



W.P.No.27257 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.27257 of 2010

M.P.No.1 of 2010

K.Anbazhagan

... Petitioner

Vs

1.The Joint Registrar of Co-operative Societies
and Regional Authority,
Thiruvannamalai Region,
Thiruvannamalai District.

2.The Special Officer,
V.L.Spl.149, Thiruvathipuram PACB,
Cheyyar Taluk,
Thiruvannamalai District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the Joint Registrar of Co-operative Societies and Revisional Authority, Thiruvannamalai in rejecting the revision petition filed under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 by the petitioner against the termination in Na.Ka.No.12858/2009, sa pa dated 18.09.2010 in

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R.P.No.17/2009/SaPa, quash the same and direct the first respondent to reinstate the petitioner as Clerk in the second respondent office on in any one of the existing vacancy under the control of the first respondent with continuity of service and consequently direct the respondent to confirm and regularise the service of the petitioner with effect from the initial appointment viz., 04.11.1996, disburse backwages with consequential service and attendant benefits attached to the post, within short date that may be fixed by this Court.

For Petitioner : Ms.G.Sridevi

For Respondents : Mr.S.Ravichandran AGP for R1
Mr.P.M.Muthukumar for R2

ORDER

The Writ Petition had been filed challenging the order of the first respondent in affirming the order of the second respondent in terminating the services of the petitioner and seeking a consequential direction to regularize the services of the petitioner with effect from the date of initial appointment on 04.11.1996 and to reinstate the petitioner, and further direct the respondents to disburse back wages

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with all attendant and consequential benefits.

2. Heard Ms.G.Sridevi, learned counsel appearing for the petitioner, Mr.S.Ravichandran, learned Additional Government Pleader appearing for the first respondent and Mr.P.M.Muthukumar, learned counsel appearing for the second respondent.

3. The learned counsel for the petitioner would submit that, the petitioner was appointed as a Clerk in the second respondent Society on 04.11.1996. The second respondent by a Communication dated 23.09.2002, had terminated the services of the petitioner on the ground that his appointment was irregular, as he was not appointed through the Employment Exchange. She would rely upon the Government Order in G.O.Ms.No.86, Cooperation Food and Consumer Protection (C2) Department dated 12.03.2001, wherein the services of the person whose appointment was found to be irregular as not being sponsored by

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the Employment Exchange, on and from 08.07.1980 to be regularized from the date of issue of the said Government Order subject to condition that they had completed their work for 480 days in two succeeding calendar years. She would further submit that, based on the Government Order in G.O.Ms.No.86, the Employees Union Association, had filed a Writ Petition in W.P.No.21087 of 2001, seeking to implement the aforesaid G.O. Ms.No.86 dated 12.03.2001. This Court by an order dated 09.10.2001, had directed the petitioner to make appropriate application before the concerned authority and in meantime the services of the similarly placed persons shall not be terminated.

4. She would further submit that, the petitioner made an application on 05.12.2001, and he was called for an oral enquiry on 10.08.2002, in the meanwhile by an order dated 17.07.2002, the second respondent terminated the petitioner from service. Thereafter, the petitioner and others filed W.P.Nos.29387 to 29389 of 2002, before

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this Court and this Court by an order dated 08.08.2002, had quashed the order of termination. After which the second respondent had conducted a detailed enquiry and had again passed the order of termination, stating that the name of the petitioner was not sponsored by the Employment Exchange with effect from 23.09.2002. She would contend that, challenging the order of termination dated 23.09.2002, the petitioner and two others filed W.P.Nos.39113 to 39115 of 2002 before a Division Bench of this Court and the Division Bench by order dated 29.10.2002 had passed a final order fixing certain guidelines.

5. She would further submit that, based on the order of Division Bench, the petitioner had preferred an Revision before the first respondent and the same was rejected on 17.12.2007. Aggrieved over the said order of rejection, the petitioner has filed a Writ Petition in W.P.No.11564 of 2008 before this Court and this Court by an order dated 31.07.2009, directed the first respondent to consider the Revision Petition and pass appropriate orders on merits and in accordance with

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law. Thereafter, on 18.09.2010, the first respondent had confirmed the order of termination passed by the second respondent. Therefore, the petitioner had filed this Writ Petition to quash the order of termination as confirmed by the first respondent and direct the respondents to regularize the services of the petitioner w.e.f., 04.11.1996 and to reinstate the petitioner and to pay him the back wages with all attendant and consequential benefits.

