

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) No.17374 of 2015 and
M.P.(MD)Nos.1 and 2 of 2015

V.Arivel Nedunchelian

.. Petitioner

-vs-

1. The Secretary,
Government of Tamil Nadu,
Tamil Nadu Co-operation, Food and
Consumer Protection Department,
St. George Fort,
Chennai.
2. The Registrar of Co-operative Societies,
170, EVR Periar Road,
Kilpauk, Chennai-10.
3. The Regional Joint Registrar of Co-operative
Societies, Tirunelveli Region 2,
Survigner Street, Palayamkottai,
Tirunelveli-2.
4. The Deputy Registrar of Co-operative Societies,
Tirunelveli Circle, Perumalpuram,
Palayamkottai, Tirunelveli-7.
5. The Special Officer/Liquidator,
T.T.109, Manonmaniam Sundaranar University
Employees Co-operative Thrift and Credit
Society Limited, University Campus,
Abisekapatty, Tirunelveli.

Now office at
Deputy Registrar of Co-operative Societies,
Perumalpuram, Palayamkottai,
Tirunelveli-7.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certioarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent herein in his Proceedings in

R.C.51548/2014 B1-1 dated 12.07.2014 and quash the same as illegal and further direct the 2nd and 5th respondents herein to fix the petitioner's scale of pay w.e.f 03-04-1997, the date when the petitioner entered the service of the 5th respondent society with all financial benefits within a time stipulated by this Court.

For Petitioner : Mr.A.R.Balaji
for M/s.D.Nalliathambi

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

ORDER

Challenging the impugned order passed by the 2nd respondent herein in his Proceedings in R.C.51548/2014 B1-1 dated 12.07.2014 and quash the same as illegal with a further direction, directing the 2nd and 5th respondents herein to fix the petitioner's scale of pay w.e.f. 03-04-1997, the date on when the petitioner entered into the service of the 5th respondent society with all financial benefits within a time stipulated by this Court, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that the petitioner was initially appointed as Clerk through Employment Exchange on 23.4.1979 in 01616 Palayamkottai Co-operative Milk Supply Society Limited. As such, while he was working as Clerk till 02.04.1997, he applied for appointment in the 5th respondent Society on 26.03.1997 and also attended interview on 31.03.1997 and on the very same day, he was appointed as Secretary in the 5th respondent Society. As he was already working in 01616 Palayamkottai Co-operative Milk Supply Society Limited, he was relieved by order passed by the Secretary and joined as Secretary in the 5th respondent Society on 03.04.1997 at 44 years. Since the 5th respondent society was a newly formed one, considering his 18 years of service rendered in 01616 Palayamkottai Co-operative Milk Supply Society Limited, he was observed and appointed in the post of Secretary of the 5th respondent Society. Therefore, he sought the benefit of the time scale of pay as per G.O.No.89, Co-operation Food and Consumer Protection Department dated 16.5.2000 w.e.f. 03.04.1997 i.e. from the date of his joining in the 5th respondent Society on the ground that he got exemption from appointment through Employment Exchange and also got exemption at entry in age limit as per Special by laws 4(1) and 5(ii). Moreover his appointment was as per special by laws and regular and does not require regularisation by Government. Further, even when he was appointed as Clerk through Employment Exchange in 01616 Palayamkottai Co-operative Milk Supply Society Limited, he was

having all the requisite qualification and also Diploma in Co-operative Training.

