



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.03.2022
PRONOUNCED ON:19.05.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)Nos.4103 of 2014, 1290 of 2015 and 6860 of 2018
and
M.P. (MD)Nos.2 and 3 of 2014, 1 and 2 of 2015 and
W.M.P. (MD)Nos.5610 of 2017 and 4350 of 2022

W.P. (MD)No.4103 of 2014:

K.Elangovan

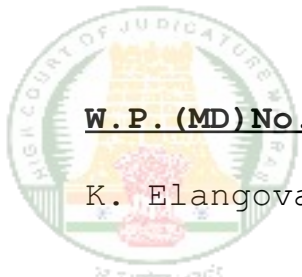
... Petitioner

vs.

- 1.The Secretary to Government,
Department of Animal Husbandry,
Dairying and Fisheries,
Fort St. George, Secretariat,
Chennai- 600 009.
- 2.The Special Commissioner,
Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai- 600 051.
- 3.The Managing Director,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.
- 4.The General Manager,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent, vide RC.No.6180/N1/2012, dated 12.11.2013 and consequential order passed by the third respondent, vide Na.Ka.No.1533/Nirvaakam/2011, dated 27.11.2013 and to quash the same and consequently, to direct the 1st and 2nd respondent to regularize the petitioner's service with effect from 02.01.1996 with all other attendant monetary benefits on par with similarly placed employees covered under G.O. (2D) No. 138, Animal Husbandry, Dairying and Fisheries (MP. II) Department, dated 28.09.2007.



W.P. (MD)No.1290 of 2015:

K. Elangovan

... Petitioner

vs.

- 1.The Secretary to Government,
Department of Animal Husbandry,
Dairying and Fisheries,
Fort St. George, Secretariat,
Chennai- 600 009.
- 2.The Special Commissioner,
Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai- 600 051.
- 3.The Managing Director,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.
- 4.The General Manager,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.
- 5.The Assistant Director,
District Employment Office,
Thanjavur,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call the records pertaining to the impugned notification issued by the 4th respondent, vide Na.Ka.No.1929/Nir/2007, dated 08.11.2014 and to quash the same in so far as relating to the recruitment for the post of Junior Assistant is concerned.

W.P. (MD)No.6860 of 2018:

K. Elangovan

... Petitioner

vs.

- 1.The Secretary to Government,
Department of Animal Husbandry,
Dairying and Fisheries,
Fort St. George, Secretariat,
Chennai- 600 009.
- 2.The Special Commissioner/Director,
Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai- 600 051.



3.The Managing Director,
Thanjavur District Cooperative
Milk Producers Union Limited,
Thanjavur.

4.The General Manager,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Letter No.160/MP.II/2018-2, dated 24.04.2018, of the first respondent/Principal Secretary to Government, Animal Husbandry Dairying and Fisheries (MP.II) Department, Secretariat, Chennai-9, and to quash the same as illegal and consequently, to direct the respondents 1 and 2 to regularize the petitioner's service, in terms of G.O.(2D)No.138, Animal Husbandry, Dairying and Fisheries (MP.II) Department, dated 28.09.2007, wherein the service of similarly placed ten casual labours were regularized.

(Prayer amended, vide this order, dated 19.05.2022, in W.M.P. (MD) No.4350 of 2022 in W.P. (MD)No.6860 of 2018)

In all cases:

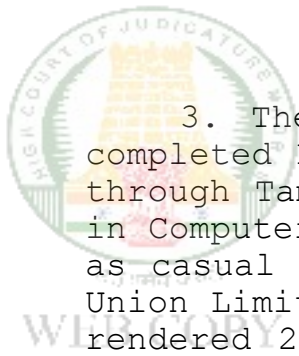
For Petitioner : Mr.G.Kannan
for M/s.Veera Associates

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil side)

COMMON ORDER

The Writ Petition in W.P.(MD)No.6860 of 2018 was filed for issuance of a Writ of Mandamus, to direct the 1st respondent to implement the proposal sent by the 2nd respondent, vide his proceedings in Rc.No.11676/2017/N2, dated 18.12.2017, on the basis of the G.O.(2D). No. 138 of A.H.D. and Fisheries (MP II) Department, dated 28.09.2007, by way of regularizing the petitioner's service with effect from 02.01.1996 with all other benefits within the time frame as fixed by this Court.

