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W.P.No.29065 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.29065 of 2010
and M.P.No.1 of 2010

T.Mani

...Petitioner

VS.

1.The Registrar of Co-operative Societies,
“N.V.N.Maaligai”, Kilpauk,
Chennai - 600 010.

2.The Co-operative Registrar,
(Sales Scheme and Development),
Office of the Registrar of Co-operative Societies,
“N.V.N.Maaligai”, Kilpauk,
Chennai - 600 010.

3.VLSPL 132-Chithathur Primary Agriculture,
Co-operative Credit Society,
Represented by its Special Officer,
Chithathur, Cheyar Taluk,
Thiruvannamalai – 604 410.

... 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



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relating to the order of the 2nd respondent dated 27.10.2010 in Na.Ka.No.86605/2010/Sa.Pa.1, and quash the same and consequently direct the respondents to regularize the services of the petitioner in the 3rd respondent Society as Salesman with effect from the date of regularization of the Juniors to the petitioner.

For Petitioner : Mr.K.Selvaraj
For RR 1 & 2 : Mr.A.M.Ayyadurai
Government Advocate
For R3 : Mr.P.K.Sivakumar
for Mr.M.S.Palanisamy

ORDER

This Writ petition has been filed challenging the order passed by the 2nd respondent herein rejecting the case of the petitioner to regularise the services of the petitioner in the 3rd respondent/Society as a Salesman.

2. Heard Mr.K.Selvaraj, learned counsel for the petitioner and Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents 1 and 2 and Mr.P.K.Sivakumar, learned counsel for Mr.M.S.Palanisamy, learned counsel appearing for the 3rd respondent.



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3. Mr.K.Selvaraj, learned counsel appearing for the petitioner would submit that the petitioner was appointed as a Salesman in a ration shop of the 3rd respondent/Society in the year 1984 and he had been continuously working. The petitioner had made a representation requesting the 3rd respondent/Society to regularise the services of the petitioner. The Society, according to him had passed a resolution to regularise the services of the petitioner. However, no orders were passed to regularise the services of the petitioner. He would submit that similarly placed persons as that of the petitioner have all been regularised even though they were his juniors and they have been paid higher salary and also the regular increments. He would further submit that the petitioner's service was not regularised on par with his juniors which had driven the petitioner to approach the 1st respondent. Since, the same was not been considered by the 1st respondent, he had approached this Court in W.P.No.14425 of 2010 seeking to direct the 1st respondent to consider the request. Even though, a direction was issued by this Court to the 1st respondent to consider the claim of the petitioner, the 2nd respondent issued a notice of enquiry to the petitioner to which the petitioner had made a request that the revision should only be heard by the



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1st respondent as this Court had directed only the 1st respondent to consider the case. The claim of the petitioner for regularisation of service was rejected by the 2nd respondent through the impugned communication dated 27.10.2010 which had been challenged before this Court and that had been assigned by the 2nd respondent by referring to the judgment of the Hon'ble Apex Court in *Uma Rani and Uma Devi case*. He would submit that the Hon'ble Apex Court in its subsequent judgment reported in *2010 (9) SCC 247* had held that if the employees had complied with the requirements mentioned in *Uma Devi's case (2006 (4) SCC 1)* their services ought to be regularised. The learned counsel for the petitioner would submit that the petitioner had complied with the requirements as laid down in the judgment of the Hon'ble Apex Court in *Uma Devi's case* and therefore, he is entitled for being absorbed.

4. Countering his arguments, Mr.A.M.Ayyadurai, learned Government Advocate would submit that the petitioner's service cannot be regularised. He would submit that the petitioner's claim seeking for regularization is based on the judgment of the Division Bench of this Court



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made in W.A.Nos.2501 and 2502 of 2001. Further, he had also relied upon the G.O.Ms.86 Co-operative Food Consumer Protection Department dated 12.03.2001, wherein, direction was issued to Co-operative Societies to regularise the services of employees who had joined Co-operative Society between 09.07.1980 to 11.03.2001 and those who have completed 480 days. He would submit that the aforesaid Government order in G.O.Ms.No.86 dated 12.03.2001 had been declared as nullity by a Full Bench judgment of this court reported in 2007(6) MLJ 455. He would further submit that the judgment of the Division Bench relied upon by the petitioner was pursuant to the aforesaid Government order has been held to be nullity and in that context, he would submit that the judgment of the Division Bench also now cannot be pressed into the services in view of the Full Bench judgment. Based on the judgment, namely the G.O.Ms.No86 have been held to be in nullity. He would also submit that the Hon'ble Apex Court had come down heavily on illegal appointments as being a back door method of entering into the Government services for getting regularization. Therefore, he would pray this Court to reject this Writ Petition.



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5. Mr.P.K.Sivakumar, learned counsel appearing on behalf of the 3rd respondent had also adopted the arguments of the learned Government Advocate appearing for the respondents 1 and 2.

6. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

7. As rightly pointed out by the learned Government Advocate for the respondents 1 and 2, the prime claim of the petitioner is based on the G.O.Ms.No.86 and judgment of the Division Bench in W.A.Nos.2501 and 2502 of 2001 which primarily on the strength of the Government order issued in G.O.Ms.No.86. It is not disputed by the learned counsel for the petitioner that the G.O.Ms.No.86 had been held to be in nullity by the Full Bench of this Court reported in **2007 (6) MLJ 455**.

8. In such view of the matter, based upon which the petitioner seeks regularization itself is not in existence and therefore, I find no infirmity or illegality in the order impugned in this Writ Petition to be



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interfered with.

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9. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order : Yes/No

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