



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	26.07.2021
PRONOUNCED ON	26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.335 OF 2016

P. Vijayalakshmi

... Petitioner

Vs.

1. The State of Tamil Nadu
rep. by the Principal Secretary,
Corporation, Food & Consumer Protection,
Fort St. George,
Chennai-600 009.
2. The Registrar of Co-operative Societies,
N.V.N.Maligai,
170, EVR Periyar Salai,
Kilpauk, Chennai-600 010.
3. The Additional Registrar of
Co-operative Societies (MPD),
Kilpauk, Chennai-600 010.
4. The Special Officer,
O/o.The Corporation Officials
Co-operative Societies,
Rippon Building, Chennai-600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the fourth



respondent's proceedings made in No.nil dated 20.07.2010, as confirmed by the third respondent in its proceedings in Na.Ka.No.84571/2010 Sa.Pa.1-1 dated 10.02.2011 and that of the first respondent made in G.O.No.136 dated 06.11.2015, to quash the same and to consequently direct the respondents to regularize the services of the petitioner as Assistant with effect from 01.06.1993 and to extend all benefits, both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.K.V.Sajeev Kumar
Nos.1 to 3 Counsel for Government

For Respondent-4 : Mr.L.P.Shanmugasundaram

O R D E R

This Writ Petition is heard through Video Conferencing on 26.07.2021.

2. The petitioner herein claims regularization of her services as an Assistant with effect from 01.06.1993, on the ground that her services as a temporary Assistant with effect from 01.06.1993 was regularized on 06.07.1994. The third respondent herein, through his proceedings dated 12.12.2006, had placed reliance on G.O.Ms.No.86, Co-operation, Food and Consumer Protection Department, dated 12.03.2001 and rejected the petitioner's request on the ground that her initial appointment was not through the employment exchange and therefore irregular. Accordingly, her services came to be regularized with effect from 12.03.2001, on the date on which G.O.Ms.No.86 dated 12.03.2001 was passed. Based on the said order, the Special Officer had in his proceedings dated 10.09.2007, regularized the services of the petitioner from 31.01.2007. The revision filed against the said order under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, was also rejected on 10.02.2011 and the same was confirmed by the first respondent in G.O.(Ms) No.136, Co-operation, Food and Consumer Protection (CP2) Department, dated 06.11.2015. The rejection orders are put under challenge in the present Writ Petition.



3. The case of the petitioner is that she was originally appointed for the post of Secretary in-charge at Nethaji War Widow Agarbathi Producers and Marketing Industrial Co-operative Society Ltd., on 07.03.1989. The said appointment was on the basis of the recommendations made by the employment exchange. The War Widow Society was liquidated and the petitioner was temporarily absorbed with effect from 01.06.1993, on daily wages by the Madras Corporation Officials Co-operative Society Ltd.,/the fourth respondent herein and her appointment was regularized on completion of her one year probation, on 06.07.1994. The petitioner continues to serve as a Junior Assistant in the said post till date. Since her original appointment at the War Widow Society was proper, as she was recommended by the employment exchange and also since, she was regularly appointed and confirmed by the fourth respondent society from 01.06.1994 onwards, she is entitled for regularization from the date on which she was originally appointed at the fourth respondent society.

4. The case of the respondents is that, after the War Widow Society became defunct, the petitioner was temporarily engaged on daily wages basis on 04.08.1992, against a leave vacancy. Thereafter she was relieved on 02.11.1992 and again temporarily appointed on 01.06.1993 to the post of Assistant. This temporary appointment was regularized only with effect from 12.03.2001, since her earlier services were not a regular appointment through recommendation of the employment exchange. In view of G.O.(Ms) No.86, dated 12.03.2001, the services of the staff of the fourth respondent society, who were not regularly appointed through the recommendations of the employment exchange, cannot claim service benefits for the period of their irregular appointment.

5. The mode in which the respondents have handled the case of the petitioner suffers from one basic infirmity.

6. The G.O.(Ms) No.86, dated 12.03.2001, would not be applicable to the petitioner at all. As per G.O.Ms.No.86, dated 12.03.2001, the Government had authorized the Registrars of the Co-operative Society to regularize the services of persons, who have been irregularly appointed without the recommendations of the employment exchange after 08.07.1980 and who have completed



480 days of services in two calendar years. Such authorization to regularize was to be with effect from 12.03.2001 i.e., from the date of G.O.(Ms) No.86. In other words, the Government Order is a facilitation to the irregular appointees, who have not been sponsored by the employment exchange and who were continuing in the services of the various societies without being regularized. The Government Order was not intended to conduct a postmortem of the services of the existing employees, whose services have already been regularized, but rather would apply only to such employees, who have been continuing to serve the Societies after 08.07.1980 and on completion of 480 days within two years. The recital to G.O.(Ms) No.86 clarifies this position, wherein the object behind passing of G.O.(Ms) No.86 was contemplated only to take care of such non regularized persons, who were irregularly appointed and have been serving for a considerable time.

