



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.14251 of 2018

and

W.M.P. (MD) .Nos.12912, 12913 of 2018 and 5900 of 2019

WEB COPY

A.Shanmugasundari

... Petitioner

Vs.

1.The Deputy Registrar of Co-Operative Societies,
Krishnarayar Tank Street,
Madurai - 625 001.

2.M.M.3243, Vadipatti Taluk Co-Operative,
Institution staffs Co-Operative Thirft and
Credit Society Limited,
Alanganallur,
Madurai District - 625 501,
Represented by its President.

3.A.2873, Local Fund Audit Employees,
Co-Operative Thirft and Credit Society Limited,
Tallakulam,
Madurai - 625 002,
Represented by its President.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Na.Ka.No.7282/2017 see.Koo(1) dated -12-2017 signed on 26.12.2017 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Kumar

For Respondents : Mr.G.Suriyananth,
Additional Government Pleader.

ORDER

This Writ Petition has been filed to quash the impugned order dated 26.12.2017.

2. The brief facts of the case are that the petitioner was appointed as Attender in the second respondent Society vide Resolution dated 01.04.1996. The petitioner has completed co-operative training and was brought under time scale of pay on 01.04.1999 and then he was further promoted as Clerk. Due to financial constrain of the Society, the petitioner was transferred on deputation to the third respondent Society on 16.04.2010. Again the tenure was extended, the petitioner was working in the third



respondent Society from 2010 onwards. The Deputy Registrar of Co-operative Society sent a proposal to confer permanency to the petitioner vide letter dated 07.09.2015. Since the same was not granted, the petitioner preferred a Writ Petition in W.P.(MD).No.726 of 2017 and this Court vide order dated 15.11.2017 directed the first respondent to consider the proposal and pass orders on merits. In consequent to the same, the third respondent submitted a proposal dated 04.12.2014 and the first respondent rejected the proposal vide impugned order dated 26.12.2017 stating that the initial appointment of the petitioner is irregular, since the petitioner was not sponsored by the employment exchange. Aggrieved over the same, the petitioner preferred W.P.(MD).No.7221 of 2018 and the same was pending. On 29.06.2018, the second respondent Society directed the petitioner to meet the second respondent in person. When the petitioner obeyed the direction and met the second respondent, the proceedings of the first respondent dated 26.12.2012 was handed over wherein the petitioner was demoted from the post of Clerk since the petitioner promotion was against the circular No.92088/08 SR3 dated 21.08.2008, the reason stated is that the petitioner's initial appointment is irregular. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents had filed a counter along with Vacate Stay Petition, wherein it has been stated that the petitioner's initial appointment is irregular and the same cannot be considered. The petitioner was deputed to the third respondent Society for a period of three years. The third respondent is at liberty to fill up its sanctioned cadre strength by recruiting new employee in consonance with law and existing recruitment rules. There are no grounds to absorb the petitioner to the third respondent Society. As per the direction of the first respondent, the second respondent has passed an order demoting the petitioner from the post of Clerk to the Attender. The Writ Petition is not maintainable because the Three Member Bench of Madras High Court in Marappan case has held that the writs are not maintainable since the Cooperative Society are not coming under the definition of Government.

4. Heard Mr.S.Kumar, learned counsel for the petitioner and Mr.G.Suriyananth, learned Additional Government Pleader for the respondents.

5. It is seen that this is the third round of litigation for the petitioner. The first round ended up with a direction to the respondent to consider and pass orders. The second Writ Petition was filed for regularizing the service in W.P.(MD).7221 of 2018 and this Court vide order dated 21.12.2018 directed the respondents to regularize the petitioner. It is seen that the second respondent has submitted a proposal for regularization based on the Court orders.

<https://hcservices.ecourts.gov.in/hcservices/> Far as the issue of regularization is concerned, the



Court has passed an order in W.P.No.21440 of 2015 and the relevant portion 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 were 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 flow 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.

WEB COPY

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

7. Based on the order of this Court, the Registrar of Cooperative Society, Chennai has issued a Circular No.7/2021 dated 09.09.2021. Based on the order and the circular, the petitioner is entitled for regularization. Once the petitioner's service is regularized, then the petitioner would be eligible for other service benefits including the promotion. In the present case, the petitioner promotion was declined and the impugned order of demotion has passed because the petitioner initial appointment is irregular. The appointment of the petitioner ought to be regularized since the earlier litigation has ended up in directing the respondents to regularize the petitioner's service, coupled with the fact of the order passed in W.P.(MD).No.21440 of 2015 and the circular.

(*)8. In view of the above circumstances, the impugned order dated 26.12.2017, wherein the petitioner was demoted is set aside and the respondents are directed to regularize the petitioner's service immediately and confirm the promotion which was already granted on 01.04.1999 and to pay the consequential monetary benefits within a period of four weeks from the date of receipt of the copy of this order.

9. With the above observation, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

(*)Substituted paragraph No.8 as per the order of this Court dated 30.03.2022 made in WP(MD).14251 OF 2018

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

(*)to be substituted to the order already despatched on 22.03.2022

1.The Deputy Registrar of Co-Operative Societies,
Krishnarayar Tank Street,
Madurai - 625 001.

2.The President,
M.M.3243, Vadipatti Taluk Co-Operative,
Institution staffs Co-Operative Thirft and
Credit Society Limited,
Alanganallur, Madurai District - 625 501.

3.The President,
A.2873, Local Fund Audit Employees,
Co-Operative Thirft and Credit Society Limited,
Tallakulam, Madurai - 625 002.

+1 CC to M/s.SPL GP (SR-15680[F] dated 03/03/2022)

+1 CC to M/s.S.KUMAR, Advocate (SR-9798[F] dated 03/03/2022)

W.P. (MD) .No.14251 of 2018
02.03.2022

NSN (CO)

KB (17.03.2022) 5P 6C

TR (21.04.2022) 5P 6C