½ years till the order of termination.

5. The learned counsel appearing for the petitioner would further submit that the only reason cited by the second respondent for having terminated the services of the petitioner is that the name of the petitioner was not initially sponsored by the Employment Exchange, since Rule 149(2) of the Tamil Nadu Cooperative Societies Rules specifies appointments has to be made based on the sponsorship of the employment exchange and if any appointment is made without sponsoring from employment exchange, then certainly it would violate the said Rule 149 of the Rules and therefore, the service was terminated. In this regard, the learned counsel for the petitioner relied on the reason given by the first respondent in his order dated 18.02.2013, wherein the first respondent has stated that pursuant to the orders passed by this Court dated 24.10.2002 made in W.A.No.2501 of 2001 ie., those who had been appointed on and after 11.03.2001 without their name being sponsored by employment exchange their service can be dispensed with immediately and those incumbent can be removed from service. According to the respondents since the petitioner had been working after the cut of date ie., 11.03.2001 and the name of the petitioner has not been sponsored by the employment exchange his service is liable to be terminated and accordingly, it was terminated. Therefore, the learned counsel appearing for the petitioner would submit that in the very same impugned order, the first respondent has also relied upon the judgment of this Court in the said Writ Appeal referred to above, whereby it has been specifically stated that those who had been appointed after 11.03.2001 without following the norms as per Rule 149 can be terminated, provided if the said appointment is not in consonance with the required sponsorship from the employment exchange. According to the learned counsel for the petitioner, those who have been appointed prior to 11.03.2001 or upto 11.03.2001 without their name being sponsored by the employment exchange, for this reason only, their services need not be dispensed with. By relying on the said judgment of this Court, the learned counsel for the petitioner would submit that since the petitioner had been initially appointed in August, 1997 and had been working subsequently for four years continuously and only for want of cadre strength his service has been terminated and subsequently has been reappointed/reemployed, the original date of appointment insofar as the petitioner is concerned should be assessed as August, 1997 and not from the reemployment date. Therefore, if initial appointment is taken into account, certainly appointment of the petitioner would be within the cut of date and his service need not be terminated for want of his name being sponsored by the employment exchange. Therefore, the learned counsel appearing for the petitioner would submit that since the only reason assigned in the impugned orders is non-sponsorship of the petitioner from the



employment exchange, the same can be cured if the ratio laid down by the said judgment is applied. Therefore, certainly the case of this petitioner would be brought under the purview of the said judgment.

6. Per contra, the learned Additional Government Pleader appearing for the first respondent and the counsel appearing for the second respondent by relying on the counter affidavits would submit that no doubt the initial appointment of the petitioner's was in August, 1997, but his service was terminated in September, 2001 for want of cadre strength. Thereafter, he had been appointed only from 23.05.2005 and therefore, the appointment of petitioner is not continuous one as his earlier service has been terminated. Therefore, the appointment made in the year 2005 shall be taken into consideration for the purpose of applying the cut of date 11.03.2001. So very well before the petitioner was appointed in the year 2005, admittedly his name was not sponsored by the employment exchange. Therefore, he would not be entitled to continue in service because his name was not sponsored by the employment exchange. Therefore, if the ratio of the said judgment is applied with this case, certainly the petitioner is out of the purview. Therefore, there is no infirmity in the orders passed by the respondents 1 and 2 herein and hence they require no interference.

7. This Court considered the rival submissions made by the respective learned counsel for the parties.

8. The only issue to be decided in this petition is whether the petitioner is entitled to claim the benefits of continuance in service, in spite of the fact that his name not being sponsored by the employment exchange, merely because of the original appointment in 1997 is well before the cut of date i.e., 11.03.2001 as has been stated in the judgment referred to in W.A.No.2501 of 2001.

9. As rightly pointed by the learned counsel for the petitioner, the petitioner had been originally appointed in the year 1997. He had worked in that capacity for four years continuously up to 2001. His service was terminated in 2001 and was reemployed in 2005, in between the said cut of date came in. Even after the second appointment/reappointment the petitioner had been working from 23.05.2005 till 03.11.2011 that is for six years and six months. Earlier the petitioner had been working in the Society for four years i.e., between August 1997 to September, 2001. Therefore, altogether the petitioner had put in more than 10 years 6 months service in the second respondent society. This long years of service put in by the petitioner cannot be taken lightly by ignoring the cut of date 11.03.2001 and to state that the cut of date has to be considered by taking re-employment date that is from 23.05.2005.



10. Since the petitioner admittedly had been employed in the respondent society in the year 1997 and the same has not been continued, of course for want of cadre strength, and reemployed in the year 2005 and altogether the service of the petitioner is for 10 long years, it has to be taken into consideration. The person who has rendered one decade service cannot be obstructed or disturbed by merely stating that his initial appointment in the year 1997 or 2005 by way of reemployment was against Rule 149 of Tamil Cooperative Societies Rules as he was not sponsored by the Employment Exchange.

11. Mere reason of non-sponsorship of the employment exchange cannot be a fatal to the person who have rendered long service. Thus for that reason, in the said judgment, this Court, when refusing to give exemption to other category of employees who are not eligible, has given a specific exemption to those who have not been sponsored by the employment exchange. Therefore, the import of the said case applies to the facts and circumstances of the present case and certainly the petitioner can be considered as one of the employee who can have the benefits of availing the continuity of the service by taking into account the initial appointment in 1997, which is well before the cut of date and the respondents ought not have terminated the petitioner for the non-sponsoring of the petitioner's candidature by the employment exchange.

12. In the result, the following orders are passed in this writ petition:

(i) The impugned order is set aside.

(ii) The petitioner's service shall be regularised at least from the date of reappointment on 23.05.2005 by taking into account the earlier service of four years rendered from August, 1997 to September, 2001.

(iii) Since admittedly the petitioner is not in service after the impugned order dated 03.11.2011, the petitioner shall not be entitled to get any back wages or salary from the date of termination till the date of reappointment.

(iv) Accordingly, the petitioner shall be reappointed into service and his service shall be regularised by taking into account all the total service rendered by the petitioner including the services from August, 1997 to September, 2001 so as to enable him to get the pensionary benefits.

<https://hcservices.ecourts.gov.in/hcservices/> The endeavour shall be completed within eight weeks from the date of receipt of a copy of this order.



13. This Writ Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Regional Joint Director of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram.

2. The Special Officer,
Q 1276 District Electricity Scheme Employees
Cooperative Thrift Society Ltd.,
New Street,
Vellipattinam,
Ramanathapuram.

+1cc to Special Government Pleader, SR.No. 6597
+1cc to M/S.J.Gunaseelan Muthiah, Advocate SR.No. 6311
+1cc to M/S.Veera Associates, Advocate SR.No. 6674

W.P. (MD) No. 4041 of 2013
and M.P. (MD) No. 2 of 2013
06.02.2017

sj
JM/JC/SAR 4/13.06.2017/6P/6C