

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

W.P.No.39474 of 2002

Mannupillai

...Petitioner

Vs

1.The Registrar
Co-operative Societies,
N.V.N.Natarajan Maligai
E.V.R.Road, Kilpauk Chennai-10.

2.The Deputy Registrar
Co-operative Societies,
Tiruvannamalai Circle,
Tiruvannamalai District.

3.The Joint Registrar
Co-operative Societies,
Tiruvannamalai Circle,
Tiruvannamalai.

4.The Special Officer,
Thurinjapuram Co-operative Primary
Land Development bank Ltd.,
Mallawadi Post,
Tiruvannamalai District,

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings of the fourth respondent dated 30.09.2002 pursuant to the special officers resolution No.1/2002 dated 30.09.2002 and quash the same.

For Petitioner : Mr.R.Krishnamoorthy

For Respondents

For R1 to R3 : Mr.L.P.Shanmugasundaram

For R4 : Mrs.T.Girija

ORDER

The prayer sought for in this writ petition is for a writ of certiorari, to call for the records relating to the

proceedings of the fourth respondent dated 30.09.2002, pursuant to the Special Officer's resolution No.1/2002 dated 30.09.2002 and quash the same.

2. The facts which are required to be noticed for disposal of this writ petition are as follows:- The petitioner was appointed as Supervisor at the fourth respondent bank on 01.12.1972. Even though the minimum qualification to hold the post of Supervisor was passed in SSLC, admittedly the petitioner did not have that qualification, as even though he had studied the SSLC course under old SSLC system, he did not pass the said course, however, he had been appointed and continued in the post.

3. Thereafter, the Government passed an order in G.O.Ms.No.337, Education Department dated 24.02.1981, by virtue of the said G.O., those who had studied old SSLC i.e., Secondary School Leaving Certificate Course at the 11th standard and did not pass the said course, would be considered as passed under three categories, out of which, one of the category was that, those who studied old SSLC and obtained 30 marks in each of the subjects, even though the said marks were not qualifying marks to declare the candidate pass, however such candidates would be deemed to have been passed in the said old SSLC course and such declaration would have come to effect from 01.10.1978.

4. In pursuant to the said concession given by the Government to the candidates by the above said G.O, since the petitioner obtained 30 marks in all subjects, but even though he failed in old SSLC, since he had been declared as passed on 01.10.1978, he was considered as having fulfilled the qualification to hold the post of supervisor, for which he was appointed originally, under the fourth respondent society. Accordingly, orders were passed by the Registrar of Co-operative Society by order dated 13.01.1989, in Registrar's letter in Na.Ka.No.22370/88 NV2, dated 13.01.1989. By virtue of the said order passed by the Registrar of Co-operative Society i.e., the first respondent herein, the service of the petitioner had been regularised with effect from 01.10.1978. Accordingly, the petitioner subsequently has also been conferred in the selection grade with effect from 01.10.1988.

5. However, when the wage settlement was entered into between the employees and the employer/respondents dated 13.09.1996, pursuant to G.O.2(D)No.69, dated 12.11.1993, at the time of refixing the salary of the petitioner, which had been fixed by taking into account, the date of the original appointment of the petitioner i.e., on 01.12.1972, and accordingly his conferment of selection grade and special grade are also preponed.

6. This conferment of those status were given to the petitioner as if his service has been regularised from the original date i.e., 01.12.1972, and subsequently the benefit conferred on him by giving selection grade and special grade salary also had been regularised, and the revised/enhanced salary also had been paid to the petitioner for some time. This was noticed by the Audit team later on and on coming to know the fact that, even though the petitioner had been regularised in the post of Supervisor from 01.10.1978, the subsequent preponement of his service and further conferment of the status of selection grade and special grade and re-fixation of the revised/enhanced pay, was not in consonance with the order of regularization given to the petitioner by the first respondent in as much as his qualification being conferred as declared by virtue of the Government Order dated 01.10.1978, as referred above, the respondents had taken decision to revise the pay scale fixed in favour of the petitioner and also decided to recover the excess pay paid to him till such time. Accordingly, the fourth respondent passed an order dated 30.09.2002, under which, the fourth respondent directed the petitioner to pay back a sum of Rs.43,618/- as excess payment and such payment shall be recovered in 40 instalments. Along with said order, the revised pay structure has also been issued, taking into account the regularisation date of the petitioner as 01.10.1978. Aggrieved over the said order passed by the fourth respondent on 30.09.2002, with the annexed revised pay structure of the petitioner, the present writ petition has been filed with the above said prayer.

