

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.2762 of 2013

T.M.S.Balaraman

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. By Secretary to Government,
Co-operative Food and Consumer Protection
Department, Fort St. George,
Chennai 600 009.
 2. The Registrar of Co-operative Societies,
No.178, E.V.R. Periyar Salai,
Kilpauk, Chennai 600 010.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus directing the Respondents to implement G.O.Ms.No.113, dated 03.09.2012, Co-operation, Food and Consumer Protection CL2 Department and thereby direct the Respondents to re-appoint the Petitioner as Junior Inspector of Co-operative Societies in the Respondents' Department immediately and pay back all the service benefits and monetary benefits immediately.

For Petitioner : Mr.B.Gopalakrishnan
for Ms.P.A.Chitramani

For Respondents : Ms.T.Girija,
Government Advocate

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O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondents to implement G.O.Ms.No.113, dated 03.09.2012, Co-operation, Food and Consumer Protection CL2 Department and thereby direct the Respondents to re-appoint him as Junior Inspector of Co-operative Societies in the Respondents' Department immediately and pay back all the service benefits and monetary benefits immediately.

2. It is stated by the Petitioner that he was appointed as Junior Inspector of Co-operative Societies in the 2nd Respondent Department on temporary basis by invoking Rule 10(a) (i) of the General Rules of State and Subordinate Services. According to him, in order to accommodate the directly recruited Junior Inspectors of Co-operative Societies, the Petitioner and other Junior Inspectors were purposely ousted from service by the Respondents. It is the case of the Petitioner that though his appointment and that of other similarly placed persons are temporary in nature, they have put in more than ten years of continuous service. Hence, the Petitioner and other similarly placed persons made a joint representation to the Government on various dates seeking regularization of the services of temporary Junior Inspector.

3. After careful consideration, the Government issued G.O.Ms.No.271, dated 10.11.1998 for conducting special qualifying examination for temporary Junior Inspectors. The said examination was morefully conducted in the year 1989 and the Petitioner and other similarly placed candidates participated in the same, but, unfortunately, they were not successful in the examination. However, such of those Inspectors working as Junior Co-operative Auditors in the Co-operative Department were ousted from service, on expiry of the need or after co-operative election. From among the 63 failed candidates, 21 candidates, who were working in the Co-operative Audit Department continued in service and the said candidates approached the Tamil Nadu State Administrative Tribunal for regularization of their service from 16.10.1989, i.e. the next day after the date of conducting special qualifying examination (15.10.1989).

4. Based on the direction issued by the Tribunal, the Government, vide G.O.Ms.No.445, dated 20.12.2005, regularized 21 temporary Junior Inspectors, who were working as Junior Co-operative Auditors and they were regularized with effect from 16.10.1989. Based on their claim in G.O.Ms.No.445, unsuccessful candidates approached the Tribunal and subsequently, O.A.No.912 of 1996 was transferred to the file of this Court and renumbered as W.P.No.28269 of 2006 and this Court, by an order dated 21.09.2007, directed the 1st Respondent to consider the case of the Petitioners in the light of G.O.Ms.No.445. Prior to the direction of this Court on 21.09.2007, the Government passed G.O.Ms.No.158, dated 22.05.2007.

5. It is further stated by the Petitioner that two candidates, viz. C.Thirupathi and S.Velu, were similarly placed as that of the Petitioner herein and they were granted the

benefit of appointment as Junior Inspectors. Based on the same analogy, the Petitioner and other unsuccessful candidates knocked the doors of the Respondents' Department with a request to re-appoint or regularize the services of Junior Inspectors of Co-operative Society.

6. Thereafter, the Petitioner and other similarly placed persons filed a Writ Petition in W.P.No.25223 of 2008 and W.P.No.11322 of 2009, seeking to call for the records relating to the order passed by the 1st Respondent in G.O.Ms.No.(D) No.333, Food and Consumer Protection Department, dated 25.09.2008, and for a consequential direction to the Respondents to re-appoint/regularize them as Junior Inspectors of Co-operative Societies and to extend all benefits, both service and monetary. Considering the facts and circumstances of the case, this Court, on 27.01.2010, allowed the above Writ Petitions with the following directions:

"... 11. Therefore, I am of the clear view that the impugned orders are arbitrary and unreasonable and totally discriminatory.

