



W.P.No.24000 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24000 of 2010

S.Jayaseeli

.. Petitioner

Versus

1. State of Tamil Nadu, rep. by its
Secretary to Government,
Cooperation, Food & Consumer
Protection Department,
Secretariat, Chennai-9.

2. Registrar of Cooperative
Societies, Kilpauk,
Chennai-10.

3. Deputy Registrar of Cooperative,
Societies, Erode,
Erode District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of a Writ calling for the records pertaining to the order passed by the 1st respondent issued in G.O.(D).No.247, Cooperation, Food & Consumer Protection Department, dated 10.06.2010 and the consequential proceedings on the third respondent in



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Na.Ka.No.4866/2010/Pa.Tho, dated 20.10.2010 and quash the same, and direct the respondents to count the service rendered by the petitioner in the Revenue Department, Nilgiris District from 1984 to 1989 and confer all the consequential benefits, including Selection Grade and Special Grade and seniority and further promotion, in the Cooperation Department.

(Prayer Amended as per the orders, dated 07.12.2011 in M.P.No.1 of 2011 in W.P.No.24000 of 2010)

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.R.Arumugam,
Government Advocate

ORDER

The petitioner, who since retired from service, with effect from 31.08.2015 as Senior Inspector, Co-operative Department, has filed this Writ Petition, challenging two orders. Firstly, the order of the first respondent in G.O.(D).No.247, Co-operation, Food & Consumer Protection Department, dated 10.06.2010, refusing to grant her seniority and other benefits by considering her erstwhile temporary services in the Panchayat Union Development Department, when she got regular employment in her present department. Secondly, the charge memo, dated 20.10.2010 issued to her containing one charge that she failed to inform the erstwhile Panchayat Union Development Department, when she got regular employment in her



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present department. As a matter of fact, when she attained the age of superannuation, she was permitted to retire without prejudice to continuance of said disciplinary proceedings.

2. The facts in this case are as follows:-

In the year 1980, the petitioner joined service under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services as Typist in the Panchayat Union Development Department and was ousted from the service from the year 1982. Thereafter, in the year 1984, she participated in the regular selection to the post of Typist conducted by the Tamil Nadu Public Service Commission and was duly selected and was appointed to the said post with effect from 11.10.1984. Subsequently, on 27.04.1989, Personnel and Administrative Reforms Department issued G.O.Ms.No.259, thereby, regularizing the services of the temporary employees, who worked for more than one year. Therefore, based on the list maintained by the department, the Collector, Erode District issued posting order directing the petitioner to come and join in the said post. However, the applicant filed O.A.No.5443 of 1992 before the Tamil Nadu Administrative Tribunal, aggrieved by the said order of grant of posting and



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the subsequent order rejecting her representation and the Tribunal allowed the Original Application setting aside the orders and giving her liberty to approach the respondents to pray for counting the earlier service. Therefore, the petitioner made a representation but the same was rejected by the G.O.(D).No.247, dated 10.06.2010. Thereafter, the charge memo is also issued to her containing a charge that she suppressed about the subsequent regular employment to her erstwhile department.

3. Heard *Mr.P.Ganesan*, learned Counsel for the petitioner and *Mr.R.Arumugam*, learned Government Advocate for the respondents.

4. The learned Counsel for the petitioner, mainly attacking the charge memo, would submit that firstly there was no legal requirement for the petitioner, a temporary employee who was ousted from the service, to inform to the erstwhile department about her subsequent selection. Therefore, the factual basis of the charge is non-existent. Secondly, the said action would not in any manner amounts to misconduct. Thirdly, the said action was known to the respondent immediately after her posting order was given in the year 1989. But, however, the charge memo was served in the



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year 2010 and therefore, there was an inordinate and unexplained delay of 21 years, which is fatal. Therefore, he would submit that the charge memo is totally justified. He would further submit that when the Government has given the benefit to the other temporary servants, the innocuous prayer of the petitioner was to count the said service which could have also been beneficially considered by the respondents.

5. The learned Counsel for the respondents, relying upon the paragraph No.6 of the counter affidavit, would submit that the name of the petitioner was recommended by the District Collector to remain in the live register and she ought to have informed the District Collector about her subsequent employment and should have got her name removed from the list. This apart, there is no provision or legal justification for counting her temporary service for giving seniority or other benefits in her present service, which is totally a different service. Therefore, he would justify both the impugned orders passed by the respondents and would pray for dismissal of the Writ Petition.



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6. I have considered the rival submissions and perused the material records of the case. As far as the charge memorandum is concerned, I am in agreement with the learned Counsel for the petitioner that there was no legal obligation on the part of the petitioner to inform about the subsequent employment to the erstwhile department which she got selected two years after her ouster. The said conduct cannot be treated as a misconduct. This apart, there is also inordinate and unexplained delay of 21 years in issuing the charge memorandum and therefore, the charge memorandum is liable to be quashed.

7. As far as the challenge to the other impugned order, dated 10.06.2010 of the first respondent is concerned, I agree with the learned Counsel for the respondents that there is no legal right or entitlement for the petitioner to pray that the said temporary service to be counted for the purposes of the seniority or for other service benefits. The selection of the petitioner in the year 1984 was for a totally different cadre in a different selection and there is no any right for the petitioner to pray that the service between the years 1980-1982 should be counted for any purpose in the



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present employment. Therefore, that part of the Writ Petition is liable to fail.

8. Therefore, the above Writ Petition is disposed of in the following terms:-

(a) The Writ Petition is dismissed inasmuch as it prays to quash the order of the first respondent in G.O.(D).No.247, Co-operation, food & Consumer Protection Department, dated 10.06.2010 and the order, dated 10.06.2010 is upheld;

(b) The charge memorandum, dated 20.10.2010 in Na.Ka.No.4866/2010/Pa.Tho, issued by the third respondent is quashed;

(c) Consequently, if any of the retiral or other benefits of the petitioner is withheld only because of the pendency of the said charge memorandum, which is pending, is ordered to be released to the petitioner;

(d) However, there will be no order as to costs;

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Index : yes
Speaking order
grs

To



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1. The Secretary to Government,
Cooperation, Food & Consumer
Protection Department,
Secretariat, Chennai-9.
2. The Registrar of Cooperative Societies,
Kilpauk,
Chennai-10.
3. The Deputy Registrar of Cooperative Societies,
Erode,
Erode District.



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D.BHARATHA CHAKRAVARTHY, J

grs

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