2. Pending the Writ Petition, the first respondent passed an order in Letter No.160/MP.II/2018-2, dated 24.04.2018, wherein, the proposal submitted to regularize 8 employees were declined by the first respondent stating that it is not feasible. Therefore, the petitioner filed W.M.P.(MD)No.4350 of 2022, to amend the prayer as Certiorarified Mandamus, to quash the impugned order, dated 24.04.2018 and consequently, to regularize in terms of G.O.2D.No.138, Animal Husbandry Dairying and Fisheries (MP.II) Department, dated 29.08.2007.



3. The brief facts of the cases are that the petitioner has completed B.A. (Economics) and has completed Diploma in Cooperation through Tamil Nadu Cooperative Union and has completed P.G. Diploma in Computer Application. The petitioner was appointed on 30.10.1994 as casual employee in Thanjavur District Cooperative Milk Producers Union Limited by the fourth respondent herein and the petitioner has rendered 23 years of service. The third respondent has regularized the petitioner's service as Mazdoor with effect from 02.01.1996, vide proceedings, dated 02.11.1995. In pursuance of the regularization, petitioner was given time scale of pay, periodical increment and other attendant benefits by the third respondent. The petitioner was also declared as completed the probation period successfully.

4. The third respondent has sent proceedings, dated 22.09.1999, to the second respondent proposing to accept the regularization order and also sought to issue Government order for ratifying the regularization passed in favour of the petitioner and 14 similarly placed employees. The second respondent has sent a letter to the first respondent, dated 03.05.2001, seeking to issue the Government order, in respect of rectifying the requisition order passed by the third respondent. Again, in the month of June 2007, the third respondent has sent a fresh proposal to the second respondent for regularizing 20 casual employees, including all those 15 employees already proposed. Subsequently, the Government has passed G.O.(2D) No.138, Animal Husbandry, Dairying and Fisheries (M.P.II), dated 28.09.2007, regularizing the service of 10 casual labourers. However, the petitioner and 15 others service were not regularized and hence 16 employees including the petitioner has submitted representations, dated 27.04.2001 and 19.05.2001 to the 3rd and 4th respondents requesting to sanction increment. Further, in the audit report of the year 2001-2002, issued by the Director of Audit for Milk Coops, non-sanctioning of increment to the above 15 regularized employees have been pointed out as defect. Therefore, above said employees were given hike in dearness allowance as and when arises to other employees, encashment of earn leave, earn leave accumulation, medical leave, casual leave, bonus, ex-gratia, group, gratuity, family benefit fund, contribution of EPF, ESI, etc. on par with other employees except sanctioning of annual increment. Thereafter, the increment was sanctioned with notional effect from 01.01.1997 to 31.12.2005 with monetary benefit from 01.01.2006 to 30.04.2007 and then the second respondent has subsequently directed the third respondent to cancel the sanction of increment and other allowances by proceedings, dated 13.09.2007 and directed to recover the increment and other allowances. Hence, the third respondent has passed an order, dated 17.09.2007, to recover the increment amount and the same was challenged in W.P.(MD)No.8838 of 2007 and W.P.(MD) No.9113 of 2007 and this Court granted an interim order. Aggrieved over the same, the respondents have preferred a Writ Appeal in W.A. (MD)No.620 of 2010 and the same is pending. The petitioner submitted representations to promote the petitioner to the post of Junior Assistant. Even though the petitioner is eligible, the petitioner's representations were not considered, but the petitioner



has been working continuously in the time scale of pay with annual increment and other attendant benefits.