12. In the result, the above Writ Petitions are allowed and the impugned orders are set aside and the Respondents are directed to reappoint the petitioners as Junior Inspectors, as has been done in the case of Thiru. C.Thirupathi in G.O.Ms.(D) No.158, dated 22.05.2007 and in the case of Thiru.S.Velu in G.O.Ms.No.153, dated 13.08.2008 within a period of three months from the date of receipt of a copy of this order."

7. Against the said order made in the above Writ Petitions, Respondents preferred Writ Appeals in W.A.No.2390 of 2010 and W.A.No.2008 of 2010 and by separate judgments dated 05.01.2011 and 18.01.2011, respectively, a Division Bench of this Court dismissed the above Writ Appeals. Even after dismissal of the said Writ Appeals, Respondents did not come forward to re-appoint the Petitioner and other similarly placed persons as Junior Inspectors of Co-operative Societies. Hence, challenging the said dismissal order passed by the Division Bench of this Court, the Petitioner went upto Apex Court in S.L.P.Nos.12830 of 2011 and 12832 of 2011 along with a Petition seeking to condone the delay.

8. The Apex Court condoned the delay and dismissed the Special Leave Petition filed by the Respondents for the reason that no ground is made out for interference of the impugned order. Hence, the Respondents made a proposal to the Government

to comply with the order passed by this Court in the said Writ Petitions and reappoint the Petitioners in the said Writ Petitions, as Junior Inspectors of Co-operative Societies. The said proposal was considered by the Government and G.O.(Ms) No.113 Co-operation, Food and Consumer Protection (CL2) Department, dated 03.09.2012 was issued. Through the said Government Order, it was made clear by the 1st Respondent that re-appointment of temporary Junior Inspector of Co-operative Societies is concurrence from the Tamil Nadu Public Service Commission and certain other guidelines were also framed in the said Government Order to re-appoint Junior Inspectors of Co-operative Societies.

9. For better appreciation, relevant portion of G.O.(Ms) No.113 Co-operation, Food and Consumer Protection (CL2) Department, dated 03.09.2012, is extracted hereunder:

"15. After careful examination of the proposal of the Registrar of Co-operative Societies along with the Government Orders and orders of Hon'ble High Court, the Government have decided to comply with the orders of the Hon'ble High Court, Madras, dated 27.01.2010 in W.P.Nos.25223 of 2008 & M.P.Nos.1 & 2 of 2008 and W.P.No.11322 of 2009 and pass orders accordingly, subject to the following conditions:

(i) The reappointment is to be made only to the petitioners as appeared in the common order of the High Court in W.P.No.25223 of 2008 and M.P.Nos.1 and 2 of 2008 and W.P.No.11322 of 2009, dated 27.01.2010 ...

(ii) The concurrence of the Tamil Nadu Public Service Commission shall be obtained regarding the genuineness of the candidates. The opinion of the Tamil Nadu Public Service Commission shall be obtained prior to joining since the reappointments are made against the post(s) which are under the purview of Tamil Nadu Public Service Commission and also as they have already failed in the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission. Their continuity in service and regularization of their service, etc. are subject to the concurrence of the Tamil Nadu Public Service Commission.

(iii) The reappointment of the temporary Junior Inspector of Co-operative Societies should be treated as a special case and it should not be quoted as a precedent for any

other reappointment in future.

(iv) The reappointment of the concerned Junior Inspectors of Co-operative Societies should be done against the existing vacancies only.

(v) Before issuing reappointment orders, the Registrar of Co-operative Societies should verify the antecedents and bonafide activities of the temporary Junior Inspector of Co-operative Societies, since they are out of service for a long time and any pendency of criminal case/FIR is a bar for their reappointment.

(vi) No backwages and service benefits will be admissible for the period out of their employment, on the basis of 'No Work, No Pay' concept.

(vii) They will be allowed to continue in service based on their bonafide activities and performance in the employment/Work.