3. The learned Counsel for the petitioner further referring to the By Law 2.4(ii) of the 5th respondent states that no appointment by direct recruitment to any post shall be made except through Employment Exchange by way of notifying the vacancies decided to the concerned Employment Exchange (compulsory notification of vacancy) rules, provided that these restrictions shall not apply to appointment of any staff whose services have been lent by Government or taken on deputation from other institutions or recruited from services of another co-operative institution. Therefore, according to the learned Counsel for the petitioner, when the 5th respondent has accepted the eligibility and competency of the petitioner for being appointed as a Secretary, instead of giving the benefit of the time scale of pay from the date of entry into service in the 5th respondent Society, namely, 03.04.1997, they have wrongly given the benefit of the time scale of pay only from 01.08.2008 without any basis and arbitrarily. Hence, fixing a cut off date, namely, 01.08.2008 to grant time scale of pay to the petitioner is wholly unjustifiable and untenable. If the 5th respondent has not chosen the petitioner while he was serving as Clerk in 01616 Palayamkottai Co-operative Milk Supply Society Limited, he would have definitely in the said society and also retired from service with all the service benefits. Therefore, having given the benefit of the time scale of pay w.e.f. 01.08.2008 without any basis, direction be given to grant the same from the date of entry into service i.e. w.e.f. 03.04.1997 to the petitioner, it is pleaded.

4. A detailed Counter Affidavit has been filed by the respondents 1 and 2.

5. Learned Special Government Pleader appearing for the respondents submitted that the petitioner was not transferred as a staff of 01616 Palayamkottai Co-operative Milk Supply Society Limited to the 5th respondent and he also made a specific mercy plea while he was serving in the earlier society to be appointed in the 5th respondent Society and accepting his request, he was appointed as a Secretary on consolidated pay of Rs.1,000/- p.m. Since he was not directly recruited as per rules or by any Selection Committee, his appointment was irregular. As per the Special by law of the 5th respondent Society, no person shall apply after the age of 30 in the case of BC and 35 in the case of MBC and 40 in the case of SC/ST, but the petitioner was beyond 30 years at the time of his appointment as Secretary in the 5th respondent Society. It is also stated that in view of the order passed in the Writ Petition filed by the petitioner herein before the Madurai Bench of this Court in W.P.(MD)

No.9889/2009 dated 25.4.2014 setting aside the order impugned therein, directing the respondents to consider the claim of the petitioner afresh in the light of the subsequent Government Orders, relaxing the conditions stipulated under Rule 149(1), (2) and (3) of the Rules, the Registrar of Co-operative Societies has passed an order dated 21.08.2008 fixing the time scale of pay w.e.f. 01.08.2008.

6. The learned Special Government Pleader for the respondents further submitted that it is an admitted case that the petitioner was not sponsored through Commissioner of Milk Production Department or Deputy Registrar (Dairying) Tirunelveli. Therefore, his entry in the 5th respondent Society is only a fresh appointment and that the age limit fixed in the Special By Law of the 5th respondent Society should be applicable to the petitioner. Besides, at the time of his appointment, the petitioner was more than 30 years. Therefore, his appointment in the 5th respondent Society was clearly an irregular one. Further, the petitioner has also not obtained any relaxation for age limit at the time of entering into the service of the 5th respondent Society from the Tamil Nadu Government under Section 170 of the Tamil Nadu Co-operative Societies Act, 1983 and Rule 149 (1)(2)(3). Hence, his claim is not reasonable to get the time scale of pay before 01.08.2008 and as such, the Writ Petition is liable to be dismissed.

7. Heard the learned Counsel on either side and I have also perused the materials available on record carefully.

8. At the outset, a perusal of the order passed by the Madurai Bench of this Court in W.P.(MD) No.9889/2009 dated 25.4.2014 shows that the petitioner was originally appointed as Clerk in 01616 Palayamkottai Co-operative Milk Supply Society Limited and thereafter, he was appointed as Secretary of the 5th respondent Society by order dated 31.3.1997. He is eligible for time scale of pay as per G.O.No.89, Co-operation, Food and Consumer Protection Department, dated 16.5.2000 w.e.f. 03.04.1997, from the date of joining in the 01616 Palayamkottai Co-operative Milk Supply Society Limited, based on which this Court passed an order directing the respondents to consider the claim of the petitioner in the light of the subsequent Government Orders relaxing the conditions stipulated under Rule 149(1) (2) and (3). Thereafter, the 2nd respondent has passed an order giving the benefit of the time scale of pay w.e.f. 01.08.2008, but no reason has been given why they have fixed the time scale of pay from 01.08.2008.

