

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.31840 of 2013

K.Mariappan

... Petitioner

Vs

1.The Government of Tamil Nadu,
Rep by its Secretary,
Co-operative Food and Consumer
Protection Department,
Fort St.George,
Secretariat, Chennai-600 009.

2.The Registrar of Co-operative Societies,
Kilpauk, Chennai 600 010.

3.The Joint Registrar of Co-operative Societies,
Virudhunagar, Virudhunagar District.

4.The Deputy Registrar of Co-operative Societies,
Srivilliputhur, Virudhunagar District.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents herein to grant monetary and other benefits to the petitioner as per G.O.Ms.No.324, Co-operative Food and Consumer Protection Department, dated 09.12.1997 for the period from 09.10.1990 to 20.07.2008 during when the petitioner was ousted from service as temporary Junior Inspector in Co-operative Department within the time frame.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the

following relief:-

"To issue a Writ of Mandamus, to direct the respondents herein to grant monetary and other benefits to the petitioner as per G.O.Ms.No.324, Co-operative Food and Consumer Protection Department, dated 09.12.1997 for the period from 09.10.1990 to 20.07.2008 during when the petitioner was ousted from service as temporary Junior Inspector in Co-operative Department within the time frame."

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Junior Inspector of Co-operative Society on temporary basis on 16.12.1985. On 10.11.1988, G.O.Ms.No.271, Cooperation, Food and Consumer Protection, was issued providing for special qualifying examination by Tamil Nadu Public Service Commission, in order to regularise the services of temporary Junior Inspectors of Co-operative Societies. The examination was held on 15.10.1989, in which, the petitioner along with others participated. Immediately thereafter, results came to be published, but, however, the result of the petitioner was withheld, in view of the minor penalty being imposed on him on 22.07.1987.

4. In the meanwhile, all the temporary Junior Inspectors were ousted from service on 09.10.1990, including the petitioner. The termination of Junior Inspectors was put to challenge before the then Tamil Nadu Administrative Tribunal in O.A.No.3127 of 1990, etc. batch. On 11.07.1991, the original applications were allowed by directing the authority to reinstate all those applicants who were originally employed as temporary Junior Inspectors with all service and monetary benefits. Against which, a Special Leave Petition was filed and the same was also dismissed.

5. While matter stood thus, the petitioner had approached the then Tamil Nadu Administrative Tribunal in O.A.No.710 of 1993, challenging the withholding of his result by the Tamil Nadu Public Service Commission in regard to the qualifying examination held on 15.10.1989. However, the said application was ultimately dismissed on 11.04.2002. Against which, a writ petition in W.P.No.43605 of 2002 was filed. Thereafter, the writ petition was allowed. In the writ petition, there was a finding that the petitioner had secured 93 marks in the examination and the qualifying mark was only 60 marks and therefore, he was entitled to be appointed as Junior Inspector on par with other similarly placed persons. After the disposal of the writ petition on 17.07.2006, it was finally implemented by the respondents on 21.07.2008, re-appointing the petitioner as Junior Inspector of Cooperative Society. Pursuant to his appointment, an order was issued on 01.09.2009, granting

appropriate seniority to the petitioner with effect from 16.10.1989 i.e., after the date when the qualifying examination was conducted.

6. The grievance of the petitioner is that after the original applications were allowed filed by the similarly placed persons, questioning their termination by the Tamil Nadu Administrative Tribunal and which was also confirmed by the Hon'ble Supreme Court of India, the Government has issued G.O.Ms.No.324, Co-operative Food and Consumer Protection Department, dated 09.12.1997, extending all benefits including monetary benefits to all the Junior Inspectors from 10.10.1990 till re-employment. Those persons who succeeded before the Tribunal, originally came to be re-appointed in 1997, with extension of benefits including monetary benefits with effect from 10.10.1990. However, the petitioner was though litigating for several years from 1993, till this Court has disposed of the writ petition on 17.07.2006, he was not granted monetary benefits though he was identically placed like that of the other Junior Inspectors. Though the petitioner has been assigned seniority on par with others with effect from 16.10.1989, he was not granted monetary benefits as given to other Junior Inspectors who came to be re-appointed after the orders passed by the then Tamil Nadu Administrative Tribunal, which was also confirmed by the Hon'ble Supreme Court of India.

