



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.19220 of 2021

and

W.M.P.Nos.20520 and 20523 of 2021

1. R.A.Perumal
2. R.Gopinath
3. M.Natarajasundaram
4. P.Glaston Joseph
5. C.Sivaram
6. R.Purushothaman
7. S.Murugan
8. V.Palani
9. S.Sudhakaran ... Petitioners

Vs

1. The State of Tamil Nadu,
rep. by its Secretary,
Co-operation Food and Consumer Protection,
Fort St.George,
Chennai - 600 009.
2. The Registrar of Co-operative Societies,
NVN Maaligai, Kilpauk,
Chennai - 600 010.
3. The Secretary,
Finance Department,
Fort St.George,
Chennai - 600 009.



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4. The Director of Co-operative Audit,
Co-operative Audit Department,
Slum Clearance Board, Complex,
Kamarajar Salai,
Chepauk,
Chennai - 600 005.

5. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the 2nd respondent's order made in Letter No.7533/CL2/2010-14 Co-operation, Food and Consumer Protection Department on 10.08.2011, quash the same and consequently, direct the respondent to forthwith include the already earned increments as well as the notional increment from 16.10.1989, the date of successful completion of the Special Qualifying Examination and to notionally revise and refix the benefits thereto by taking into account the already rendered services as qualifying services for arriving at the pension and pensionary benefits.

For Petitioner : Mr.K.S.Kumar

For Respondents : Mr.P.Ganesan,
Additional Govt.Pleader,
for R1, R2 and R4
Mr.L.S.M.Hasan Fizal
Government Advocate for R3
Mr.V.Govarthan,
Standing Counsel for R5

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the 2nd respondent's order made in Letter No.7533/CL2/2010-14 Co-operation, Food and Consumer Protection Department on 10.08.2011, quash the same and consequently direct the respondent to forthwith include the already earned increments as well as the notional increment from 16.10.1989 the date of successful completion of the Special Qualifying examination and to notionally revise and refix the benefits thereto by taking



into account the already rendered services as qualifying services for arriving at the pension and pensionary benefits.

2. The case of the petitioners is that they were appointed as Junior Inspectors of Co-operative Societies, through Employment Exchange under Rule 10(a) (i) of the Tamil Nadu State and Subordinate Rules during 1985 on temporary basis. Around 1400 Junior Inspectors were appointed during 1974 to 1985. In the year 1985, a separate department for Co-operative Audit was created by bifurcating it from the parent Department. Out of the total 1400, around 1049 Junior Inspectors were employed under the control of the Registrar of Co-operative Societies and the remaining 351 Junior Inspectors were employed under the control of Director of Co-operative Audit(DCA).

3. In March 1987, more than 300 Junior Inspectors were terminated from service who had put in continuous service for more than 2 years. Subsequently, the Government vide G.O.Ms.No.271 Co-operation, Food and Consumer Protection Department, dated 10.11.1988 instructed all the temporary Junior Inspectors to appear for Special Qualifying examination conducted by the TNPSC for the purpose of regularization of their services as Junior Inspectors which included the Junior Inspectors who were terminated from service in March 1987.

4. The Special Qualifying Examination was conducted on 15.10.1989 and the result was also published on 09.11.1989. In the examination, totally 1235 candidates became successful. According to the petitioners, the services of all the pass candidates were regularised. However, persons who failed in the examination, their services were not regularised but they were continued in service. Even for those candidates G.O.Ms.No.445 dated 20.12.2005 was issued regularising 21 failed candidates with effect from 16.10.1989. Thereafter, several such persons who were unsuccessful in the examination, approached this Court and obtained orders regularising their services in W.P.No.15439 of 2014 dated 21.09.2017 and W.P.No.546 of 2015 dated 23.03.2021. After the orders were passed by this Court, G.O.Ms.No.56, Cooperation, Food and Consumer Protection (CL2) Department dated 11.05.2020 was issued granting the benefits to the petitioners therein. These petitioners were entitled to be treated on par with the other identical employees who had been given the benefit of various G.Os. as aforementioned.

5. When the matter is taken up for hearing, the learned counsel appearing for the petitioners reiterated the above facts. He would draw the attention of this Court to the earlier



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orders passed by this Court in W.P.No.15439 of 2014. He would draw the attention of this Court to paragraph 6 to 9 which are extracted hereunder.

6. Upon notice, Mr.A.Zakkir Hussain, the learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit. The learned Additional Government Pleader would submit that the service conditions of the Junior Inspectors, who are working in the Audit and Co-operative Departments are different and therefore, G.O.No.445, Finance (Audit) Department dated 20.12.2005 cannot be pressed into the service in respect of the petitioners herein.

