



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.01.2022
CORAM

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

W.P.(MD)No.7359 of 2015

and

M.P.(MD)No.2 of 2015

R.Ganesh Kumar

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Co-operation, Food and Consumer Protection
Department,
Secretariat, Chennai-600 009.

2.The Joint Registrar of Co-operative Societies,
Tuticorin Region, Tuticorin.

3.The Managing Director,
Tuticorin Melur Co-operative Bank,
Tuticorin.

... 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 in pursuant to the impugned order passed by the first respondent in G.O.Ms.No.112, Co-operative, Food and Consumer Protection (Sippi 2) Department, dated 08.10.2014 and the consequential order passed by the third respondent in his proceedings, dated 27.03.2015 and to quash the same and to consequently direct the respondents to fix the time scale of pay to the petitioner on par with his colleagues who are working in the same cadre and to grant all other attendant benefits.

For Petitioner	: Mr.M.Saravanakumar
For Respondents	: Mr.J.K.Jayaselan Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in G.O.Ms.No.112, Co-operative, Food and Consumer Protection(Sippi 2) Department, dated 08.10.2014 and the consequential order passed by the third respondent in his proceedings, dated 27.03.2015 and to quash the same and to consequently direct the respondents to fix the time scale of pay to the petitioner on par with his colleagues who are working in the same cadre and to grant all other attendant benefits.



2.The petitioner was appointed as Attendar in the third respondent Bank on 05.02.1994 on daily wages and subsequently absorbed as permanent employee with time scale of pay from 31.05.1996 and then promoted as Assistant on 01.07.2000. The third respondent entered into a settlement with the employees of the Cooperative Bank on 31.10.2007 to revise scale of pay. The petitioner submitted a representation, dated 19.10.2009, for request to extend the settlement benefits to the petitioner. However, the third respondent denied to extend the settlement benefits on the ground that the petitioner's service was not regularized by the competent authorities. Thereafter, the third respondent submitted a proposal to regularize his service, vide proceedings, dated 12.02.2007 to the Deputy Registrar of Cooperative Society and the same was returned on the ground that the petitioner had preferred a Writ Petition in W.P.No.16813 of 2002 and the same is pending.

3.The contention of the petitioner is that the said Writ Petition was disposed of, vide order, dated 24.10.2002, along with L. Justin and Batch cases. Therefore, the proposal was resubmitted on 05.11.2007 for regularization of service. In the meanwhile, the Government issued G.O.Ms.No.301, Food Cooperation and Consumer Protection Department, dated 17.10.2007, in which the power vested with the Joint Registrar to regularize was withdrawn. Therefore, the petitioner's regularization proposal was again returned by the second respondent, vide letter, dated 25.01.2008. The petitioner filed a Revision Petition No.8 of 2010, before the second respondent to extend the benefits of settlement, dated 30.10.2007 and Revision Petition was dismissed on 13.09.2010.

4.The petitioner preferred a Writ Petition in W.P.(MD)No.8033 of 2011 and the same was dismissed on 22.07.2011 with a liberty to file an appeal before the first respondent. The petitioner preferred an appeal on 12.09.2011 and the same was pending. Therefore, the petitioner preferred W.P.(MD)No.2378 of 2014 and this Court, vide order, dated 13.03.2014, had directed the first respondent to pass final orders on the appeal.

5.In the meanwhile, the respondents issued G.O.No.112, Co-operative, Food and Consumer Protection (Sippi 2) Department, dated 08.10.2014 and denied the prayer to the petitioner. The first respondent rejected the petitioner's appeal and denied to revise the salary as per the 12(3) settlement and directed the respondents to revise as per the order in RC No.92088/2008/SF3, dated 21.08.2008. The contention of the petitioner is that this letter was set aside by this Court in similar Writ Petitions filed in W.P. No. 2015 / 2010 vide order dated 18.07.2013. In the meanwhile, based on the impugned Government order, the third respondent passed a consequential recovery order in proceedings, dated 27.03.2015, thereby, revised the scale of pay of the petitioner from 01.08.2008 and ordered for recovery of the said amount. The



petitioner challenged both the recover order and the order passed in G.O.No.112, Co-operative, Food and Consumer Protection (Sippi 2) Department, dated 08.10.2014 and prayed to consequently direct the respondents to revise the scale of pay on par with his colleagues.