7. Heard Mr.R.Krishnamoorthy, learned counsel appearing for the petitioner who would submit that, no doubt the petitioner did not have the qualification of SSLC passed at the time of appointment on 01.12.1972. Even though the minimum qualification to the post of the Supervisor is pass in SSLC, subsequently once such irregularity had been rectified by giving regularisation by the proceedings of the first respondent/Registrar of Co-operative Societies, then all other service benefits shall be conferred on the petitioner including the regularisation from the date of original appointment itself.

8. The learned counsel would also submit that, once the service of the petitioner had been regularised, in view of the settled proposition of the law in this regard, such regularisation should date back from the date of original appointment and therefore the respondents have no authority to fix an artificial date to regularise the service of the petitioner.

9. In support of his contention, the learned counsel appearing for the petitioner has relied upon two decisions of the Honourable Apex Court. The first decision cited is (1984) 4

SCC 329 in the matter of G.P.Doval and others versus Chief Secretary, Government of UP and others wherein, the learned counsel relied upon the following findings in the paragraph No. 13 of the judgement :-

"13.If the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. That has not been done in this case. Therefore, assuming that the model principle set out in the 1940 Order has a binding effect, the impugned seniority list does not conform to the prescribed guidelines and would certainly be invalid."

10. The second judgement cited by the learned counsel appearing for the petitioner in support of his contention is that (1999) 8 SCC 287 in the matter of L.Chandrakishore Singh Vs. State of Manipur and others, wherein the learned counsel relied upon paragraph No. 15 of the judgement, which reads thus:

"15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority and shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgement of this Court in G.P.Dovalv.Chief Secy., Govt. of Up."

11. By relying upon these decisions, the learned counsel appearing for the petitioner contended that, once the initial

appointment is made, even though it was irregular, and had subsequently been regularised and the appointment itself has been regularised by the subsequent decision of the authority, such regularisation shall take back only from the date of appointment. The services rendered by the petitioner from 1972 to 1978 will also have to be taken into account for the purpose of regularisation and confirmation of all other benefits and therefore such confirmation, since have already been conferred on the petitioner, the same cannot be taken away or abrogated by the respondents by stating the reason that, by virtue of the Government Order as referred above, since the petitioner's qualification was deemed to have passed ie., SSLC passed with the cut off date ie., on 01.10.1978. Such cut off date shall not be taken into account for the purpose of regularising the service of the person like the petitioner, who are already in service even prior to the issuance of the said G.O. Therefore, the learned counsel appearing for the petitioner by making these submissions and by relying upon these judgments would make a vehement contention and appeal that the impugned order taking away the right already conferred on the petitioner by giving regularisation of his service from the date of his original appointment and other status like selection grade and special grade should not have been passed and therefore the impugned order is not only unjustifiable but also unlawful, as it goes against the well settled principal of law. Hence the impugned order is liable to be interfered with.

12. Per contra, Mr.L.P.Shanmugasundaram, learned Additional Government Pleader appearing for the respondents would submit that, it is an admitted case of the petitioner that he did not possess the qualification of SSLC pass at the time of appointment as Supervisor. Nevertheless, he was appointed so, therefore such appointment cannot be treated as an irregular appointment and it can only be treated as illegal appointment. Merely because by virtue of the subsequent Government Order, the said qualification of old SSLC without having the necessary minimum marks to pass, the same also was declared as pass, only for the purpose of those who are already in service, to retain in the service, the petitioner cannot take any advantage to seek the benefits of confirmation or regularisation of his services from the original date of appointment. The learned Additional Government Pleader would further submit that, since the Government Order conferred the benefit of pass in SSLC only from the date of 01.10.1978, and by virtue of the said Government Order only, he had been regularised, he cannot seek any other benefits beyond the scope of the G.O.