7. Such contention put forth by the learned Additional Government Pleader cannot be countenanced both in law and on facts, for the simple reason that the issue was considered by the learned single Judge and the Division Bench of this Court as stated supra and this Court has come to the conclusion that the present petitioners are also entitled to be treated on par with the other persons, who are covered under G.O.No.445, Finance (Audit) Department dated 20.12.2005 and also the other two employees namely Mr.C.Thirupathi and Mr.S.Velu, whose services were also regularised in terms of the said Government Order.

8. This Court, upon considering the submissions made by the learned counsel for the petitioners and upon perusing the pleadings and the materials placed on record entirely agree with the contention that the impugned proceedings is nothing but a clear attempt made by the second respondent, to treat the equals as unequals and the same in violation of Articles 14 & 16 of the Constitution of India. This Court is also further agree with the learned counsel for the petitioners that the impugned proceedings is contrary to the order passed by the learned single Judge of this Court, which was upheld in the writ appeals as aforesaid. In any event, this Court, is of the considered view that the petitioners herein, being similarly placed like the



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petitioners/Junior Inspectors, who were conferred with the benefit of G.O.445, Finance (Audit) Department dated 20.12.2005, cannot be treated differently. Such treatment per se smacks of malafides, arbitrariness and cannot stand the test of judicial scrutiny of this Court. For the aforesaid reasons, this Court has no hesitation in allowing the writ petition. Therefore, the impugned order passed by the second respondent in Rc.No.41406/2009/EM3 dated 31.05.2013 is set aside. The second respondent is directed to grant the benefit of regularisation to all the petitioners covered under impugned proceedings in terms of G.O.No.445, Finance (Audit) Department dated 20.12.2005 and also on par with two other employees namely Mr.C.Thirupathi and Mr.S.Velu, with all attendant benefits as granted to them. Such exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order.

9. The writ petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

6. The learned counsel would further draw the attention of this Court to the recent decision dated 23.03.2021 passed in W.P.No.546 of 2015. The learned Judge, after referring to the above order has allowed the writ petition as under.

4. Heard the submissions made on the side of the respondents, who reiterated the averments made in the counter affidavit and submitted that all the ousted temporary Junior Inspectors who had come out successful in the special qualifying examination have been reappointed based on the directions of the Tribunal in batch of cases and their services have been regularised with effect from 16.10.1989 in respect of those who were in service on 16.10.1989; and in respect of others including the petitioners, their services were regularised with effect from the date of their reappointment as they were not in service on 16.10.1989. However, it is fairly submitted that the respondent



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authorities would consider the claim of the petitioners and pass orders, on merits and also in the light of the aforesaid order cited on the side of the petitioners.

5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the aforesaid earlier order, this Court finds it appropriate to direct the respondent authorities to reconsider the claim of the petitioners, taking into account the aforesaid earlier order passed by this Court in W.P.No.15439 of 2014 and to that extent alone, the order impugned herein is liable to be set aside.

6. Accordingly, the order dated 17.04.2014 passed by the second respondent is set aside and the matter is remanded back to the respondent authorities for passing fresh orders, in accordance with law and also in the light of the order dated 21.09.2017 passed in W.P.No.15439 of 2014 and taking into consideration G.O.(MS) No.56, Cooperation, Food and Consumer Protection (CL2) Department, dated 11.05.2020, within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

The above legal position has not been disputed by the respondents.

7. In view of the above, the Writ Petition is allowed, the impugned order passed by the 2nd respondent in Letter No.7533/CL2/2010-14 Co-operation, Food and Consumer Protection department dated 10.08.2011 is set aside.

8. The respondents are directed to grant all the benefits that are admissible in terms of the benefits that have been already been granted to similarly placed persons in pursuance of the earlier directions of this Court in the aforementioned orders.



9. The respondents are directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

vsi

To

1. The Secretary,
State of Tamil Nadu,
Co-operation Food and Consumer Protection,
Fort St.George,
Chennai - 600 009.
2. The Registrar of Co-operative Societies,
NVN Maaligai, Kilpauk,
Chennai - 600 010.
3. The Secretary,
Finance Department,
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4. The Director of Co-operative Audit,
Co-operative Audit Department,
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Kamarajar Salai,
Chepauk,
Chennai - 600 005.
5. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai - 600 003.

+1cc to Mr.K.S.Kumar, Advocate Sr.63427

+1cc to the Government Pleader Sr.63837 & 63787

W.P.No.19220 of 2021

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srg 20/12/2021