

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020
CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 13288 of 2019

P.Pachaiappan

... Petitioner

-vs-

1. The Registrar of Co-operative Societies,
(Credit Society)
Natesan Maligai
Kilpauk,
Chennai - 600 010.
2. The Deputy Registrar of Co-operative Societies,
Chennai Region
Raja Annamalaipuram,
Chennai - 600 108.
3. The Sub-Registrar (Credit)
Kuralagam, 2nd Floor,
Chennai - 600 108.
4. Metropolitan Transport Corporation Employees,
Co-operative Thrift and Credit Society (X.C.214)
Represented by its President,
Pallavan Salai,
Chennai - 600 002.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the First to Fourth Respondents to appoint the petitioner as an Office Assistant in the office of the 4th Respondent in the vacancy available within the approved cadre strength with effect from 27.09.2010, the date in which date agreed advise given by the Assistant Commissioner of Labour, Kuralagam.

For Petitioner : Mr. T.Ramkumar

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

O R D E R
(through video conference)

Heard Mr. T.Ramkumar, Learned Counsel for the Petitioner and
Mr. L.P.Shanmugasundaram, Learned Special Government Pleader

appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was engaged as an Office Assistant on temporary basis by the Fourth Respondent with effect from 03.04.1998 on payment of daily wages at the rate of Rs. 50/- per day and he was confirmed in service fixing time scale by order dated 07.04.2000 for which it is pointed out by the Third Respondent that the Fourth Respondent had not been conferred with any such power since that engagement made without reference to the employment exchange is opposed to the procedure required to be followed as prescribed in Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as the 'Rules' for short). A Show Cause Notice dated 14.05.2002 was issued to the Petitioner calling for his explanation, and after receiving the same, the Fourth Respondent by order dated 22.05.2002 terminated the Petitioner from service. The Petitioner had challenged that order in the Writ Petition in W.P. No. 21262 of 2002, which was upheld by the Division Bench of this Court in L.Justine -vs- Registrar of Co-operative Societies [(2002) 4 CTC 385] in a batch of cases filed by the employees of the Co-operative Societies, whose services had been terminated for the said reason. The Hon'ble Supreme Court of India in A.Umarani -v- Registrar, Co-operative Societies and others [(2004) 7 SCC 112] has confirmed the said decision.

3. It is the case of the Petitioner that in terms of the decision of the Division Bench of this Court in L.Justine -vs- Registrar of Co-operative Societies [(2002) 4 CTC 385], the cadre strength has been fixed by the Fourth Respondent as follows:-

S. No.	Designation	No. of posts
1.	Accountant	1
2.	Assistant	3
3.	Office Assistant	1

It is contended that in view of the revised sanctioned cadre strength, one post of Assistant and one post of Office Assistant is still vacant and the Petitioner has made a representation dated 12.12.2014 to reinstate him in service against one of those vacancies. It is the further case of the Petitioner that the Assistant Commissioner of Labour, Kuralagam in proceedings dated 27.09.2010 had advised that the preference may be given to the Petitioner while filling up the vacancies arising in future. The present Writ Petition has been filed for a direction to the First to Fourth Respondents to appoint the Petitioner as an

Office Assistant in the office of the Fourth Respondent in the vacancy available within the approved cadre strength with effect from 27.09.2010, on which date the advice has been given by the Assistant Commissioner of Labour, Kuralagam.

4. The Third Respondent in the Counter-Affidavit dated 26.07.2019 has explained that subsequently, the Government of Tamil Nadu by G.O.(Ms) No. 04, Co-operation, Food and Consumer (CJ1) Protection Department, dated 05.01.2016, has constituted the Recruitment Bureau for every Revenue District for the direct recruitment of paid officers and servants for employment in all categories of registered Co-operative Societies as specified in Rules 150 and 151 of Rules under the control of the Registrar of Co-operative Societies, who have been empowered to make appointments in the manner prescribed in Rule 151 of the Rules. Since the claim of the Petitioner is contrary to the aforesaid procedure, the Third Respondent has highlighted that the Petitioner cannot be granted any benefit of reinstatement in service of the Fourth Respondent as claimed in the Writ Petition. It is also brought to notice that the authorities of the Co-operation Department were not parties in that proceedings before the Assistant Commissioner of Labour, and as such, it would not bind them and that in any event, such advice contrary to law, could not be acted upon.

5. The aforesaid submissions made on behalf of the Third Respondent deserve acceptance and there are no merits in the contentions raised by the Petitioner.

6. In the result, the Writ Petition is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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(Credit Society)
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Represented by its President,
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+1 CC to Mr.L.P. Shanmuga Sundaram, Advocate sr 32903.

+1 Cc to The Special Government Pleader(Co-OP) sr 32649.

W.P. No. 13288 of 2019

SRA (CO)
SP (29/10/2020)



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