7. The learned counsel for the petitioner would submit that it was not the fault of the petitioner that he was not employed during the relevant period, as the petitioner was prevented from discharging his duties, in view of the adverse action taken against him by the respondents. The only point on which, the claim of the petitioner is sought to be resisted is that the petitioner was not in employment when G.O.Ms.No.324 dated 09.12.1997 was issued. According to the learned counsel, in fact, when the said Government Order was issued, none of the Junior Inspectors who were ousted from service, were in employment and the same holds good for the petitioner as well.

8. However, in view of the petitioner being peculiarly placed because of the withholding of the result of the Special Qualifying Examination, the petitioner had approached the then Tamil Nadu Administrative Tribunal and this Court and the litigation was pending for 13 long years, for which, the petitioner cannot be faulted with. Therefore, the learned counsel would submit that the petitioner is also to be treated on par with identically placed Junior Inspectors in the matter of grant of monetary benefits and denying the same is per se unreasonable, discriminatory and violative of the Article 14 of the Constitution of India.

9. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is submitted that the petitioner had come under adverse notice during the relevant time and therefore, the results were withheld and therefore, the petitioner cannot claim the benefits on par with identically placed Junior Inspectors. Moreover, when the G.O.Ms.No.324 dated 09.12.1997 was issued, the petitioner was not in service at all and he has challenged withholding of result which was pending consideration before the then Tamil Nadu Administrative Tribunal, which eventually dismissed the application on 11.04.2002. Thereafter, this Court has intervened in the matter in W.P.No.43605 of 2002 and granted direction in favour of the petitioner on 17.07.2006 and finally, it was implemented on 21.07.2008. In such circumstances, the petitioner was not entitled to claim monetary benefits for such long period of his non-employment.

10. The facts as narrated above have not been disputed by the respondents. That being the case, this Court is unable to appreciate the submission made on behalf of the respondents that the petitioner can be treated differently because of the litigation pending before the learned Tamil Nadu Administrative Tribunal and before this Court. In fact, even those Junior Inspectors who have challenged their termination, had approached the learned Tamil Nadu Administrative Tribunal and originally the applications filed by them were pending, finally, only after passage of few years, G.O.Ms.No.324, was issued on 09.12.1997, on their succeeding before the Tribunal. Therefore, the pendency of litigation cannot be a ground for denial of actual benefits to the petitioner, if he is otherwise entitled to.

11. As rightly contented by the learned counsel for the petitioner that once the Government has decided to extend the benefit of monetary benefits to all the ousted Junior Inspectors, even for the period of non-employment from 10.10.1990 till their re-employment, the same yardstick has to be applied in respect of this petitioner as this Court does not see any differential feature for treating the petitioner differently from others. May be the period for which, he is claiming monetary benefits is too long i.e., from 1990 till 2008, nevertheless, however, the petitioner cannot be faulted for such long delay, in view of the pendency of litigation before the Tribunal and before this Court. Once the similarly placed persons were considered and granted monetary benefits, this Court does not think that the petitioner can be precluded from claiming such similar benefit from the respondents and any other conclusion in this regard would result in hostile discrimination and cannot stand the test of Article 14 of the Constitution of India.

12. For the above said reasons, the writ petitions are allowed. the respondents are directed to grant all the benefits that are envisaged in G.O.Ms.No.324, dated 09.12.1997 for the period from 10.10.1990 to 20.07.2008. The respondents or the competent authorities are directed to implement the direction of this Court, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The Government of Tamil Nadu,
Co-operative Food and Consumer
Protection Department,
Fort St.George,
Secretariat, Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
Kilpauk,
Chennai 600 010.
- 3.The Joint Registrar of Co-operative Societies,
Virudhunagar,
Virudhunagar District.
- 4.The Deputy Registrar of Co-operative Societies,
Srivilliputhur,
Virudhunagar District.

+1cc to Mr. L.Chandra Kumar, Advocate, S.R.No. 45876

+1cc to the M.Santhana Raman, Government Pleader, S.R.No. 46531

W.P.No.31840 of 2013

GN(06/09/2018)