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W.A.542 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.04.2023

DELIVERED ON: 16.06.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.A.No.542 of 2015
and M.P.No.1 of 2015

The Special Officer,
The Vellore – Tiruvannamalai District,
Cooperative Milk Producers Union Ltd.,
Vellore-632 009.

.. Appellant

Vs.

1.E.Dhanasekar
(Deleted as per order dated 07.03.2014
in M.P.No.166 of 2013)
2.D.Manoharan
3.S.Kalaichelvi
4.K.Dayalan
5.D.Velu
6.Radhakrishnan,
7.S.Sridharan
8.The State of Tamil Nadu
Rep. By its Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Secretariat, Fort St.George, Chennai-600 009.



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9.The Managing Director / Commissioner,
Tamil Nadu Cooperative Milk Producers
Federation's Ltd.,
Madhavaram Milk Colony, Madhavaram Post,
Chennai-600 051.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.06.2014 made in W.P.No.2358 of 2005.

For Appellant : Mr.P.S.Prabu
For Respondents : Mr.R.Vaigai, Senior Counsel
for M/s.Anna Mathew for R2 to R7
Ms.S.Anitha,
Special Government Pleader for R8 & R9

JUDGMENT

D.KRISHNAKUMAR, J.

The third respondent in the writ petition, challenging the order of the learned Single Judge dated 16.06.2014 passed in W.P.No.2358 of 2005, in and by which learned Single Judge has quashed the impugned order passed by the respondents 2 and 3 therein and directed the respondents to regularize the services of the writ petitioners / respondents 2 to 7 herein in their respective cadres from the respective date of their appointment with service and other attendant benefits.

2. Facts leading to the filing of the writ appeal are as follows:



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2.1. The writ petitioners/respondents 2 to 7 were sponsored by the Employment Exchange during 1995 for appointment to the post of Technical Casual Labourers in the appellant Federation and they were duly recruited on possessing necessary qualifications prescribed for the post and they were continuously discharging their duties as Data Entry Operator / Typist / Fitter / Electricians on daily wages and they were not given any other service benefits, except payment of Bonus, EPF contribution deducted from their salary and supply of uniforms. Since they continuously serving for number of years, they submitted repeated representations requesting the authorities to regularize their services.

2.2. In pursuance of the same, G.O.Ms.No.75, Animal Husbandry and Fisheries (MP II) Department dated 21.04.1998 came to be passed regularizing the services of 46 technical persons and 64 casual labourers, who were recruited through employment exchange and completed 480 days in a period of 24 calendar months, with effect from the date of their initial appointment in their respective cadres. The petitioners, who were appointed in Technical Casual Labourers and also covered under Technical persons, have made representations to the respondents to



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implement G.O.Ms.No.75, Animal Husbandry and Fisheries (MP II) Department dated 21.04.1998 and to regularize their services on technical side.

2.3. In the meanwhile, the third respondent has issued an Express Memo dated 21.12.2004 stating that the appointment of the writ petitioners/respondents 2 to 7 is illegal and their request for regularization of their services could not be complied with. The second respondent, in pursuance of the express memo passed by the third respondent, has passed an order refusing to regularize the services of the writ petitioners in regular cadre. Aggrieved by the same, the respondents 2 to 7 herein have filed the writ petition.

2.4. During the pendency of the writ petition, G.O.(2D)No.137, Animal Husbandry, Dairying and Fisheries (MP.II) Department dated 28.09.2007 relating to regularization of casual labourers, came to be passed, in and by which the petitioners were regularized in the post of Junior Factory Assistant, which is an unskilled post. The writ petitioners joined the post of Junior Factory Assistant on 16.10.2007, without



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prejudice to their rights in the writ petition and they were subsequently posted as Senior Factory Assistant on 11.03.2008.

