



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 08.12.2021	Orders Pronounced on : 07.01.2022
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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.3051 of 2021
and
W.M.P.No.3432 of 2021

1. N.Karthikeyan, S/o Narayanan
2. R.Ezhilarasi, W/o Manoharan
3. M.Kayalvizhi, W/o Saravanakumar
4. N.Nachammai, W/o Sethuraman
5. D.Vetri Selvan
6. Jane Jothi, S/o Joel Amaladoss
7. J.David Livingston
8. A.Rajeshkumar, S/o Arokiasamy
9. G.Vijay Anand, S/o Ganesan
10. P.Krishnan, S/o Palaniandi
11. K.Anandhan, S/o Kaliyan
12. M.Durai Kandasamy, S/o Manivannan
13. P.Sridar, S/o Palaniappan
14. C.Cletus Sebastin, S/o Chinniah
15. B.Gayathri, W/o Karthikeyan
16. V.Raja Rathinam, S/o Velayutham
17. V.Rajagiri, S/o Velayutham
18. R.Chandrababu, S/o Ravichandran
19. N.S.Sukumar, S/o Subramanian
20. K.Gunaseelan, S/o Kannan
21. B.Muthusamy, S/o Balakrishnan
22. S.Ramkumar, S/o Subramanian
23. P.Vignesh, S/o Panneer Selvam
24. M.Chinthanaiselvan, S/o Masilamani
25. A.Balan, S/o C.Ariyamuthu
26. N.Srinivasan, S/o G.Nadimuthu
27. S.Prakash, S/o T.Sekar

.. Petitioners

Vs.

1. The Registrar of Co-operative Societies,
"NVN Maaligai",
No.170, E.V.R. Periyar Salai,
Kilpauk, Chennai-600 010.



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2. The Additional Registrar/Managing Director,
Tamil Nadu Co-operative Union,
"NVN Maaligai",
No.170 E.V.R.Periyar Salai,
Kilpauk,
Chennai-600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the orders of the second respondent in Na.Ka.No.1071/2020/A1, dated 09.10.2020 insofar as 1 to 24, 26 and 27 petitioners and Na.Ka.No.202/2019/A1, dated 12.10.2020 insofar as 25th petitioner, to quash the same and to consequently direct the respondents to extend the benefit of pay scale.

For petitioner : Mr.L.Chandrakumar

For respondents : Mr.P.Ganesan, Addl.G.P. for R-1
M/s.T.Girija for R-2

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the orders of the second respondent in Na.Ka.No.1071/2020/A1, dated 09.10.2020 insofar as 1 to 24, 26 and 27 petitioners are concerned, and Na.Ka.No.202/2019/A1, dated 12.10.2020 insofar as 25th petitioner is concerned and to quash the same and to consequently direct the respondents to extend the benefit of pay scale.

2. The petitioners 1 to 25 were all appointed as Lecturers in Lalgudi Co-operative Polytechnic College and the petitioners 26 and 27 were appointed as Junior Training Officer in Pattukttai Co-operative Industrial Training Institute under the Tamil Nadu Co-operative Union. All of them were appointed in response to the selection conducted in pursuance of the Notification issued by the respondents. They were appointed on various dates, i.e. 01.07.2000, 14.07.2008, 15.07.2008, 05.08.2008, 24.08.2009, 01.10.2009, 01.10.2009, 28.08.2011, 10.02.2012, 05.06.2002, 15.07.2004, 17.07.2003, 06.07.2005, 07.07.2005, 13.01.2006, 13.08.2007, 26.11.2007, 22.06.2013, 24.07.2013, 24.11.2014, 06.02.2015, 01.02.2016, 01.02.2016, December 2000, 01.04.2010 and 01.04.2010 respectively. They were appointed in terms of the governing Rules of the respondents and from the date of their initial appointment, they have continuously discharged their duties without any interruption.



3. According to the petitioners, the Government had framed a policy to regularise the service of several persons like the petitioners who were appointed on casual basis. Certain Government Orders were issued and several persons like the petitioners were granted regular time scale of pay. As far as the petitioners herein are concerned, they were initially paid Rs.8,500/- as consolidated pay, which was progressively increased to Rs.17,000/- per mensem as on date.

4. According to the petitioners, this Court, under similar circumstances, in W.P.Nos.15544 of 2018, by order dated 27.06.2018 and W.P.Nos. 35148 of 2019, 35075 of 2019 and 35147 of 2019, by separate orders dated 18.12.2019, directed the respondents therein to consider the representation of the petitioners therein on merits and pass appropriate orders with regard to the benefits of the scale of pay.

5. According to the learned counsel for the petitioners, the first respondent, vide proceedings, dated 28.02.2019, had implemented the order passed by this Court in W.P.No.15544 of 2018, dated 27.06.2018 and brought those petitioners who were identically placed like that of the petitioners herein seeking claim of regular time scale of pay. The three petitioners in W.P.No.15544 of 2018, had obtained similar directions from this Court. In fact, a detailed order has been passed by the first respondent, justifying the grant of regular time scale of pay to those petitioners. The learned counsel for the petitioners herein therefore requested this Court to direct the first respondent herein to pass similar orders as in the case of the petitioners therein.