13. The learned Additional Government Pleader would further argue that, the said regularisation was given in favour of the petitioner from 01.12.1972, unilaterally, without taking into account the legal position, and also the factual matrix

that the petitioner is entitled to hold the post only from 01.10.1978 and by virtue of wrong alternation made subsequently in favour of the petitioner, which had been rightly pointed out by the Audit team, based on which, after having considered the qualification of the petitioner, the earlier position was restored. Since, in the mean while, the excess payment paid by way of additional salary to the petitioner is sought to be recovered in 40 instalments and also the pay of the petitioner has been correspondingly revised. Therefore, the learned Additional Government Pleader submitted that, the impugned order has been passed strictly in consonance with the rules and procedure as contemplated in the G.O. as well as based on the qualification of the petitioner and therefore it does not require any interference from this Court.

14. I have considered the said rival submissions made by the learned counsel on both sides and also perused the materials placed before this Court.

15. As has been rightly pointed out by the learned Additional Government Pleader, it is an admitted fact that, the petitioner did not hold the qualification of SSLC pass in the year 1972, when he was appointed as the supervisor in the fourth respondent society/Bank. Since the minimum qualification to hold the post of Supervisor was SSLC Pass, the petitioner ought not to have been appointed as supervisor without minimum qualification. In this regard, the appointment cannot be treated as irregular appointment and it can only be treated as illegal appointment. The law is well settled in this regard, where the irregular appointment made, can be ratified at a later point of time, however, an illegal appointment if any made, at any point of time it cannot be ratified and once the illegal appointment was made it will always be an illegal appointment.

16. In the case in hand, even though the petitioner was appointed as Supervisor in the year 1972 without having minimum qualification, he continued the service in subsequent years. At that point of time, the Government came forward to issue G.O.Ms.No.337 Education Department dated 24.02.1981, which has conferred certain benefits to those who studied old SSLC but not passed the said examination. Such concession was conferred on the failed candidates under the G.O.Ms.No.337 Education Department dated 24.02.1981, with effect only from 01.10.1978. The relevant portion of the G.O is extracted herein for easy reference :-

"(ii) 4-78-க்கு முன்பு, ஒவ்வொரு பாடங்களிலும்
30 விழுக்காடும் அதற்கு மேலும் பெற்று, தோல்வியுற்றதாகக்
கருதப்பட்ட மாணவர்கள் மீண்டும் தேர்வு எழுதி 35
விழுக்காடு பெற வேண்டியதில்லை. அத்தகைய மாணவர்கள்

அனைவரும் 11ஆண்டு எஸ்.எஸ்.எல்.சி தேர்வில் தேர்ச்சி பெற்றவர்களாக 1-10-78 லிருந்து கருதப்படுவார்கள். பகுதி முறை திட்டம் நடைமுறைக்கு வருவதற்கு முன்பு, நடைபெற்ற எஸ்.எஸ்.எல்.சி தேர்வுகளில் தேர்ச்சி பெறாதவர்கள் பலர் அரசு பணியில் ஏற்கனவே சேர்ந்திருப்பார்கள். அவர்கள் ஒவ்வொரு பாடங்களிலும் 30 விழுக்காட்டிற்கு குறையாமல் மதிப்பெண்கள் பெற்றிருந்தால் 1-10-78-லிருந்து அவர்களும் எஸ்.எஸ்.எல்.சி. தேர்வில் தேர்ச்சிபெற்றவர்களாக கருதப்படுவார்கள்."

The reason for conferring the said benefit from 01.10.1978 is having a valid cause that, in the academic year 1978-79, the old pattern of SSLC ie., 11 years schooling was done away and the new system of 10+2 was introduced in Tamilnadu. In other words, instead of 11 years schooling, it had been reduced to 10 years, after the 10th year the student have to undergo two years Higher Secondary Course. By virtue of this drastic change in SSLC system, those who failed in the Old SSLC (11 years) would not have a chance of passing the SSLC as the same would no more available to those students. Since the considerable number of candidates with old SSLC failed joined in government services and in order to protect their services, the Government thought it fit to issue the Government Order and that is the reason why, such concession had been given to those who failed in old SSLC through the G.O., and from 01.10.1978, they would be considered as the candidates passed with old SSLC.