7. In the present case in hand, the petitioner herein was temporarily appointed as an Assistant in the fourth respondent society on 01.06.1993 and placed on probation for a period of 12 months, through an order of the fourth respondent dated 16.06.1993. On satisfactory completion of her probation, she was confirmed in the post of Assistant with effect from 01.06.1994, as per Bye-Law No.23(2)(6)(1) of the fourth respondent Society and was placed in a regular time scale of pay. The petitioner was also receiving the annual increments thereafter. After 8 years of regularization of her services, the Government Order in G.O.Ms.No.86 came to be passed. Even this Government order was intended for persons, who were irregularly appointed and whose services were not regularized. While that being so, there is absolutely no logic or justification on the part of the official respondents in placing reliance on G.O.Ms.No.86 dated 12.03.2001 and referring to the original appointment of the petitioner, particularly, when such appointment was confirmed and the services of the petitioner was also regularized. Hence the impugned orders, placing reliance on G.O.(Ms) No.86 and rejecting the petitioner's claim for regularization with effect from 01.06.1993, cannot be sustained.

8. By placing reliance on G.O.(Ms) No.86, dated 12.03.2001, the respondents had stated in the impugned order that, the petitioner's initial appointment was not sponsored by the employment exchange, which would render her initial



appointment, as irregular and therefore, is not entitled to claim regularization from 01.06.1993.

9. It is not in dispute that when the petitioner was originally appointed at the Nethaji War Widow Agarbathees Producers and Marketing Industrial Co-operative Society on 07.03.1989, her candidature was sponsored by the employment exchange. The petitioner herein had produced the relevant supporting document to substantiate that her appointment was through the employment exchange. This War Widow Society became defunct and was liquidated. It is in this background, the petitioner services were retained initially on temporary basis by the fourth respondent Society on 01.06.1993 and thereafter, the same was regularized. Though this Court has already found that the respondents cannot claim the petitioner's appointment as irregular appointment, since her services were already been regularised by them on 06.07.1994 itself, it would be pertinent to state that even such an objection that her appointment would be irregular since it lacks sponsorship from employment exchange, also cannot be sustained. The candidature of the persons, who have enrolled themselves before employment exchange can be sponsored for employment by the employment exchange only once and when such a sponsorship is done, her name would stand automatically removed from the seniority. In the present case, based on the sponsorship, the petitioner was appointed with the War Widow Society which became defunct, which turn of event, cannot be put against the petitioner.

10. It is in this background, the petitioner claims to have made application dated 05.04.1993 and the recommendations of the Deputy Registrar, the Special Officer of the fourth respondent Society had passed a Resolution No.1 dated 16.06.1993, for temporarily appointing the petitioner as an Assistant with effect from 01.06.1993 and placed her on probation for a period of 12 months. Thereafter on completion of probation, her temporary appointment was confirmed on 06.07.1994 and her services were regularized in the post of Assistant, with effect from 01.06.1994, under regular time scale of pay. She had also received her regular annual increments from thereon. When an employee is confirmed in the post of Assistant, placed under regular time scale of pay and sanctioned with annual increments, the services of such an employee, is deemed to have been regularized. In the present case, the



petitioner's services is thus deemed to have been regularized with effect from 01.06.1994, as per the proceedings of the fourth respondent dated 06.07.1994. In the meantime, a Hon'ble Division Bench of this Court in W.A.Nos.2501 & 2502 of 2001 etc., dated 24.10.2002, had issued certain guidelines with regard to the regularization of the irregular appointees in the light of the G.O.Ms.No.86, dated 12.03.2001. It is in this background, the third respondent herein seems to have misconstrued the case of the petitioner, as also that of a irregular appointee and had applied G.O.Ms.No.86 to her case. As observed in the earlier portion of this order, G.O.Ms.No.86 will not apply to the case of the petitioner, as her services were already regularized. Hence, all further proceedings initiated by the respondents, treating the petitioner as an irregular appointee and giving effect to her services as Junior Assistant from 31.01.2007, cannot be sustained.

11. The petitioner seems to have claimed regularization of her services as Assistant with effect from 01.06.1993, on the date on which she was temporarily appointed as an Assistant. This Court is of the view that since the fourth respondent herein, in his proceedings dated 06.07.1994, had confirmed the services of the petitioner in the post of Assistant with effect from 01.06.1994 as per the bye-law of their Society, her claim for regularization could be fixed with effect from 01.06.1994 only.

12. In the light of the above observations, the impugned order passed by the fourth respondent dated 20.07.2010, the third respondent in Na.K.aNo.84571/2010 Sa.Pa.1-1 dated 10.02.2011 and G.O.No.136 dated 06.11.2015 of the first respondent, are hereby quashed. Consequently, there shall be a direction to the first respondent herein to issue appropriate orders, regularizing the services of the petitioner as Assistant with effect from 01.06.1994 and consequently extend all the service and monetary benefits to which she might be entitled to. The first respondent herein shall endeavor to pass such an order to this effect, atleast, within a period of four weeks from the date of receipt of a copy of this order.



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13. The Writ Petition stands allowed accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

DP

To

1. The Principal Secretary,
State of Tamil Nadu,
Corporation, Food & Consumer Protection,
Fort St. George,
Chennai-600 009.
2. The Registrar of Co-operative Societies,
N.V.N.Maligai,
170, EVR Periyar Salai,
Kilpauk, Chennai-600 010.
3. The Additional Registrar of
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4. The Special Officer,
O/o.The Corporation Officials
Co-operative Societies,
Rippon Building, Chennai-600 003.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.42972

W.P.No.335 of 2016

SS(CO)
RLP(20/09/2021)