(viii) The Registrar of Co-operative Societies shall be requested to obtain the physical fitness before their joining and if they are otherwise qualified.

(ix) The reappointed candidates should fulfill all other conditions that are normally followed for appointment in the Government service."

10. The grievance of the Petitioner is that under the guise of the above conditions, no appointment order was given to the Petitioner and in that process, the Petitioner attained the age of superannuation, due to which, he cannot be considered for re-appointment. Hence, he has come up with the present Writ Petition seeking re-appointment to the post of Junior Inspector of Co-operative Societies in the 2nd Respondent Society.

11. On behalf of the Respondents, Counter Affidavit is filed, wherein, it is stated that the Special Qualifying Examination was held on 15.10.1989 and the services of the candidates, who have come out successful in that Examination, have been regularized with effect from 16.10.1989 and other subsequent dates. But, the Petitioner has not come out successful in the above said Qualifying Examination.

12. It is further stated in the counter that the Co-operative Department, which was functioning as a composite Department with the Registrar of Co-operative Societies as the

Head of the Department, prior to 1989, was subsequently bifurcated. Thereafter, the Co-operative Audit Department started functioning as a separate Department with effect from 12.01.1989 with the Director of Co-operative Audit as its Head and under the control of the Finance Department of the Government of Tamil Nadu, Secretariat, Chennai.

13. According to the Respondents, out of 64 candidates who failed in the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission, 43 candidates belong to Co-operative Department and 21 belong to the Department of Co-operative Audit. Among the 43 failed candidates of the Co-operative Department, one candidate expired and 21 candidates, who were working under the control of the Department of Co-operative Audit, continued in service and they subsequently approached the Administrative Tribunal by filing various Original Applications with a prayer to regularize their services from 16.10.1989, i.e. the next day after conducting the Special Qualifying Examination.

14. Based on the orders passed by the Tamil Nadu Administrative Tribunal in various Original Applications filed by the failed candidates of the Co-operative Audit Department, the Government vide G.O.Ms.No.445, Finance (Co-operative Audit) Department, dated 20.12.2005, issued orders regularizing the services of 21 failed candidates, who were working in the Co-operative Audit Department, w.e.f. 16.10.1989. With regard to their grievance, the Petitioner and 20 others approached this Court in W.P.No.25223 of 2008 and W.P.No.11322 of 2009 and the said Writ Petitions were allowed and the impugned orders were set aside and the Respondents therein were directed to re-appoint the Petitioners as Junior Inspectors within a period of three months. Challenging the said order, the Government preferred Writ Appeals, which came to be dismissed by a Division Bench of this Court and seeking to review the same, the Government filed Special Leave Petition before the Apex Court and the same came to be dismissed.

15. Pursuant thereto, there was several correspondences between the Tamil Nadu Public Service Commission and the 2nd Respondent-Department and finally, vide proceedings in Rc 41406/2009 dated 31.05.2013, out of 28 Petitioners in W.P.Nos.25223 of 2008 and 11322 of 2009, 21 were re-appointed. But, 7 names including the Petitioner herein viz. T.M.S.Balaraman and others were not found in the proceedings on the ground that they attained the age of superannuation and their details are as follows:

S.No.	Name of the Petitioner	Reason
1	P.Perumal	Expired on 16.03.2009
2	R.Chandran	Expired on 17.11.2009
3	A.Needhi	Expired on 25.05.2013
4	T.Thangarajan	Crossed the age of superannuation on 29.02.2008
5	D.Thasil	Crossed the age of superannuation on 30.06.2011
6	O.Viswanathan	Crossed the age of superannuation on 30.06.2012
7	T.M.S.Balaraman	Crossed the age of superannuation on 31.01.2013

16. Thus, according to the Respondents, in view of the fact that the Petitioner had attained the age of superannuation, he will not be entitled to be considered for re-appointment and prayed for dismissal of the Writ Petition.

