



WEB COPY

W.P.(MD)No.14273 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.14273 of 2010

and

M.P. (MD)No.1 of 2010

P.Kavitha

... Petitioner

-vs-

1.The Registrar of Co-op. Societies,
College Road, Chennai.

2.The Joint Registrar of Co-op. Societies,
Virudhunagar District,
Virudhunagar - 626 002.

3.The Special Officer,
RK6, Mustakurichi Primary Agri. Co.op. Bank,
Mustakurichi, Kariapatti Taluk.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent by his proceedings No.Na.Ka.6850/10 Sa.Ba. Dated 01.10.2010 by confirming the order of the third respondent dated 31.05.2008 and quash the order dated 01.10.2010. Consequently direct the respondents to re-instate the petitioner in service with all the attendant, service and monetary benefits.

For Petitioner

: Mr.Kaviarasan
for M/s.M.O.Thevan Kumar

For Respondents
1 and 2

: Mr.D.Muruganantham
Additional Government Pleader

For Respondent 3

: Mr.D.Shanmugaraja Sethupathy

ORDER

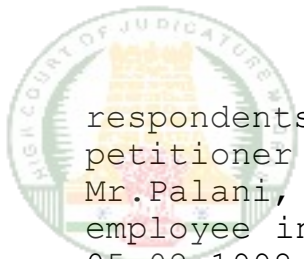
This Writ Petition has been filed challenging the order of the second respondent by his proceedings No.Na.Ka.6850/10 Sa.Ba. dated 01.10.2010 by confirming the order of the third respondent dated 31.05.2008 and consequently to direct the respondents to re-instate the petitioner in service with all the attendant, service and monetary benefits.



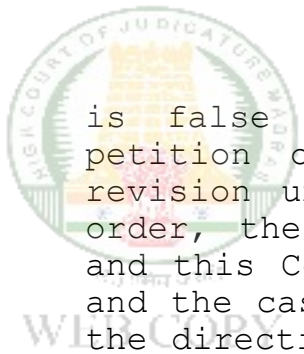
2.The case of the petitioner is that the petitioner's husband, namely, Palani, worked as a Salesman under the third respondent. On 26.11.2001 her husband died in harness while he was in service. At that time, the petitioner's age was 20 years and her husband died leaving the petitioner and two female children and the petitioner was not having any other source of income except the income of her husband's salary. Thereafter, the petitioner made an application for appointment of Saleswoman before the third respondent on compassionate ground with relevant certificates and supporting documents. Accordingly, the petitioner was appointed as Saleswoman on 20.12.2001 on compassionate ground in the Mustakurichi Ration Shop. The petitioner has been continuously working as Saleswoman for more than seven years. While so, the third respondent had issued a show-cause notice on 05.01.2008 for the termination of her service on the ground that the petitioner was not sponsored by the Employment Exchange, based on the judgment rendered by a Hon'ble Division Bench of this Court in W.A.Nos.2501 and 2502 of 2001, dated 12.03.2001. Immediately, the petitioner had sent an explanation on 04.05.2008 stating that her appointment is only on compassionate ground and hence, there is no need for sponsoring from the Employment Exchange. However, without considering the said reply, the third respondent had passed the order on 31.05.2008 terminating her from service. Assailing the said order, the petitioner had filed a revision petition under Section 153 of the Cooperative Societies Act before the second respondent. However, the second respondent had rejected the appeal without assigning any reason. Again the petitioner had challenged that order by way of a Writ Petition in W.P.No.900 of 2009 and this Court allowed the said Writ Petition on 14.07.2010 by directing the second respondent to consider her representation. Consequently, as per the direction of the second respondent, the petitioner filed a detailed representation on 28.09.2010 before the second respondent. However, the second respondent had again rejected the said representation by its order dated 01.10.2010 confirming the earlier orders. Hence, the Writ Petition is filed.

3.The learned Counsel appearing for the petitioner would submit that admittedly, the petitioner was appointed on compassionate ground. When a person is appointed on compassionate ground, the decision referred to in the impugned order does not applicable to the petitioner. The Justin's case in W.A.Nos.2501 and 2501 of 2001 relates to irregular appointment made without sponsoring from Employment Exchange and without following the Rule 149 of the Tamil Nadu Cooperative Societies Rules, such appointment can be invalidated. However, the petitioner's appointment is purely on compassionate ground. Hence, the order of termination passed by the original authority and confirmed by the revisional authority is non est in law. Accordingly, the petitioner prayed for allowing the Writ Petition.