9. In the case on hand, when the service of the petitioner has been accepted for the purpose of giving the time scale of pay from 01.08.2008, this Court is unable to find any

justification to ignore or overlook the service rendered by the petitioner from 03.04.1997 till 01.08.2008. Therefore, the impugned order refusing the benefit of fixation of time scale of pay from the date of entry into service i.e. from 03.04.1997 till 01.08.2008 is set aside and the respondents are directed to give the benefit of fixation of time scale of pay from 03.04.1997 till 31.07.2008 to the petitioner and as the petitioner retired from service on reaching the age of superannuation on 31.08.2010, this Court finds that there cannot be any impediment for the respondents to give such benefit to him. The impugned order is set aside to the above limited extent.

10. With the above observation and direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Tamil Nadu Co-operation, Food and
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3. The Regional Joint Registrar of Co-operative
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Tirunelveli-2.
4. The Deputy Registrar of Co-operative Societies,
Tirunelveli Circle, Perumalpuram,
Palayamkottai, Tirunelveli-7.

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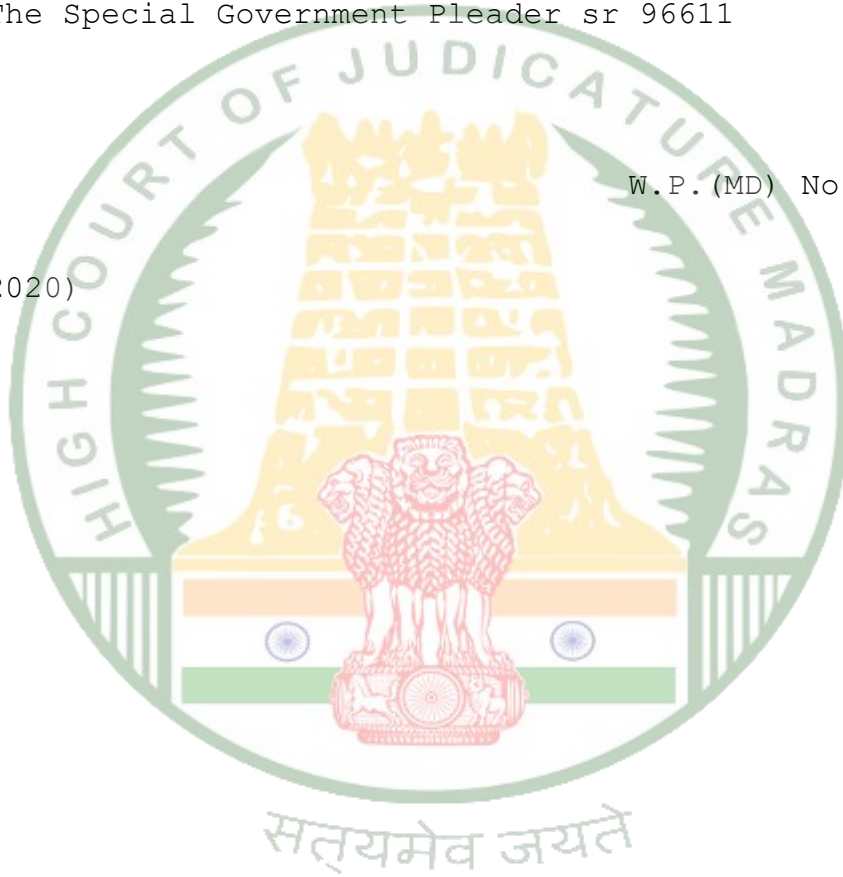
Now office at
Deputy Registrar of Co-operative Societies,
Perumalpuram, Palayamkottai,
Tirunelveli-7.

+1 CC to Mr.D. Nallathambi, Advocate sr 96168.

+1 CC to The Special Government Pleader sr 96611

W.P.(MD) No.17374/2015

MR(CO)
SP(12/03/2020)



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