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6.The respondents have filed a counter affidavit stating that the petitioner was appointed as Office Assistant on temporary basis on 05.02.1994. Admittedly the petitioner was not appointed through Employment Exchange. Even though the petitioner has completed 480 days in 24 calendar months the petitioner is not entitled to be regularized when the appointment itself ipso facto is illegal and unauthorized. The petitioner challenged the G.O. Ms. No. 89 Cooperation, Food and Consumer Protection Department dated 12.03.2001 in W.P.No.16813 of 2002 and the writ petition was taken up along with L. Justin case (reported in 2002 (4) CTC 385) and the case was allowed. The contention of the respondents that the order passed W.P.No.16813 of 2002 was not received from the petitioner in time. Therefore, the petitioner's service was not regularized. In the meanwhile, the Government has issued G.O.Ms.No.301, Food Cooperation and Consumer Protection Department, dated 17.10.2007, thereby, the power of regularization was withdrawn. Hence the petitioner's service was not regularized and therefore the 12 (3) settlement dated 31.10.2007. The petitioner preferred writ petition in W.P. No. 8033 / 2011 and this Court vide order dated 22.07.2011 directed the petitioner to approach the appropriate forum. Then the petitioner filed Revision petition No. 8 / 2010 and the same was dismissed. Then appeal under section 152 was dismissed. Thereafter the government has issued the impugned G.O. (Established) No. 112 dated 08.10.2014 wherein it has been directed that the salary shall be fixed as per the letter in RC.No.92088 of 2008, dated 21.08.2008. Initially the petitioner but refused to execute a bond in Rs.50 stamp paper. Thereafter the respondents have issued an order dated 27.03.2015 for his pay fixation and the same is challenged along with G.O. 112. The respondents submitted the letter in RC.No.92088 of 2008, dated 21.08.2008 is set aside, even otherwise the said letter is not applicable to the petitioner since the petitioner's appointment is irregular.

7.Heard Mr. M. Saravanakumar, learned Counsel appearing for the petitioner and Mr. J.K. Jayaselan, learned Government Advocate appearing for the respondents.

8.The question for consideration is whether the petitioner is entitled to regularization and whether the petitioner is entitled to pay revision as per the settlement. The respondents have denied the benefits of the settlements, because the petitioner was not regularized and the petitioner's appointment was irregular since the appointment is not through employment exchange. On scrutiny of the entire records, it is seen that the petitioner has obtained a

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



Justin case. The petitioner is an unfortunate person that he was not regularized because, in the meantime, G.O.Ms.No.301, Food Cooperation and Consumer Protection Department, dated 17.10.2007, came into effect where by the power of the Joint Registrar to regularize was withdrawn.

9. As far as regularization is concerned, this Court in Writ Petition W.P.(MD)No.21440 of 2015, has directed the respondents to regularize all the left out persons because already the Government has taken policy decision to regularize some 34,000 people. Out of that 26,000 has already been regularized some of them have been left and the petitioner is one among them. In the said order, it has been directed to regularize all the persons including the persons who have not got the benefits, based on that order. The relevant portion is culled out hereunder:

"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;

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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."

The petitioner is entitled to regularization, once the regularization is done, the consequential benefit of pay revision as per the settlement can be considered.

10. Therefore, this Court is directing the respondents to regularize the petitioner within a period of four weeks from the date of receipt of a copy of this order. Thereafter, confer the benefits granted under 12(3) Settlement. As far as the recovery order is concerned, the respondents are not entitled to recover the pay, since the regularization was not granted because of wrong interpretation of the order. Therefore, the respondents are restrained from recovering any amount from the petitioner.

11. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

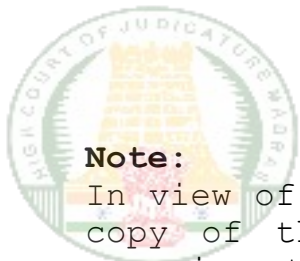
Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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

- 1.The Secretary to Government,
Co-operation, Food and Consumer Protection
Department,
Secretariat, Chennai-600 009.
- 2.The Joint Registrar of Co-operative Societies,
Tuticorin Region, Tuticorin.
- 3.The Managing Director,
Tuticorin Melur Co-operative Bank,
Tuticorin.

+1 CC to M/s.SPL.GP (SR-2045[F] dated 21/01/2022)

+1 CC to M/s.M.SARAVANAKUMAR, Advocate (SR-1874[F] dated 20/01/2022)

W.P. (MD)No.7359 of 2015
20.01.2022

NSN(CO)
KB(15.02.2022) 6P 4C