5. In the meanwhile, the second respondent has passed an order, dated 12.11.2013, thereby changing the service conditions. In view of the order, the third respondent passed a consequential order, dated 27.11.2013, without giving opportunity. Hence, the petitioner has filed W.P.(MD)No.4103 of 2014 and the same is pending. Based on the various representations, the 4th respondent submitted the proposal to the second respondent in proceedings, dated 10.06.2016, stating that the petitioner and other similarly placed 7 persons who are all working as irregular employees working in special time scale of pay who have acquired requisite qualification as per G.O.No.84, Co-operation Food and Consumer Protection Department, dated 12.03.2001 and omitted to be included by mistake of fact in G.O.(2D) No.138, A.H.D. and Fisheries (M.P.II) Department, dated 28.09.2007, may be regularized and after that on the basis of the proposal of the fourth respondent, the second respondent forwarded the proposal to the first respondent, vide proceedings, dated 18.12.2017 and requested the first respondent to issue necessary order. The second respondent forwarded the proposal to the first respondent as early as 18.12.2017 but the first respondent has not passed any order on the proposal. Hence, the petitioner has filed Writ of Mandamus in W.P.(MD)No.6860 of 2018. Pending this Writ Petition, an order, dated 24.04.2018 was passed, declining to grant the request and hence, the prayer of this Writ Petition ought to be amended and the petitioner has filed an Amendment Petition. The petitioner has filed W.P.(MD) No.1290 of 2015, praying to quash the notification issued by the fourth respondent in Na.Ka.No.1929/Nir/2007, dated 08.11.2014. In so far as relating to the recruitment for the post of Junior Assistant is concerned, the petitioner is working in the fourth respondent Milk Producers Union Limited seeking an approval from the first respondent for the regularization. The fourth respondent has already regularized the petitioner and approval is granted. The petitioner is eligible to be promoted as Junior Assistant. Therefore, the petitioner is seeking to stop the proceedings initiated for fresh recruitment for the post of Junior Assistant. Therefore, the impugned notification, dated 08.11.2014, requesting the employment exchange to sponsor candidates to various posts including Junior Assistant is sought to be quashed in this Writ Petition.

6. The Writ Petition filed in W.P.(MD)No.4103 of 2014, to quash the impugned order passed by the second respondent, dated 12.11.2013 and consequential order passed by the third respondent, dated 27.11.2013, with a consequential prayer to regularize the petitioner's service. Through the impugned order, dated 12.11.2013, the second respondent has entirely changed the service conditions of the regularized employees and reducing the allowances by imposing various conditions. Based on the said order, the second respondent has passed a consequential order, dated 27.11.2013, wherein, it has ordered to recover the benefits. Aggrieved over the same, the petitioner has preferred this Writ Petition. While in the Writ



Petition W.P.(MD)No.4103 of 2014, this Court has granted an interim order of status quo.

7.The fourth respondent has filed a counter affidavit along with vacate stay in W.M.P.(MD)No.5610 of 2017 in W.P.(MD)No.4103 of 2014. The respondents have stated that the petitioner was not recruited through employment exchange and the same is in violation of Rule 149 of Tamil Nadu Co-operative Societies Rule, 1988. The petitioner was engaged as casual labour as Mazdoor and his service particulars are given below:

S l . N o	Name of the CL	Date of appoin tment as CL	Whether recruit ed through Employ ment Exchang e	Date of Birth of the CL	Whether fulfilled the age at the time of his appointme nt	Qualifi cation of the individ ual	Whether fulfilled the educational qualificati on at the time of his appointment	Whether completed 480 days in continuous period of 2 years	Whether fulfill ed all conditi ons prescri bed
1	K.Elagovann	30.10. 1994	No	05.06 .1963	No	B.A.	Yes	No	Except recruit ment through Employ ment Exchang e, age and complet ion of 480 days.

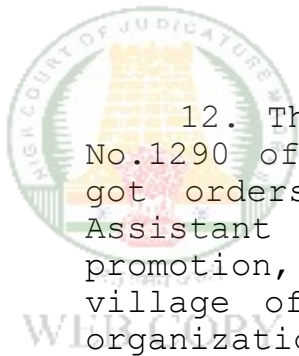
8.In the table, it has been stated that the petitioner is not employed through employment exchange and he has not fulfilled the age criteria but he has the educational qualification and he has completed 480 days. The respondents submitted that Commissioner for Milk Production and Dairy Development circular Rc.No.337/90/N1, dated 26.12.1994, instructions were issued to the Managing Directors / General Managers of the District Cooperative Milk Producers Unions not to regularize any causal labours without following the existing Rules, Regulations and Bylaws. Further, instructed to send proposals to the Commissioner for the Milk Production and Dairy Development Department for relaxation, if required and regularize the service of casual labours after obtaining the approval from the competent authority. The fourth respondent has placed the matter of regularization before the Personnel Committee and has regularized the service of 16 casual labourers including the petitioner with effect from 02.01.1996 and fixed the time scale of pay and sanctioned incremental arrears, vide proceedings, Rc.No.254/A1/2006, dated 17.09.2007. The above orders were issued in terms of indemnity bond executed by the above persons for that purpose. The Government issued G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001, have issued orders authorizing the management of Cooperative Societies to regularize the service of casual labourers recruited without reference of employment exchange but having all other qualifications, necessary proposals shall be sent to Government for issuing necessary orders.