2.5. The third respondent/appellant herein had filed a counter affidavit stating that during the inspection conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, it was pointed out that the appointment of 46 Technical Persons and 64 Casual Labourers (Both Technical and Non-Technical) as illegal appointment. On the proposal sent to the Government by the Commission of MP & DD, Chennai, the Government issued orders to regularize these 46 Technical persons and 64 Casual Labourers, vide G.O.Ms.No.75, A.II & F (MP.II) Department dated 21.04.1998 and accordingly, the services of 46 Technical persons have already been regularized in the then existing vacancies.

3. The learned Single Judge, after elaborately considering the submissions made, has allowed the writ petition by setting aside the impugned orders and also directed the respondents to regularize the services of the writ petitioners/respondents 2 to 7 in their respective



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cadres from the respective date of their appointment with service and other attendant benefits, within a stipulated time frame. Challenging the same, the third respondent therein, namely the Special Officer, Vellore Tiruvannamalai District Cooperative Milk Producer's Federation Ltd., has filed the instant writ appeal.

4. Mr.P.S.Prabu, learned counsel for the appellant submitted that as per G.O.Ms.No.75 dated 21.04.1998, 46 Technical Persons alone were taken into regular service on the existing vacancies in their respective cadres and the remaining 64 persons which includes the respondents 2 to 7 herein, were not taken into service and their appointment could not be regularized due to nonavailability of vacancy in the cadre of Factory Assistant. It is further contended that pendency of the writ petition, the Government of Tamil Nadu has taken a sympathetic view and decided to accommodate the 55 casual labourers, including the writ petitioner, by issuing G.O.(2D) No.137, Animal Husbandry, Dairying and Fisheries (MP II) Department dated 28.09.2007, regularizing the casual labourers with effect from 12.03.2001 and based on the said Government Order, 55 casual labourers were taken into service and the writ petitioners/private



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respondents herein also joined as Junior Factory Assistant. The learned counsel for the appellant has relied on the decision of the Hon'ble Full Bench of this Court in ***R.Radhakrishnan v. Deputy Registrar of Cooperative Societies [2007 (5) CTC 369]*** which dealt with the issue relating to regularization of irregular appointment in cooperative societies and held that appointment in violation of cadre strength and sanctioned post cannot be regularized. The learned counsel for the appellant, in support of his contentions, also relied on the judgments in ***A.Umarani v. Registrar of Cooperative Societies and Others [(2004) 7 SCC 112]*** and ***L.Justin v. Registrar of Cooperative Societies [(2002) 4 SCC 385]***.

5. Ms.R.Vaigai, learned Senior Counsel appearing for the writ petitioners/respondents 2 to 7 contended that originally the writ petition was filed seeking regularization as per G.O.Ms.No.75 dated 21.04.1998 with arrears of salary, seniority and other attendant benefits and during the pendency of the writ petition, G.O.(2D)No.137 dated 28.09.2007 was issued regularizing the services of several employees including the writ



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petitioners as Junior Factory Assistants and the prayer in the writ petition was amended seeking to quash G.O.(2D) No.137 dated 28.09.2007 and with consequential relief of regularization as per G.O.Ms.No.75 dated 21.04.1998. It is further submitted by the learned Senior Counsel that the learned Judge has allowed the writ petition by quashing G.O.(2D)No.137 dated 28.09.2007 and directed the respondents to regularize their services from the date of their appointment with service and monetary and other attendance benefits and thus, the writ petitioners are entitled for retrospective regularization from 24.01.1998 and for consequential monetary benefits from the date of their initial appointment. The learned Senior Counsel for the respondents/writ petitioners, in support of his submission, has placed reliance on the following decisions:

(1) A.Umarani v. Registrar, Cooperative Societies and Others

[(2004) 7 SCC 112]

(2) Secretary, State of Karnataka and Others v. Umadevi and

Others [(2004) 7 SCC 132]

(3) Indian Council of Medical Research, represented by its



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Director General and Others v. K.Rajalakshmi [2005 (1) CTC 488]

(4) Srikanth S.M. V. Bharath Earth Movers Ltd., [(2005) 8 SCC 314]