<https://hcservices.hcourtsgov.in/hcservices/> 4.The learned Additional Government Pleader appearing for the



respondents 1 and 2 by referring to the counter submitted that the petitioner was not appointed on compassionate ground. One Mr.Palani, the husband of the petitioner, was appointed as Casual employee in the Fair Price Shop run by the third respondent bank on 05.02.1998 on daily wages basis. His appointment was neither made in accordance with Rule 149 of the Tamil Nadu Cooperative Societies Act nor by the District Recruitment Bureau and as such, the appointment of the said Palani was not approved and also his appointment was objected by the Statutory Audit under the Tamilnadu Cooperative Societies Act. On 26.11.2001, the said Palani died in harness while he was in temporary service under the third respondent. After the death of the said Palani, the petitioner had sent a representation to the third respondent society requesting to provide suitable employment on compassionate ground. Considering the overall circumstances, the petitioner was engaged as Saleswoman on daily wage basis as Casual employee from 18.12.2001 to 31.05.2002 as per the need. Subsequently, her engagement was extended periodically as and when required by adopting resolution by the Board. However, her appointment was not at all on compassionate ground. She was engaged as Saleswoman considering the fact that her husband died during his employment as Casual employee. Compassionate appointment would be entirely different from engaging a person as Casual employee according to the requirement. The petitioner was engaged for a specific period and for a specific work and hence, her employment automatically comes to an end on the expiry of such period. It is further submitted that as per the judgment made by this Court in W.A.Nos.2501 and 2502 of 2001, the service of persons who were appointed after 12.03.2001 without reference to the Employment Exchange and without following the procedure contemplated under Rule 149 of the Tamil Nadu Cooperative Societies Rules shall be terminated forthwith. Since the petitioner was engaged as Saleswoman only on 20.12.2001, the respondent society had issued a show cause notice dated 05.01.2008 requiring her to submit the documents in respect of educational qualification. But, she had not submitted any document to show her educational qualification. Since the petitioner has not possessed required educational qualification, she was not appointed as per existing recruitment rules and bye-laws. Therefore, she was issued with another notice on 09.03.2008 to show-cause as to why action should not be taken against her. In response to the said notice, the petitioner had sent a letter dated 22.03.2008 requesting the respondents to furnish a copy of the special bye-law and the Government Order prescribing educational qualification for salesman and the respondent society had furnished the same on 18.04.2008. Even thereafter, the petitioner had not submitted her explanation to the show cause notice. Therefore, she was issued with another reminder dated 19.05.2008 and as no explanation was offered, the petitioner was terminated from service vide order dated 31.05.2008 by the third respondent. It is further stated that the second respondent had rejected the revision petition under Section 153 of the Tamil Nadu Cooperative Societies Act without giving any reason,



is false as the second respondent had dismissed the revision petition on the ground that the petitioner had not filed the revision under correct provisions of law. Aggrieved by the said order, the petitioner had filed W.P.No.900/2009 before this Court and this Court had set aside the order of the revisional authority and the case was remanded back to the revisional authority. As per the direction of this Court, the revisional authority, after giving reasonable opportunity to the parties concerned, passed an order on 01.10.2010 by upholding the order of the third respondent. Challenging the said order, the petitioner has come forward with the present Writ Petition which according to the respondents is unsustainable.

5.This Court heard the learned Counsel appearing for the petitioner, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.D.Shanmugaraja Sethupaty, learned Counsel appearing for the third respondent and perused the materials available on record.

6.Admittedly, the facts in the present case is not disputed. The petitioner claims that she was appointed on compassionate ground. However, the appointment order does not reveal any reference to the application and supporting document submitted by the petitioner and the said appointment was made based on the resolution passed by the authority. However, the petitioner has not established before this Court that there was a scheme or bye-law for making compassionate appointment. In the absence of any scheme or bye-law, the compassionate appointment cannot be made and further, in the present case, the basic educational qualification for the post of Salesman is S.S.L.C. and admittedly the petitioner did not possess such qualification. Hence, without such qualification, no appointment can be made.

7. For the reasons aforesaid, this Writ Petition fails and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM



To

1.The Registrar of Co-op. Societies,
College Road, Chennai.

2.The Joint Registrar of Co-op. Societies,
Virudhunagar District,
Virudhunagar - 626 002.

3.The Special Officer,
RK6, Mustakurichi Primary Agri. Co.op. Bank,
Mustakurichi,
Kariapatti Taluk.

+1 CC to M/s.GP (SR-112[F] dated 05/01/2021)

+1 CC to M/s.D.SHANMUGARAJA STHUPATHI, Advocate (SR-32[F] dated
05/01/2021)

W.P(MD)No.14273 of 2010
04.01.2021

—
MK(CO)
KK(18.01.2021) 5P 6C