6. Countering her arguments, Mr.S.Ravichandran, learned Additional Government Pleader would submit that, the appointment of the petitioner was made in contravention to the Rule 149 of the Tamilnadu Cooperative Societies Rules, 1988, and an order of termination was issued to the petitioner only after issuing a show cause notice and following the principles of natural justice. The termination of the petitioner from the service was confirmed by the first respondent in view of the Judgments passed by this Court and also by the Hon'ble Supreme Court in Civil Appeal Nos.1413 of 2003 etc., batch dated

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28.07.2004, by considering that the appointment itself was made against Rule 149.

7. The learned counsel for the second respondent would submit that, there is no dispute that the petitioner was appointed as a Clerk in the second respondent's office on 04.11.1996, and his appointment was not made through the employment exchange and he was directly appointed and that the appointment of the petitioner was not in accordance with the Rules of the Cooperative Societies Act. He would submit that, the second respondent had sent a notice to the petitioner and had conducted enquiry as to why the petitioner should not be terminated from service. After hearing the petitioner, the second respondent had passed an order of termination on 23.09.2002.

8. He would further submit that, the appointment of clerks in the second respondent office including this petitioner was done without the approval of the Selection Committee and without obtaining

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administrative permission. He would submit that, an interim order of stay was passed by this Court against the order of termination passed by the second respondent on 23.10.2002, but the petitioner was permanently terminated from service on 23.09.2002, so the order of stay passed by this Court could not be implemented. He would submit that, based on the order of this Court, the second respondent had not received any regulations or directions from the Registrar of Co-operative Societies for reinstating the petitioner back into services. Therefore, the order of dismissal passed by the second respondent, as confirmed by the first respondent is correct and does not require any warrant any interference of this Court.

9. I have considered the rival submission made by the learned counsels appearing on either side and perused the materials placed on record.

10. It is an admitted case that the petitioner herein had been appointed as a Clerk in the year 1996 and his appointment was not

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made through the employment exchange. The Government had issued a Government Order in G.O.Ms.No.86, dated 12.03.2001, taking into consideration the appointments that have been made to the various posts in Co-operative societies, by directing the regularization of such employees provided that they had completed 480 days of service in the continuous period of two years. A Division Bench of this Court in a batch of Writ Petitions, including the Writ Petition filed by the petitioner, disposed of the claim of the petitioner in terms of a batch of case, which was disposed of on 29.10.2010, by framing various guidelines. For better appreciation, the said guidelines are extracted hereunder:-

(i) that G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001 has got the effect of only authorising the regularization of the employees recruited by the cooperative societies for the period from 09.07.1980 to 11.03.2001, exempting the intervention of employment exchange;

(ii) that G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001,



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shall not operate for regularization of any employee recruited by the cooperative societies in violation of sub-Rule (1) of Rule 149 of the Tamil Nadu Cooperative Societies Rules as amended by G.O.Ms.No.212, Co-operation, Food and Consumer Protection Department, dated 04.07.1995;

(iii) in societies, where the cadre strength has not been fixed, direct them to adopt the special bye-law in conformity with sub-rule (1) of Rule 149 of the Tamil Nadu Cooperative Societies Rules as amended by G.O.Ms.No.212, Cooperation, Food and Consumer Protection Department, dated 04.07.1995;

(iv) direct the Registrar of Cooperative Societies to issue a circular within a week from today calling upon all the Co-operative societies in the State of Tamil Nadu to comply with the directions in clause (iii) supra.

(v) direct that within two months of the approval of the special bye-laws under sub-rule (1) of the Rule 149 of the Rules, the respective Deputy Registrars of Co-operative Societies having jurisdiction over the cooperative societies in their Divisions, shall enquire by issuing notice to the entire staff recruited from



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09.07.1980 to 11.03.2001, and decide as to whether the said recruitment is in conformity with the special bye-laws approved by the Registrar of the Co-operative Societies and terminate the services of such staff members, whose appointments are in contravention of the special bye-laws so approved by the Registrar of the Co-operative Societies;

It is made clear that while considering the validity or otherwise of the appointment of the staff cooperative societies, the requirement of notifying the vacancies to employment exchange shall not be taken cognisance of.

