

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1027 of 2017 and

CMP No.14444 of 2017

- 1.The State of Tamil Nadu,
Represented by the Secretary,
Cooperation, Food and Consumer
Protection Department,
Fort St.George, Chennai -9.
- 2.The Registrar of Co-operative Societies,
No.170, EVR Periyar Salai,
Kilpauk, Chennai -10.
- 3.The Joint Registrar of Co-operative Societies,
M.M.Avenue, Kancheepuram. Appellants/Respondents

-Vs-

K.Punniyakotti Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.27412 of 2007 dated 05.06.2012.

WP.No.27412/2007:Writ petition is filed under Article 226 of the Constitution of India, praying for the issue of a writ of certiorarified mandamus to call for the records in pursuant to the impugned rejection order passed by the 2nd respondent in proceeding Lr. Rc. no 93096/2002 EM3 dated 26/7/2007 and quash the same and consequently direct the respondents to regularize the services of the petitioner in the post of Junior Inspector of Co-operative Societies retrospectively with effect from his initial date of appointment on 14/12/1985 with all service and monetary benefits by extending the benefits of G.O.Ms.No.445, Finance(Co-Operative Audit) Department, dated 20.12.2005.

For Appellants : Mr.L.P.Shanmugasundaram
Spl.Govt.Pleader

For Respondent : Mr.N.Naganathan

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

The request made by the respondent for regularisation of his service in the post of Junior Inspector of Co-operative Societies with effect from his initial date of appointment was negatived by the Registrar of Co-operative Societies, by order dated 26 July 2007. The writ petition filed by the respondent challenging the said order was allowed by the learned single Judge taking into account the orders of regularisation issued by the Government in the case of similarly situated employees. Feeling aggrieved, the appellants have come up with this intra court appeal.

2. We have heard the learned Special Government Pleader appearing for the appellants. We have also heard the learned counsel for the first respondent.

3. The appellant was appointed as Junior Inspector of Co-operative Societies, as per proceedings dated 14 December 1985. While he was working as Junior Inspector of Co-operative Societies, the Deputy Registrar issued a charge memo vide proceedings dated 17 February 1988. Thereafter, the respondent was terminated from service by order dated 6 November 1988. The original application filed by the respondent before the State Administrative Tribunal in O.A.No.1792 of 1990 was allowed by order dated 23 June 2002. The respondent joined duty on 30 December 2003.

4. The respondent having found that other employees, who were appointed under Rule 10(a)(i) were all regularised with effect from their initial appointment, submitted a representation to the Registrar of Co-operative Societies to consider his case for regularisation.

5. The Registrar of Co-operative Societies without assigning any specific reason rejected the request of the respondent.

6. There is no dispute that the service of the employees who were appointed along with the respondent were all regularised and they are working as Co-operative Sub-Registrars. The learned single Judge referred to the Government Order in G.O.Ms.No.445, Finance (Cooperative Audit) Department, dated 20 December 2005, wherein, even candidates who failed in the departmental examination were considered for regularisation.

7. The learned single Judge allowed the writ petition by taking into account the earlier order in S.Jalajakumari and another v. Personal Assistant (General) to the Collector [2008 (5) MLJ 1073]. The High Court in the said decision directed the Government to regularise the services of even

those who failed to qualify the special examination conducted by the TNPSC.

8. The factual matrix indicates that but for the termination from service, the respondent would have been given the benefit of regularisation. The order of termination was subsequently set aside by the Tribunal. The appellants implemented the said order. In view of the subsequent events relating to the order quashing the punishment and the re-instatement of the respondent into service, the learned single Judge was correct in directing regularisation of the service.

9. The appellants have placed reliance on an earlier decision of a Division Bench in W.A.No.1643 of 2014 (M.Veeramalai v. The Secretary to Government, Chennai, dated 17 December 2014]. In Veeramalai case, the employee was removed from service on account of his failure to pass the Special Qualifying Examination. When a challenge was made, the High Court directed his regularisation. The Division Bench by taking into account the re-employment of the appellant therein directed his regularisation with effect from the date on which he was re-employed.

10. The facts of the present case is entirely different. The employee in M.Veeramalai case (supra) continued to work on the basis of the interim order granted by the High Court. Therefore, while deciding the writ petition, the Division Bench moulded the relief by granting regularisation with effect from the date on which the employee was reinstated into service. The said decision is not an authority for the proposition that retrospective regularisation is not possible. The appellants having extended the benefit to the other employees and in fact, even to those who have failed in the departmental examination cannot be heard to say that the case of the respondent is different. We are therefore of the view that the learned single Judge was justified in allowing the writ petition.

11. In the up shot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

svki

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Cooperation, Food and Consumer
Protection Department,
Fort St.George, Chennai -9.

2.The Registrar of Co-operative Societies,
No.170, EVR Periyar Salai,
Kilpauk, Chennai -10.

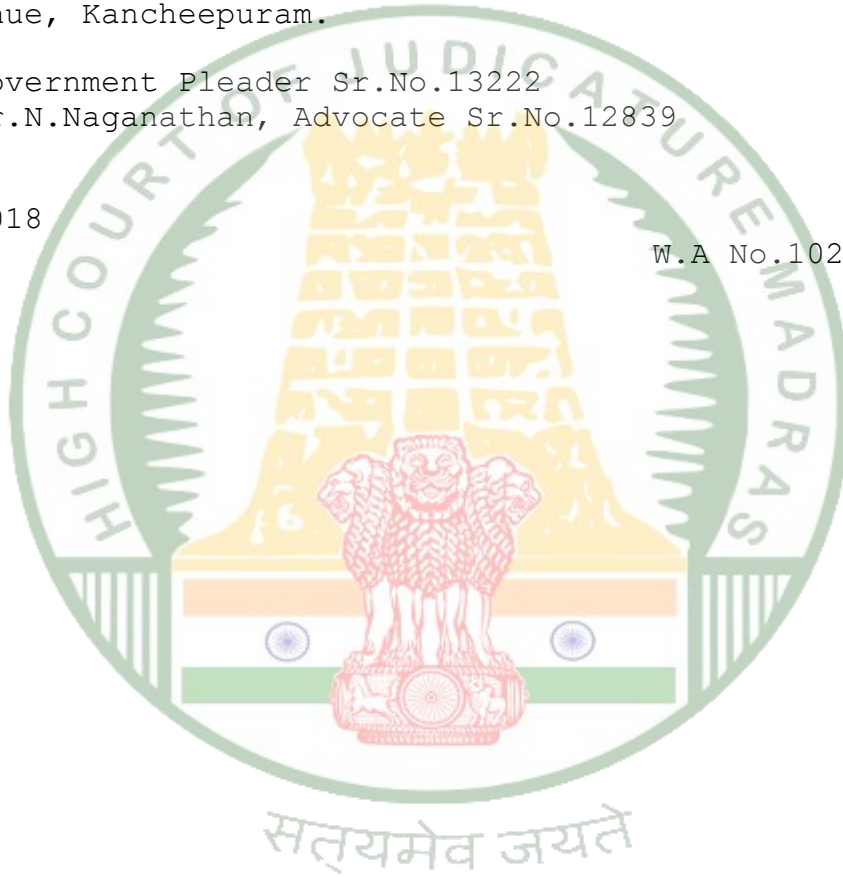
3.The Joint Registrar of Co-operative Societies,
M.M.Avenue, Kancheepuram.

+1cc to Government Pleader Sr.No.13222

+1cc to Mr.N.Naganathan, Advocate Sr.No.12839

NRJK(CO)
sm:20.3.2018

W.A No.1027 of 2017



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