17. Here the case in hand, the petitioner's service itself had been conferred and regularised with effect from 01.10.1978, only because of the said G.O. Otherwise the petitioner service would not have been regularised and he would have been dismissed from service for want of qualification.

18. Insofar as the contention raised by the learned counsel appearing for the petitioner by relying upon the said two decisions ie., (1984) 4 SCC 329 and (1999) 8 SCC 287, are concerned, in both the cases, the Hon'ble Apex Court has made it clear that, if any appointment is made without following the prescribed procedure but later on such irregular appointment is regularised, such regularisation can be given only from the date of initial appointment. Here in the case in hand, it is not the mere violation of the procedure in making appointment. It was an appointment without any qualification and therefore the appointment made to the petitioner initially cannot be treated as an appointment in violation of the procedure alone but it can only be treated as an illegal appointment. The law is well settled in this regard. If an illegal appointment is made, it

cannot be ratified. Here in the case, even though the initial appointment was made illegally, subsequently by the G.O issued by the government, as referred to above, the petitioner was able to get regularisation from 01.10.1978, which was strictly on the basis of the benefit conferred under the said G.O. Once the petitioner seeks to enjoy the benefit conferred under the G.O., the petitioner cannot turn around and say that he is entitled to get the benefit beyond the scope of the G.O.

19. In view of the facts and circumstances of the case, as the appointment made to the petitioner initially was not merely in violation of the procedure but it is an appointment without the qualification, therefore it was unlawful and illegal, therefore the decisions cited by the petitioner's counsel would not be made applicable to the facts of the case of the petitioner.

20. Since the petitioner is entitled to get regularisation only from 01.10.1978, by virtue of the G.O as referred above, and such regularisation since has already been rightly made to the petitioner and based on the which, further benefits of selection grade and special grade have also been given, the petitioner could have satisfied with the said conferment of the benefits made in favour of him. While so, the subsequent change of regularisation by preponing the same from 1978 to 1972 and corresponding preponement of the benefits of selection grade and special grade, certainly would be unlawful exercise under which if any benefits acquired or received by the petitioner, the same shall be treated only as unjust enrichment, against which, the petitioner cannot seek any protection and of course the decision on the part of the respondent to pass the impugned order to recover the excess payment paid to the petitioner as well as the fixation of revised pay scale is perfectly correct. In view of that, this Court is of the considered opinion that there is no infirmity or illegality or perversity attached with the impugned order and therefore the same has to be sustained. Hence, the present writ petition fails.

21. It is brought to the notice of this Court by the learned counsel appearing for the petitioner that, during the pendency of this writ petition no further action had been taken to pay the retirement benefits payable to the petitioner, as the petitioner has already been superannuated and retired from the service. On the said submission, the learned counsel appearing for the respondent would submit that, because of the pendency of this case, no step had been taken and once the writ petition is decided, accordingly the petitioner's revised pay as per the impugned order and the retirement benefits accordingly would be calculated and whatever the due payable to the petitioner, would be paid within the time frame. Considering all these

developments, this writ petition is disposed of with the following orders:-

(i) The impugned order is sustained. Hence, the writ petition is liable to be dismissed, accordingly is dismissed .

(ii) The respondents are directed to calculate the benefit payable to the petitioner, pursuant to the impugned order/revised pay scale and accordingly, pay the same to the petitioner within the period of two months from the date of receipt of the copy of this order.

No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rts/rst
To

1.The Registrar
Co-operative Societies,
N.V.N.Natarajan Maligai
E.V.R.Road, Kilpauk Chennai-10.

2.The Deputy Registrar
Co-operative Societies,
Tiruvannamalai Circle,
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Tiruvannamalai.

4.The Special Officer,
Thuringapuram Co-operative Primary
Land Development bank Ltd.,
Mallawadi Post,
Tiruvannamalai District.

+1cc to Mr.T.Girija, Advocate, S.R.No. 66969
+1cc to Mr.K.Premkumar, Advocate, S.R.No. 67209
+1cc to the Government Pleader, S.R.No. 67413

W.P.No.39474 of 2002

PVS(CO)
GN(09/10/2019)