



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.9498 of 2014 and

MP(MD) Nos.1 & 2 of 2014

R.Renganathan

Petitioner

Vs

1. The Deputy Registrar of Co-operative Societies
Nagercoil,
Kanyakumari District

2. The President
Y-10 Eathamozhi Primary Agricultural
Co-operative Credit Society Ltd
Eathamozhi - 629 501
Kanyakumari District

Respondents

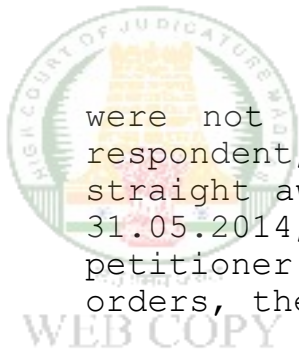
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned direction of the first respondent in his proceedings No.Na.Ka.639/2014/ThoVeSa(2) dated 12.05.2014 and the consequential order of removal passed by the second respondent in his proceedings Nos.04/2014(iv) dated 31.05.2014 in so far as it relates to the petitioner and quash the same.

For Petitioner : Mr. M.E.Ilango
For Respondents : For R1 - Mr.S.Dhayalan
Government Advocate
For R2 - Mr.S.Kumar

O R D E R

This Writ Petition is filed to call for the records relating to the impugned direction of the first respondent in his proceedings No.Na.Ka.639/2014/ThoVeSa(2) dated 12.05.2014 and the consequential order of removal passed by the second respondent in his proceedings Nos.04/2014(iv) dated 31.05.2014 in so far as it relates to the petitioner and quash the same.

2. The case of the petitioner is that his father was initially appointed as appraiser in the second respondent society during 1978 on daily wage basis. Later on, he was brought under the time scale of pay. He died on 24.05.2006. At the time of his demise, he had completed 28 years of service in the second respondent society. The petitioner would state that he has completed +2 and diploma in Co-operative Management. Based on his representation, he was appointed as Night Watchman on compassionate grounds on 30.10.2013. While so, based on some representation from a rival union, the first respondent by impugned proceedings dated 12.05.2014, directed the second respondent to cancel the appointment of the petitioner, on the ground that the services of his father



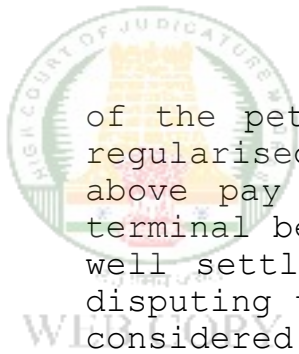
were not regularised. Pursuant to the above order of the first respondent, without giving any notice or affording any opportunity, straight away the 2nd respondent has passed the impugned order dated 31.05.2014, removing the petitioner from service, and also asked the petitioner to remit the salary granted to him. Challenging those orders, the petitioner has filed this Writ Petition.

3. The learned counsel for the petitioner submitted that the father of the petitioner was continuously working in the Society for nearly 28 years and was receiving pay under the time scale and after his demise, his terminal benefits were also settled and therefore, it cannot be stated that the services of the petitioner's father were not regularised. Even assuming without admitting that the petitioner's father's services were not regularised, as per the exception carved out by the Apex Court in Umadevi's case, and as per the consequential Government orders, the father of the petitioner is entitled for regularisation. Even then, the petitioner cannot be unilaterally removed from service without any notice or opportunity of hearing, and only on the strength of the interim order granted, the petitioner is still continuing in service as Night watchman. In support of his contention, he would rely upon the order of this Court in W.P.(MD) No.4704 of 2015 dated 04.12.2019 and prayed to quash the impugned order.

4. The learned Government Advocate appearing for the respondent submitted that though the petitioner's father was given scale of pay from 24.05.1997, his appointment was irregular and was not regularised, as such the petitioner was not eligible for compassionate ground appointment, but he was appointed as Night watchman, which is a mistake of fact and therefore the respondents have rightly removed the petitioner from service. Thus, he would pray that the interference of this Court is not necessary.

5. Heard both sides.

6. Perusal of record shows that the petitioner's father joined the second respondent Society in 1978 as appraiser on daily wages and it is evident from the communication of the second respondent dated 17.04.2014 that the petitioner's father was granted salary in the pay scale of Rs.1500-30-1650-40-1850-50-2100/- with other allowances from 24.05.1997 as per the resolution No.7 of the Society, and after his death, gratuity, leave salary and other monetary benefits were settled to his family by the Special Officer of the Society on 11.01.2012 and thereafter, the petitioner was also granted compassionate appointment as Night watchman. But, now the impugned order has been passed removing the petitioner from service stating that the appointment of the petitioner's father itself was irregular appointment and therefore, he was not regularised, as such, the petitioner is not entitled to compassionate appointment. It is very unfortunate that after the lapse of more than two decades
<https://hcservices.courts.gov.in/hcservices/> the respondents have now found that the appointment



of the petitioner's father was irregular and therefore it was not regularised. It is not known how the petitioner's father was granted above pay scale from 24.05.1997 and his family were settled with terminal benefits, without any regularization of his services. It is well settled that after the passage of so many years, question of disputing the initial appointment cannot be raised. Therefore, in my considered opinion, the impugned orders suffer from infirmity. Be that as it may, it is a settled law that before passing an order affecting the right of a person, an opportunity should be given to the person concerned. Here, in this case, no notice or opportunity of hearing was granted to the petitioner before passing the impugned proceedings. Therefore, for the reasons stated above, I am inclined to interfere with the impugned orders.

7. Accordingly, the order passed by the first respondent in his proceedings No.Na.Ka.639/2014/ThoVeSa(2) dated 12.05.2014 and the consequential order of removal passed by the second respondent in his proceedings Nos.04/2014(iv) dated 31.05.2014 are quashed and the respondents are directed to reinstate the petitioner as Night watchman and confer all service benefits from 12.05.2014. The said exercise shall be completed within 12 weeks from the date of receipt of a copy of this order.

8. With the above directions, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

vrn

To

1. The Deputy Registrar of Co-operative Societies
Nagercoil,
Kanyakumari District

2. The President
Y-10 Eathamozhi Primary Agricultural
Co-operative Credit Society Ltd
Eathamozhi - 629 501, Kanyakumari District

+1 CC to M/s.M.E.ELANGO, Advocate (SR-2634[F] dated 23/01/2020)

+1 CC to M/s.SPL GP (SR-2810[F] dated 24/01/2020)

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SMA/12/02/2020/3P/5C

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