6. The learned Additional Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the second respondent, strongly opposed grant of relief to the petitioners herein.

7. The learned counsel for the second respondent, by filing counter affidavit, submitted that the petitioners herein are not entitled to the relief sought for, as they are being engaged on contract basis by outsourcing their employment. In paragraph 8 of the counter affidavit filed by the second respondent, the details of the engagement of the petitioners, are also given in Tabular Column as to the number of days they have been engaged on contract basis. According to the second respondent, the regularisation was done in respect of certain work-men like the petitioners herein, who had been recruited during the period from 09.07.1980 to 11.03.2001 without sponsorship of Employment Exchange in terms of G.O.Ms.No.86, Co-operation, Food and Consumer Protection Department, dated 12.03.2001. The Joint



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Registrars of Co-operative Societies were permitted to regularise the employees recruited without sponsorship from the Employment Exchange during the period from 09.07.1980 to 11.03.2001, as per the said G.O. However, these petitioners do not come within the framework of the G.O.

8. The learned counsel for the second respondent further submitted that the petitioners herein have been engaged on hourly basis and also on a contract/outsourcing basis, and therefore, no Government Order is to be made applicable to them. The learned counsel also pointed out that subsequently, another G.O.Ms.No.301, Co-operation, Food and Consumer Protection Department, dated 17.10.2007, had withdrawn the power granted to the Regional Joint Registrars to regularise the services of the irregular appointments with reference to the order of the Supreme Court in Umarani's case. (A.Umarani Vs. Registrar of Co-operative Societies and others) (Civil Appeal No.1413 of 2003, dated 28.07.2004, reported in 2004 (7) SCC 112).

9. At this, the learned counsel for the petitioners submitted that the request of the petitioners herein is not for regularisation of their services, but their request is that they may be atleast be brought on a regular time scale of pay. The prayer of the petitioners herein is confined only in regard to the grant of time scale. According to the learned counsel, when the respondents are extracting the work from the petitioners and identically placed persons have been granted regular time scale of pay, vide proceedings dated 28.02.2019 passed by the second respondent in Rc.No.2683/2018/C, in all fairness, the same benefits ought to be bestowed upon these petitioners also. The learned counsel therefore prayed for allowing the Writ Petition.

10. This Court, in consideration of the various materials made available and the pleadings on record, is in agreement with the submissions made by the learned counsel for the petitioners.

11. The bone of contention and the "lis" between the parties in this Writ Petition, are the one relating to grant of regular time scale of pay and not regularisation. Therefore, the averments and the citations given in the counter affidavit, relating to the regularisation aspect, may not have any bearing on the adjudication of grant of relief in the present Writ Petition. The prayer in the Writ Petition is to only grant of regular time scale of pay, as given to the similarly placed persons like that of the petitioners in terms of the above said proceedings, dated 28.02.2019. The said proceedings, dated 28.02.2019 came to be issued only in pursuance of the order passed by this Court in W.P.No.15544 of 2018, dated 27.06.2018.



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The three petitioners in W.P.No.15544 of 2018 were identically placed like that of the petitioners herein, and therefore, it is not open to the respondents to adopt any differential yardstick and allow hostile discrimination to raise its ugly head in the discriminating process not to treat the petitioners herein differently, detrimental to their interest.

12. Moreover, the Court has given directions in three other Writ Petitions mentioned above in response to similar claim by the identically placed petitioners herein, and in such circumstances, it does not lie in the mouth of the respondents to contend that the petitioners herein can be treated differently in the matter of bringing them on par with other co-employees in the matter of grant of regular time scale.

13. It is needless to mention that the State/appointing authority cannot discriminate between employees who are identically placed in the matter of grant of regular time scale of pay and any such action would amount to doing violence to Articles 14 and 16 of the Constitution of India. Any action purported to be opposed to fair play, not in good conscience, ought not to be countenanced by the Courts.

14. In the above said circumstances, the impugned orders of rejection of the request of the petitioners herein, in Na.Ka.No.1071/2020/A1, dated 09.10.2020 insofar as 1 to 24, 26 and 27 petitioners and Na.Ka.No.202/2019/A1, dated 12.10.2020 insofar as 25th petitioner, are set aside. The respondents are directed to bring the petitioners herein in the regular time scale of pay as applicable to their positions they hold from the date they become eligible for the benefits on par with the similarly placed employees, as indicated above.

15. The respondents are directed to pass appropriate orders in the above context, within a period of eight weeks from the date of receipt of a copy of this order, or on production of a web-copy of this order, whichever is earlier.

16. With the above directions, the Writ Petition is allowed as prayed for. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

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1. The Registrar of Co-operative Societies,
"NVN Maaligai",
No.170, E.V.R. Periyar Salai,
Kilpauk, Chennai-600 010.
2. The Additional Registrar/Managing Director,
Tamil Nadu Co-operative Union,
"NVN Maaligai",
No.170 E.V.R.Periyar Salai,
Kilpauk, Chennai-600 010.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.1581
+1cc to M/s.T.Girija , Advocate, S.R.No.1378
+1cc to the Government Pleader, S.R.No.2261

W.P.No.3051 of 2021

SMI[co]
NSK 25/01/2022