9. Accordingly, the Government has issued G.O.(2D)No.138, dated 28.09.2007, regularizing the service of 10 casual labourers who possess the required age as on 11.03.2001 and the educational qualification and have completed 480 days in 24 calendar months by giving relaxation for not having recruited through employment exchange. The aforesaid G.O. was issued based on the judgment delivered in **Justin** case, filed in W.A.Nos.2501 and 2502 of 2001. The said G.O.Ms.No.86, was issued only for the employees recruited from 09.07.1980 to 11.03.2001, exempting the intervention of employment exchange. Since the petitioner is not having the age requirement, he could not be regularized. The petitioner had filed W.P.(MD)No.10076 and 9113 of 2007, praying to implement the regularization orders as per the order, dated 02.11.1995 and to sanction annual increment. This Court, vide order, dated 05.11.2009, has dismissed the Writ Petition with a direction to the petitioners to work out the remedy. This Court has held that the fixation was done contrary to the standing instructions of the department and the petitioners have agreed to adjust the amount in case any objections and an undertaking was given along with witnesses. Since the Commissioner has not granted any approval, the petitioner is not entitled to any relaxation orders. However, necessary proposals were sent to the Government in Commissioner's reference Rc.No.18601/N3/98, dated 03.05.2001, seeking ratification of appointment of 15 casual labours made without obtaining orders of relaxation on age and educational qualification.

10. Since the financial viability of fourth respondent was not viable to sanction annual increment from 1997, the petitioners were sanctioned only notional increment from 1997 and monetary benefits from 01.01.2006. The above arrears were sanctioned to them after obtaining indemnity bond in a non-judicial stamp paper. Hence, invoking the powers conferred under Section 170 of Tamil Nadu Cooperative Societies Act, 1983, orders were issued, rescinding the orders of Managing Director, dated 30.04.2007 and recovery orders were passed recovering the increment arrears from the petitioner. In the meanwhile, the power of regularization granted under G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001, was taken away by the Government. Hence, the Government preferred a Writ Appeal in W.A.(MD)No.620 of 2010 and this Court had granted interim orders in respect of recovery of balance amount alone on 29.09.2010. Later, the main Writ Appeal was disposed of on 04.12.2015, dismissing the above Writ Appeal.

11. The Government, vide letter, dated 11.11.2013, have permitted the Commissioner to give instructions to the District Co-operative Milk Producers' Union to give time scale of pay of Rs.3,840-8000+Rs.1,040/- of Grade Pay to 155 casual labourers. The name of 9 casual labourers (including the petitioner) were included in the above 155 casual labourers. The extending of scale of pay will not confirm regularization in the post. Therefore, the petitioner cannot seek regularization.



12. The respondents have filed a counter affidavit in W.P.(MD) No.1290 of 2015, wherein it has stated that the fourth respondent got orders to fill up the existing vacancies of the 3 Junior Assistant as 1:1:1 ratio which means one post to be filled up by promotion, one by selection by the eligible employees of primary village of Dairy Cooperatives who are members of the respondent organization. The petitioner's service is neither permanent nor eligible for the promotion to the post of Junior Assistant. Therefore, the petitioner has no ground or valid reason to get the recruitment process stayed. Therefore, the fourth respondent prayed to dismiss the Writ Petitions.

13. Heard Mr.G.Kannan, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents and perused the files placed before this Court.

14. According to the petitioner, the fourth respondent has regularized his service from 02.01.1996 and has submitted the proposal to the 3rd respondent and the 3rd respondent in turn has submitted it to the second respondent. However, the first respondent ought to grant the approval for the regularization. Pending these Writ Petitions, the first respondent declined to approve the said regularization on the ground that the petitioner has not been recruited through employment exchange.

15. On perusing the records it is seen that the Government has issued G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001, to regularize the persons who are engaged in the Cooperative Societies but were not employed through employment exchange. Subsequently, the said G.O. was cancelled and the regularization cannot be granted subsequently and the power conferred on the Special Officer was taken away. Based on G.O. Ms. No. 86 the Government has taken steps to regularize some 34,000 employees. In the said process, the Government has regularized more than 26,000 employees. Unfortunately, some of the employees was not regularized.