(5) State of Kerala and Others v. E.K.Bhaskaran Pillai [(2007) 6 SCC 524]

(6) V.Radhakrishnan and Others v. The Registrar, Central Administrative Tribunal, Chennai and Others [2007 (3) CTC 672]

(7) Shiv Nandan Mahto v. State of Bihar and Others [(2013) 11 SCC 626]

(8) State of Gujarat and Others v. PWD Employees Union and Others [(2013) 12 SCC 417]

(9) Nihal Singh and Others v. State of Punjab and Others [(2013) 14 SCC 65]

(10) Ramesh Kumar v. Union of India and Others [(2015) 14 SCC 335]

(11) Devinder Singh v. Municipal Council, Sanaur [(2011) 6



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SCC 584/

(12) State of Punjab and Others v. Jagjit Singh and Others

[(2017) 1 SCC 148].

6. This Court has considered the rival submissions and also perused the materials on record.

7. The undisputed fact remains that the respondents 2 to 7 / writ petitioners were among the 54 casual labourers and they possessed the requisite age and educational qualification and were recruited through employment exchange and worked for 480 days within a period of 24 calendar months. It is also not in dispute that the petitioners were already regularized as Junior Factory Assistants at Entry Level and they were subsequently promoted as Senior Factory Assistants.

8. The primordial contention of the appellant is that the respondents/writ petitioners have no right to be regularized as Data Entry Operator / Typist / Fitter / Electricians and are entitled to be regularized only as Junior Factory Assistant at entry level. It is contended by the



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appellants that the appointment of the respondents/writ petitioners was illegal and through backdoor entry for want of cadre strength. It is nobody's case that the writ petitioners/respondents are not entitled to be regularized in service at all. The point for consideration is whether the claim of the writ petitioners/respondents seeking monetary benefits from the date of their initial appointment as Data Entry Operators / Typists / Fitters / Electricians in the light of G.O.Ms.No.75 dated 21.04.1998 is legally sustainable?

9. The Division Bench decision of this Court relied upon by the learned counsel for the appellant in ***L.Justine and another v. The Registrar of Cooperative Societies, Chennai and Others [2002 (4) CTC 385]*** held that “mere completion of 480 days of service cannot make employees permanent under Permanency Act, 1981, when appointment itself is illegal and unauthorized”.

10. The Hon'ble Supreme Court in ***A.Umarani v. Registrar, Cooperative Societies and Others [(2004) 7 SCC 112]*** held that “an appointment made in violation of the mandatory provisions of the



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Statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. Appointments cannot be made on political considerations and in violation of the Government directions for reduction of establishment expenditure or a prohibition on the filling up of vacant posts or creating new posts including regularization of daily waged employees. Those who come by back door should go through that door. Regularization is not and cannot be the mode of recruitment by any “State” within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature.

11. The Hon'ble Supreme Court in the landmark decision in ***State of Karnataka v. Uma Devi and Others [AIR 2006 SC 1806]***, held as follows:

“There is no fundamental right in those who have been employed on daily wages or temporarily or on



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contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.”

12. The decision of the Hon’ble Supreme Court in ***Umadevi’s case*** squarely applies to the case on hand. The recruitment of the petitioners were deemed to be illegal on the ground that initially they have been appointed during the year 1995 as Technical Casual Labourers and they have been paid daily wages and they were not given any service benefits except bonus and EPF contribution and therefore, they have submitted representations seeking regularization. Based on their representation, G.O.Ms.No.75, Animal Husbandry and Fisheries Department dated 21.04.1998 came to be passed regularizing the services of the petitioners with effect from the date of their appointment in the respective cadre.



