

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.385 of 2018 and CMP.No.3214 of 2018

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Rural Development and Panchayat Raj (CGS-3)
Department, Fort St George, Chennai-9.
 2. The Director of Rural Development and
Panchayat Raj, Panagal Building,
Saidapet, Chennai-600 015.
 3. The District Collector,
Pudukottai.
 4. The Joint Director/Project Officer,
District Rural Development Agency,
Kattupudukulam,
Pudukottai-622 001. Appellants
- Vs

- 1.M.Sekar
- 2.N.Rajagopal
- 3.G.Sarojini @ Sheela
- 4.S.Anthonysamy

- 5.The District Supply and Marketing Society
rep. by Secretary, DRDA Campus,
Kattupudukulam, Pudukottai-622 001.

- 6.The Managing Director,
Tamil Nadu Corporation for Development
of Women Limited,
Annai Theresa Mahalir Valagam,
Valluvarkottam Annex,
Nungambakkam, Chennai-34.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 08.08.2016 made in W.P.No.24823 of 2015
by a learned Single Judge.

W.P.No.24823 of 2015:

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Ceriorarified Mandamus, to call for the records of the 1st respondent relating to G.O.Ms.No.99, Rural Development and Panchayat Raj (CGS.3) Department, dated 07.07.2015 stating that the claim for regularisation and fixing time scale of pay to the petitioners cannot be complied with and to quash the same and consequently, to direct the 1st respondent to pass orders regularizing the service of the petitioners and to fix time scale of pay as per the recommendations made by the respondents 3 and 5, dated 08.06.1999, 25.09.2000, 05.11.2001 and 27.12.2004 and as per order of this Court, dated 04.04.2013, passed in W.P.No.9871 of 2008

For Appellant :: Mr.STS.Murthy,
Additional Advocate General
for Mr.Govindasamy, Spl.G.P.
For Respondents :: Mr.R.Singaravelan(S.C)
1 to 4 for Mr.V.S.Jagadeesan

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 08.08.2016 made in W.P.No.24823 of 2015 by a learned Single Judge.

2. The Writ Petition has been filed challenging the order passed by the 1st respondent therein, namely, the Secretary to Government in G.O. (Ms.) No.99, Rural Development and Panchayat Raj (CGS.3) Department, dated 07.07.2015 wherein, the claim of the petitioners therein for regularising their services and to fix time scale of pay was rejected and for a consequential direction to the 1st respondent to pass orders regularising the services of the writ petitioners and to fix time scale of pay as per the recommendations made by the 3rd respondent therein, namely, the District Collector, Pudukkottai and the 5th respondent, namely, the Joint Director/Project Officer, Pudukkottai, dated 08.06.1999, 25.09.2000, 05.11.2001 and 27.12.2004 and as per the order of this Court dated 04.04.2013 passed in W.P.No.9871 of 2008. By order dated 08.08.2016, the said Writ Petition was allowed by setting aside the impugned order of the 1st respondent. Aggrieved over the same, the State is before this Court with this Writ Appeal.

3. Heard the learned Additional Advocate General appearing for the appellants and the learned Counsel appearing for the respondents 1 to 4. We have also perused the materials available

on record carefully including the order of the learned Single Judge.

4. At the outset, it is relevant to extract paragraph 16 of the order of the learned Single Judge hereunder:

'16. For the foregoing discussions held, this writ petition is allowed and the impugned order passed by the 1st respondent, dated 07.07.2015, is set aside. This Court can only sympathetically say that the petitioners have been continuously toiling for the past 20 years, without any break, till date, without the benefit of regularisation. Therefore, it is suffice to state that the 1st respondent, viz. Government has to consider the case of of the petitioners for absorbing them in the Society, where they have been continuously employed for nearly 20 years without any break and continuing in service till date and pass appropriate orders, on merits and in the light of the order passed by this Court in W.P.Nos.3571, 3572 and 5975 of 2009 dated 25.11.2010, and also in the light of G.O.Ms.No.139 dated 28.09.2013 and G.O.Ms.No.105, dated 26.02.2016, as expeditiously as possible. There shall be no order as to costs.'

5. But, according to the appellants herein, the respondents 1 to 4 are claiming regularization of their services in District Supply and Marketing Society which is a Society registered under the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27 of 1975) and it is not a Government Department/Undertaking. Further, the District Supply and Marketing Society (DSMS) was created to support the Self-Help Groups in marketing their products and assisting them in value addition, packaging and providing all other support to enable them to compete in the market and realise profits and enhance their income. Since the persons working there were not recruited through Government Procedures and Norms, they are not Government Servants and they do not have the inherent right to be absorbed as Government Servants after a particular point of time. Therefore, the case of the respondents 1 to 4 have to be rejected.

6. A perusal of the typed set of papers reveals that the Society under which the respondents 1 to 4 have been working continuously for more than 20 years is an establishment under the Scheme of the Government of India through the District Collector to make the society viable. Therefore, it is no doubt obvious that the respondents 1 to 4 are not Government Servants and as prayed for by them, their services could not be regularized and fix their salary in the time scale of pay.

Taking into consideration of the same, it is relevant to state that this Court by an interim order dated 13.03.2018 has held as follows:

'2. We are of the opinion that it is for the respondent authority to approach the Apex Body, namely, Funding Agency to reconsider the grievance submitted by way of representation already submitted, in order to run the system through the general funding by the Central Government Schemes.

3. It is disheartening to note that no decision has been taken even after six years and it is high time that concerned agency shall look into the situation and take a decision for enhancing the fund, so that the system which was established long back with idea would survive and problem of unemployment and labour would be reduced.'

In response to the said order, it is represented that the salary of the respondents 1 to 4 have been enhanced considerably.

7. In view of all the above, as observed by the learned Single Judge, it is difficult to direct the 1st appellant, Secretary to Government, Rural Development and Panchayat Raj (CGS.3), Fort St. George, Chennai-9 to consider the case of of the writ petitioners/respondents 1 to 4 for absorbing them in the Society, where they have been continuously employed for nearly 20 years without any break and continuing in service till date. At the same time, we are of the view that having regard to the settled principles of law, it could not be impediment for the appellants to continue the services of the respondents 1 to 4, till they reach the age of superannuation except for any misconduct and as and when the scale of pay revises to other employees, the same is applicable to them also.

8. With the above modification of the order of the learned Single Judge made in W.P.No.24823/2015 dated 08.08.2016, the Writ Appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
District Supply and Marketing Society,
DRDA Campus,
Kattupudukulam, Pudukottai-622 001.
- 2.The Managing Director,
Tamil Nadu Corporation for Development
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+1cc to Mr.R.Singaravelan, Advocate sr.no.58930

W.A.No.385/2018

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