17. Heard the learned counsel on either side and perused the material documents available on record.

18. Admittedly, the Petitioner herein was not successful in the special Qualifying Examination for temporary Junior Inspectors of Co-operative Societies. Out of the 64 failed candidates, 43 belonged to the Co-operative Department and 21 belonged to the Department of Co-operative Audit. By means of G.O.Ms.No.445, Finance (Co-operative Audit) Department, dated 20.12.2005, 21 candidates who failed in the Qualifying Examination, were granted orders of regularization of service in the Co-operative Audit Department w.e.f. 16.10.1989. However, the names of the Petitioner herein and six others were not included in the said Government Order on the ground that they have attained the age of superannuation on 31.01.2013.

19. When this Court, by a common order dated 27.01.2010 in W.P.No.25223 of 2008 and W.P.No.11322 of 2009, had set aside the impugned order passed against the Petitioners therein and consequently directed the Respondents to re-appoint the Petitioners (including the Petitioner herein) as Junior Inspectors within a period of three months, the contention of

the Respondents herein that the Petitioner herein could not be re-appointed vide proceedings dated 31.05.2013, as he had attained the age of superannuation on 31.01.2013, is unacceptable.

20. It has to be noted that the Writ Appeals preferred by the 2nd Respondent-Department came to be dismissed on 05.01.2011 and 18.01.2011, respectively and even the Special Leave Petitions were dismissed for the reason that no ground is made out to interfere with the impugned order. Even thereafter, the 2nd Respondent-Department has taken two years' time to pass an order regularizing the services of the Petitioner. Once an order of the learned Single Judge is confirmed by a Division Bench of this Court and the Apex Court, benefits of the order passed in the Writ Petition have to be extended to the Writ Petitioner. As this Court has passed an order in the Writ Petitions as early as in the year 2010, for the delay in regularization of services of the Petitioner even after the order of the Apex Court confirming the said order passed in Writ Petitions, the Petitioner cannot be blamed and the 2nd Respondent-Department cannot try to escape to wriggle out the order passed by this Court.

21. As there is inordinate delay on the part of the Respondents in regularizing the services of the Petitioner, this Court is of the view that the petitioner has to be paid wages for the services that he would have rendered, had he been appointed pursuant to the order dated 27.01.2010 passed in the Writ Petition, as confirmed by the Apex Court.

22. In view of the above, Respondents herein are directed to pay wages to the Petitioner herein as per the order dated 27.01.2010 passed by this Court in W.P.No.25223 of 2008 and W.P.No.11322 of 2009, from the date of the said order till the date of his superannuation, together with interest on the same at 9% per annum.

23. Due to the inaction/delay on the part of the Respondent Officials, amount has to be paid from the State exchequer to the employee, who has not rendered any services. Certainly, they have to be penalized for not allowing the petitioner to work. Similarly, the Tax Payers' money should not be wasted in paying for the services of the employee. Hence, the wages payable to the Petitioner shall be recovered from the officials who are responsible for not regularizing the services of the Petitioner in time, as the Apex Court in the case of Central Co-operative Consumers' Store Ltd. vs. Labour Court, Himachal Pradesh reported in 1993 (3) SCC 214, has ordered recovery of the amount of back wages to the employee from the personal salary of the Officers of the Society, who have been

responsible for the endless litigation. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"5. Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority. They have literally persecuted her. Despite unequal strength the opposite-party has managed to survive. We are informed that the opposite-party has been reinstated. This was put forward as bona fide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite-party has been lost in this tortious and painful litigation of more than twenty years. That for such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite-party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite-party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite-party. We may clarify that the permission given shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite-party as directed by the High Court."

24. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. It is made clear that if the order of this Court is not complied

within the time stipulated, Officials who are responsible to implement the order of this Court shall not draw salary till the disbursement of wages to the Petitioner.

This Writ Petition is allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
State of Tamil Nadu,
Co-operative Food and Consumer Protection
Department, Fort St. George,
Chennai 600 009.
2. The Registrar of Co-operative Societies,
No.178, E.V.R. Periyar Salai,
Kilpauk, Chennai 600 010.

+1cc to Mr. B.Sundarapandiyan, Advocate Sr.49883
+1cc to the Special Government Pleader Sr.50580

सत्यमेव जयते

W.P.No.2762 of 2013

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