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13. Subsequently, the petitioners made representation seeking implementation of G.O.Ms.No.75 and also filed W.P.Nos.10209/2004 and W.P.No.17720 of 20024 and vide orders of this Court dated 19.04.2004 and 28.06.2004, the representation of the writ petitioners were directed to be considered in the light of G.O.Ms.No.75. In the interregnum, the Division Bench of Madras High Court in *Justin's case* [W.A.No.2501/2001 and 2502/2001 dated 24.10.2002] has held that the appointments of the staff made to the Cooperative Societies by the elected bodies or the officers in charge, in violation of the cadre strength or the prescription of the educational qualifications cannot stand and are held to be null and void.

14. In the light of the order passed by the Division Bench of this Court in *Justin's case*, the appellant has sent an Express Memo dated 21.12.2004 addressed to the 4th petitioner and to the 2nd respondent therein / 9th respondent herein, informing that in the light of the order of the Division Bench of this Court in Justin's case dated 24.10.2022 and the letter of the eight respondent dated 17.12.2004, the appointment of the petitioner without cadre strength in the appellant Cooperative Society is



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illegal and therefore, the request of the writ petitioner's to regularize his services without cadre strength could not be complied with and in pursuance thereof, the 9th respondent herein has rightly rejected the request of the petitioners, vide impugned order dated 29.12.2004. The aforesaid orders passed by the respondents 8 and 9 dated 21.12.2004 and 29.12.2004 respectively were challenged in the writ petition.

15. During the pendency of the Writ Petition, the Government has passed G.O.(2D)No.137 dated 28.09.2007, regularizing the services of 54 Casual Labourers with effect from 12.03.2001 by downgrading the posts and giving monetary benefits from the date of issuance of the Government Order. Subsequently, the writ petitioners has filed an amendment application by challenging G.O.(2D)No.137 dated 28.09.2007 in the pending W.P.No.2358 of 2005.

16. The primordial ground raised by the writ petitioners / respondents 2 to 7 is that they have produced records to show the vacancy position as on 31.10.1999 and 30.09.2001 before the Writ Court by way of typed set of documents and as per the said document, there was no excess cadre strength in the appellant Society and therefore, they



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are entitled for regularization as per G.O.Ms.No.75 dated 21.04.1998.

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17. On the contrary, the respondents 1 and 2 in the writ petition / 8th and 9th respondents herein has filed a detailed counter affidavit stating that sponsorship through employment exchange alone was dispensed with in the *Justin's case* and that too for the period from 08.07.1980 to 11.03.2001, in other words, all the requirements contemplated in Rule 149 of the Tamil Nadu Cooperative Societies Rules 1988 should be complied with such as cadre strength, age educational qualification and cooperative training etc., and as far as the petitioners are concerned, no sanctioned post is available to accommodate them and moreover their appointments would be in excess of cadre strength.

18. Even in the earlier writ petition in W.P.No.10209 of 2004 filed by Mr.K.Dayalan seeking to implement G.O.Ms.No.75 dated 21.04.1998, the 9th respondent herein has filed a counter affidavit stating as follows:

“Though the appointments were irregular, taking humanitarian consideration, the services of the above persons were regularized vide G.O.Ms.No.75, Animal Husbandry and Fisheries (MP.II) Department dated 21.04.1998. As the vacancies were available in the



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respective cadre to accommodate 46 persons listed in the Annexure I to the above G.O., the partial implementation of the above Government Order was done and the above 46 persons were accommodated in the respective cadres. ***However, to accommodate the remaining persons, as there was no cadre strength in the above cadre, proposals were sent to Government for the creation of 64 supernumerary posts of Junior Factory Assistants as early as during 1999, which are still pending with the Government.***”

19. Thus it is crystal clear from the counter affidavit filed by the 9th respondent that there is no cadre strength available even at the time of issuance of G.O.Ms.No.75 dated 21.04.1998 and partial implementation of the said Government Order was done by accommodating 46 Technical Persons in their respective cadres and it has been unambiguously stated that as there was no cadre strength to accommodate 64 Casual Labourers, proposals were sent to the Government for creation of 64 supernumerary posts of Junior Factory Assistants as early as during 1999. Despite the said fact, the 8th respondent / Government has taken a sympathetic view and passed G.O.(2D)No.137, dated 28.09.2007, downgrading the posts to accommodate the existing casual labourers with effect from 12.03.2001, subject to the condition that the monetary benefit will take



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effect from the date of issuance of the order viz., 28.09.2007. However, it is the grievance of the writ petitioners/respondents 2 to 7 that they are entitled to monetary benefits from the date of their initial appointment.