(vi) that no cooperative staff member appointed subsequent to G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department dated 12.03.2001 otherwise than through employment exchange shall be continued in service and their services shall be terminated forthwith.

(vii) that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent) Status to Workmen Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of



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the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 09.07.1980 to 11.03.2001. This is equally applicable to the staff appointed to the cooperative societies otherwise than through employment exchange for the period from 12.03.2001 onwards.

11. The petitioner's service had been terminated by the respondent, and an order of termination had been set aside by this Court on an earlier occasion and remitted the matter back to the respondent to pass appropriate orders, as this Court had found that there was an infirmity in the said order. On remand, even after the Division Bench judgment, the petitioner was again terminated which came to be set aside by the learned Single Judge and thereafter, the order impugned had been passed.

12. The respondent had rejected the claim of the petitioner by relying upon the judgment of the Hon'ble Apex Court in ***A.Umarani vs. Registrar, Cooperative Societies & Ors., reported in***

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MANU/SC/0571/2004 case by directing that the appointment made is contrary to the Rule 149 of the Tamil Nadu Co-operative Societies Rules ought not to be regularised. The judgment of the Hon'ble Apex Court in **A.Umarani's** case (stated supra) was a batch of Civil Appeal filed by the persons against the order of the Division Bench of this Court, a batch of case including the case of the petitioner, relevant portion of which had been extracted above. Even though the Hon'ble Apex Court in many times have said that appointment should not be made in violation of the Rules and Regulations available and if any such appointment have been made, those appointees should not be regularised. The Hon'ble Apex Court had not specifically held that either G.O.Ms.No.86 or the direction given by the Division Bench of this Court is bad. Infact, the Hon'ble Apex Court has affirmed the order of the Division Bench of this Court.

13. The Division Bench of this Court had granted two months time for approval of the Special Bye-law under Rule 149 of the Rules

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by the respective Deputy Registrars of Co-operative Societies having jurisdiction over the cooperative society by issuing notice to the entire staff recruited from 09.07.1980 to 11.03.2001 and decide as to whether the said recruitment is in conformity with the Special Bye-law approved by the Registrar of Co-operative society. There was also a further direction to fix the cadre strength by adopting a Special Bye-law which shall be approved by the Registrar of Co-operative societies. Neither of the order passed by the respondents indicate that the direction issued by the Division Bench of this Court had been complied with by them. When such exercise has not been carried out, the respondents cannot be heard to say that there is a violation of Rule 149, as the Division Bench itself has found that Rule 149 had not been complied with by most of the societies. When that being so, the order impugned in this Writ Petition is liable to be interfered with.

14. The respondents have proceeded on the basis that the petitioner's appointment has not been made through the employment exchange and therefore, it is in violation of Rule 149. Only to cure

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such defect, G.O.Ms.No.86, had been issued by the Government which was further qualified by this Court by issuing various directions. The said order came to be challenged by certain persons, who would be not benefited by such order, had approached the Hon'ble Apex Court. The Hon'ble Apex Court even though as stated supra in many words that the Government ought not to have passed such an order had not set aside the G.O.Ms.No.86, nor has it interfered with the direction issued by the Division Bench, which was impugned before it.

15. In such view of the matter, I am of the view that the directions issued by the Division Bench of this Court would have to be complied with by the respondents. In the present case, I do not find any compliance of the order passed by the Division Bench as early as in the year 2022. In such view of the above, the order impugned in this Writ Petition is set aside. The second respondent is directed to reinstate the petitioner into service with continuity of service and in respect of the backwages, since the petitioner had not been working

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from the date of his termination and considering the fact that the order of termination is not in conformity with the order passed by the Division Bench of this Court, there shall be a direction to the second respondent to pay 50% of the backwages to the petitioner.

16. In fine, the Writ Petition is allowed and the impugned order is set aside with the aforesaid direction. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

22.11.2023

pbn
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

K.KUMARESH BABU,J.
Pbn

To

1.The Joint Registrar of Co-operative Societies
and Regional Authority,

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Thiruvannamalai Region,
Thiruvannamalai District.

2.The Special Officer,
V.L.Spl.149, Thiruvathipuram PACB,
Cheyyar Taluk,
Thiruvannamalai District.

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