



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.9634 of 2016

and

W.M.P. (MD)No.7664 & 7665 of 2016

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M.Marimuthu

... Petitioner

vs

1. The Secretary
Food and Co-operative
Consumer Protection Department,
Government of Tamilnadu,
Chennai.
2. The Registrar of Co-operative Societies,
N.V.N.Natarajan Maaligai,
Eega Theatre opposite,
Kilapauk, Chennai.
3. The Joint Registrar of Co-operative Societies,
Thanjavur.
4. The Deputy Registrar of Co-operative Societies,
Kumbakonam.
5. Kumbakonam Co-operative Urban bank Ltd.,
represented by its Special Officer,
T.S.4062, Kumbakonam Post,
Tanjavur District.

... 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 of the first respondent in G.O.(Ms)No.43, dated 28.04.2016 and quash the same and consequently, direct the respondents to regularize the services of the petitioner and fix the pay scale of the petitioner on par with the regular employees of the Kumbakonam Co-operative Urban Bank Limited and pay all consequential benefits and pass such further or other orders that may deem fit.

For Petitioner : M/S.J.Maria Roseline

For Respondents : Mr.P.Thambidurai for R1-R4
Government Advocate (Civil side)

No appearance for R5



ORDER

The petitioner has challenged the G.O.Ms.No.43, dated 28.04.2016 with a consequential relief to regularize the service of the petitioner and fix the time scale of pay on par with the regular employees.

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2. The petitioner was appointed as Deposit Collector in the fifth respondent Bank on 29.07.1981. On 16.05.1991, the petitioner was given time scale of pay in the post of Deposit Collector. In the meanwhile, the petitioner completed Diploma in the year 1994 and subsequently on 31.10.1998, the petitioner was re-designated as Clerk and Assigned Clerk duties. Thereafter, the petitioner was promoted as Supervisor / Manager then he was designated as General Manager on 31.05.2013. The petitioner has attained superannuation in the year 2016.

3. The contention of the petitioner is that the Special Officer had submitted a proposal dated 09.06.2004 to the concerned authorities recommending to regularize the petitioner's service with effect from 29.07.1981 in the post of attender with notional increment and pay benefits given with effect from 01.09.1992 to 31.05.2004 and new pay scale was fixed with effect from June 2004. But all of sudden the proposal dated 09.06.2004 was cancelled vide order dated 04.09.2004 and the petitioner's salary was reduced to its earlier position and the reason stated that the order of regularization is passed without sanction from the appropriate authority. Aggrieved over the petitioner preferred writ petitions and also revision petition. In the impugned revision order it is stated that the petitioner's appointment is violative of the provisions of sub rules (1) & (2) of Rule 149 of Tamil Nadu Cooperative Societies Rules, 1988. The contention of the respondents is that the initial appointment of the petitioner is not as per law and hence the petitioner's appointment was not regularized. Several such employees were not regularized because of the pendency of the issue of regularization in the Co-operative societies in the Justin's case. In the meanwhile, the government has withdrawn the appointment of Special Officers in Cooperative Societies. The contention of the is that, during the interregnum period most of the employers were not regularized including one M. Venkatesan.

4. Heard the Learned Counsel Mrs.J.Maria Roseline for the petitioner and Mr.P.Thambidurai the Learned Government Advocate (Civil side) for respondents and perused the records.

5. It is seen from the records that when there was Special Officer post was existing, the Special Officer has submitted a proposal dated 09.06.2004 to the concerned authorities recommending to regularize the petitioner's service. The petitioner was one of the litigant in the L. Justin case batch. The petitioner is an unfortunate person that he was not regularized because, in the



Department, dated 17.10.2007, came into effect where by the power of the Joint Registrar to regularize was withdrawn. The contention of the respondents is that the petitioner's initial appointment is not in accordance to sub rules (1) & (2) of Rule 149 of Tamil Nadu Cooperative Societies Rules, 1988 and hence the petitioner's appointment cannot be regularized.

6. 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. 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 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."

7. Based on this Court order, the Government has considered the issue and has issued Circular No.7/2021 dated 09.09.2021, whereby it has granted regularization to all left out persons.

8. Therefore, this Court directs the first respondent to take into consideration the proposal of the Special Officer, dated 09.06.2004 and regularize the petitioner's service in the light of Circular No.7 dated 09.09.2021 read with the order passed by this Court in W.P.(MD)No.21440 of 2015. The petitioner submitted that all the other benefits were disbursed except the benefits granted under the 12 (3) Settlements of 2001 was not granted. The respondents are directed to re-fix in accordance to the Settlement and disburse the benefits to the petitioner and the said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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.

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To

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+1 CC to M/s.SPL.GP (SR-12503[F] dated 16/03/2022)

Order made in
W.P. (MD)No.9634 of 2016
15.03.2022

SA(30.03.2022) 5P 6C