20. The Hon'ble Supreme Court in the decision in ***Union of India v. Ilmo Devi and another [2021 SCC Online 899]***, has held as follows:

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

29. Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularization can be only as per the regularization



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policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014. (emphasis supplied)

21. The Hon'ble Supreme Court in a latest decision in *The Government of Tamil Nadu and another v. Tamil Nadu Makkal Nala Paniyalargal and Ors. Etc. [2023 Live Law (SC) 294]* has held as under:

“11..... The High Court has observed that even while absorbing and/or regularizing the services of the respondents, the State Government may create supernumerary posts. Such a direction to create supernumerary posts is unsustainable. Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for absorption/regularization of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts.”

22. In the light of the decision of the Hon'ble Supreme Court in *Ilmo Devi's case*, the petitioner's being casual labourers, are not entitled



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for regularization and they cannot seek regularization as a matter of right, dehors the regularization policy. In the case on hand, the petitioners were granted regularization by way of concession by passing G.O.(2D)No.137, dated 28.09.2007, on humanitarian grounds in order to accommodate them in regular posts.

23. The writ petitioners continued their services right from 1995 in non-sanctioned posts without any cadre strength and their appointments at the outset can be considered only as illegal appointment. Unless all the requirements as contemplated under Rule 149 of the Tamil Nadu Cooperative Societies Rules 1988 such as cadre strength, age, educational qualification and cooperative training etc. has been complied with, as laid down in *Justin's case* cited supra, the claim of the writ petitioners/respondents 2 to 7 cannot be considered. The respondents/writ petitioners have not produced any material to justify that the Government has accepted that there is no excess cadre strength.

24. Though legally the writ petitioners were not entitled for regularization in the light of the decision of the Hon'ble Supreme Court in



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Uma Devi's case, on account of their continuous engagement of their services, the Commissioner for Milk Production and Dairy Development has sent proposals for regularizing their services and based on the said proposal, the Government has taken a sympathetic view and issued G.O.(2D)No.137 dated 28.09.2007, regularizing their services with effect from 12.03.2001 in the downgraded posts of Junior Factory Assistants and they have joined in the said posts on 16.10.2007 and subsequently promoted as Senior Factory Assistants on 11.03.2008. When the appointment of the writ petitioners itself is illegal, their claim for monetary benefits from the date of their initial appointment based on G.O.Ms.No.75 dated 21.04.1998 is legally unsustainable. There is no discussion by the Writ Court on the aforesaid aspects. This Court finds considerable force in the contentions made by the learned counsel appearing for the appellant and therefore, the order of the Writ Court warrants interference and consequently, the same is liable to be set aside.

25. In the light of the aforesaid discussions, the Writ Appeal Stands allowed and the order of the Writ Court dated 16.06.2014 dated W.P.No.2358 of 2005 is set aside. No costs. Consequently, connected



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miscellaneous petition is closed.

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[D.K.K., J.,] [K.G.T., J.]
16.06.2023

Index:yes/no

Internet:yes / no

Jvm

To

- 1.The Secretary to Government,
The State of Tamil Nadu
Animal Husbandry and Fisheries Dept.,
Secretariat, Fort St.George, Chennai-600 009.
- 2.The Managing Director / Commissioner,
Tamil Nadu Cooperative Milk Producers Federation's Ltd.,
Madhavaram Milk Colony, Madhavaram Post,
Chennai-600 051.



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**D.KRISHNAKUMAR, J.,
&
K.GOVINDARAJAN THILAKAVADI, J.**

Jvm

**Judgment in
W.A.No.542 of 2015**

16.06.2023