16. This issue of regularization was considered by a recent judgment passed by the Court in W.P.(MD)No.21440 of 2015, dated 19.02.2021, where the Court has directed the Government to regularize the left out employees and directed the Government to consider the persons who have not filed any Writ Petitions for regularization. The relevant portion of judgment is extracted here under:

"16. This is an unfortunate case where luck has played its part. The Government took a decision to regularize the services of nearly 35,000 employees who were appointed in various Co-operative Societies by drawing a cut-off dated as 12.03.2001 and out of the same, the lucky 26,000 employees got their services regularized and the rest of the employees were facing the wrath of their destiny. They were eagerly



expecting their services to be regularized like that of the similarly placed employees but bad luck came in their. The process of regularization was undertaken even for the petitioners and due to various administrative delays, it did not reach its logical end. By then there was a huge shift in law with regard to illegal and irregular appointments.

37. In view of the above discussion, all the Writ Petitions are disposed of with the following directions:

a. All those Petitioners/Respondent Employee, as the case may be who have at the time of their appointment, fulfilled their educational qualification, who have been appointed in a sanctioned post within the cadre strength, and are in regular scale of pay, are declared to have satisfied the substantial/mandatory qualification prescribed under Rule 149(1) of the Rules;

b. The appointments not being sponsored by the employment exchange, as prescribed under Rule 149(2) of the Rules, will only make the appointments irregular and not illegal;

c. All those Petitioners/Respondent Employee, as the case may be who have fulfilled the criteria stipulated in Clause (a), shall be regularised by the Respondents by issuing appropriate proceedings within a period of 8 weeks from the date of receipt of copy of this Order by taking the cut-off date as 12.03.2001;

d. The regularization of service of the Petitioners/Respondent Employee, as the case may be will not entail them with any additional monetary benefits except the consequential benefits which flows from such regularization; and e. The benefit of regularization that is extended to the eligible Petitioners/Respondent Employee, as the case may be shall also be extended to all those employees who are similarly placed even though they have not knocked the doors of this Court.

Accordingly, the batch of writ petitions are disposed of. No costs. Consequently, all the connected miscellaneous petitions are closed."

<https://hcservices.ecourts.gov.in/hcservices/>

17. Based on this Judgment, the Government has issued Circular No.7 of 2021, dated 09.09.2021, thereby, considered to regularize



all the employees who have been recruited from 09.07.1980 to 11.03.2001. In this case, the petitioner was appointed in the year 1994 and he is eligible to be considered.

18. Therefore, the respondents are directed to grant regularization in terms of the judgment rendered in W.P.(MD)No.21440 of 2015, dated 19.02.2021, read with Circular No.7 of 2021, dated 09.09.2021, from the date of proposal G.O.(2D)No.138, wherein the service of other persons were is regularized. The petitioner is entitled to all monetary and attendant benefits attached to the promoted post. Therefore, the recovery order initiated is liable to be quashed and hence recovery order is quashed.

19. As far as the Writ Petition W.P.(MD)No.1290 of 2015 is concerned, the respondents have initiated to recruit fresh persons to the post of Junior Assistant. Since the petitioner is entitled to regularization as stated supra, the petitioner is entitled to be promoted as Junior Assistant and have other requisite qualifications. Therefore, the respondents are directed to consider the case of the petitioner for promotion as well and the notification is set aside.

20. With the above direction, the Writ Petitions in W.P.(MD) Nos.4103 of 2014 and 6860 of 2018 are allowed and W.P.(MD)No.1290 of 2015 is disposed of. The respondents are directed to implement the order within a period of six weeks from the date of receipt of the copy of the order. The amendment petition in W.M.P.(MD)No.4350 of 2022 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer/
Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

To

1. The Secretary to Government,
Department of Animal Husbandry,
Dairying and Fisheries,
Fort St. George, Secretariat,
Chennai- 600 009.

2. The Special Commissioner,
<https://hcservices.ecourts.gov.in/hcservices/>
Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai- 600 051.



3.The Managing Director,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.

4.The General Manager,
Thanjavur District Cooperative-
Milk Producers Union Limited,
Thanjavur.

5.The Assistant Director,
District Employment Office,
Thanjavur,
Thanjavur District.

+2 CC to M/s.S.RAMSUNDARVIJAYARAJ, Advocate (SR-23771,23770[F]
dated 19/05/2022)

+1 CC to M/s.D.SHANMUGARAJA, Advocate (SR-23772[F] dated
19/05/2022)

W.P.(MD)Nos.4103 of 2014, 1290 of 2015 and 6860 of 2018
19.05.2022

RK(31/05/2022) 11P 9C