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W.P.No.4571 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4571 of 2023

&

WMP.No.4574 of 2023

K.Anbarasan

...Petitioner

Vs.

1.The Joint Registrar of Co-op. Societies,
Tiruvannamalai Region,
Tiruvannamalai District.

2.The Deputy Registrar of Co-operative Societies,
Cheyyar Circle, Tiruvannamalai District.

3.C.1782 Thellar Agricultural Primary
Co-operative Marketing Society,
rep. by its Managing Director,
Thellar Post, Vandavasi Taluk,
Tiruvannamalai District -604 406.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed in Na.Ka.No.225/2022/Tho.Ve.Ko.Ka.Sa dated 21.01.2023 by the second respondent herein and quash the same and consequently direct the respondent nos.1 to 3 to consider the petitioner's application dated 09.12.2022 for compassionate appointment in



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the third respondent society, within a stipulated time as fixed by this Court.

For Petitioner : Mr.Mr.T.Sundaravadanam

For Respondent : Mr.P.Baladhandayutham, SGP
Nos.1 & 2

For Respondent-3: Mr.M.Rajendiran, AGP

ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner is the son of Late A. Kanniyappan, who was appointed as a Ration Shop Packer on 10.09.1982 in the third respondent's Society. He was promoted as a Ration Shop Salesman in Thellar Village and while in service, he died on 24.09.2021 after putting 39 years of service. The petitioner's request for compassionate appointment through his application dated 09.12.2022 has been rejected by the second respondent through the order dated 21.01.2023, on the ground that the services of his father was not regularised before his death and therefore, he cannot claim for appointment under the Compassionate Appointment Scheme.



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3. The learned counsel for the petitioner submitted that similarly placed persons like that of his father, had the benefit of an order of this Court passed in the case of ***A. Sivakumar Vs. The Secretary to Government, Food, Co-op. & Consumer Protection Department, Chennai & Others reported in CDJ 2021 MHC 425***, wherein the services of all the petitioners therein were directed to be regularised and therefore, the petitioner's father's services also is deemed to have been 'regularised' and therefore, the impugned order cannot be sustained.

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner's father was not sponsored through Employment Exchange at the time of his original appointment. Moreover, his services also were not regularised till his date of death and hence not deemed to be a 'regular employee' of the Society. Since the Scheme for Compassionate Appointment can be extended only to the legal heirs of the regular employees, there is no infirmity in the order passed by the second respondent.



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5. The petitioner's father was initially engaged on daily wages basis on 10.09.1982. When he was promoted as a Salesman in the Public Distribution System on 05.04.1988, he was sanctioned with the regular time scale of pay. It is not in dispute that the petitioner's appointment was on the sanctioned vacancy and that he was not sponsored through Employment Exchange.

6. When similarly placed Salesmen or Packers in the Co-operative Societies, Marketing Societies and Co-operative Wholesale Stores were appointed on daily wages basis and thereafter brought in regular time scale of pay, approached this Court in the case of *A. Sivakumar (supra)*, seeking for regularisation of their services, this Court by its order dated 19.02.2021, directed the official respondents to regularise their services and further rendered a finding stating that the benefit of regularisation, will also be extended to such employee, who had not approached the Court. The relevant portion of the order reads as follows:-

"37. In view of the above discussion, all



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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;

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



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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. The aforesaid judgment was delivered on 19.02.2021, when the petitioner's father was alive and in service. He had later died on 24.09.2021. In view of the decision of this Court cited supra, the service of the petitioner's father would also be required to be 'regularised', since the benefit of regularisation was extended to such employees, who have not approached the Court also.

8. This apart, the Hon'ble Supreme Court had also ratified this position in the case of ***State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others*** reported in **2015 (1) SCC 347** by holding that, when a relief is granted by a Court to a particular set of employees, the same should be made applicable to the identically situated persons also. The relevant portion of the



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order reads as follows:-

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"22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

Thus, when this Court had passed the order in *A.Sivakumar's case* (*supra*) on 19.02.2021, when the petitioner's father was very much in service, the respondent ought to have regularised his services. Having failed to pass such orders of regularisation till 24.09.2021, on which date the employee had died, in failure on their part in this regard, cannot be put against the employee. In other words, it requires to be construed that there was a 'deemed regularisation' granted to the petitioner's father in view of the failure on the part of the respondents to comply with the earlier orders of this Court



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in *A. Sivakumar's case (supra)* within a reasonable time.
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9. The other objection raised by the respondents is that the petitioner's father's initial appointment was not sponsored through Employment Exchange. This aspect was also dealt with in *A.Sivakumar's case (supra)*, wherein all the petitioners, who have approached this Court were also not sponsored from the Employment Exchange. The learned Single Judge had relied upon various decisions of the Hon'ble Supreme Court in connection with the right of an irregular appointee to claim regularisation of services, is legally permissible. The relevant portion of the order reads as follows:-

"43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , has examined that question and explained the principle regarding regularisation as enunciated in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The decision in that case summed up the following three essentials for regularisation: (1) the



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employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage: (M.L. Kesari case [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , SCC p. 250)."

10. The learned Judge had also placed reliance on the decision of the following portion of the decision of the Hon'ble Supreme Court in the case of ***Sheo Narain Nagar and Others Vs. State of Uttar Pradesh*** reported in **2018 (13) SCC 432:-**

"20. It is clear from the above judgements that paragraph 53 of the judgement in Umadevi's case (cited supra) has given rise to a glimmer of hope for all those employees whose appointments are irregular but who have voluntarily and continuously worked for ten



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years or more in a duly sanctioned post with prescribed minimum qualifications. In no uncertain terms, the Hon'ble Supreme Court has held that those category of employees who fulfil this criteria as on 10.04.2006 will be entitled to be considered for regularization."

11. Thus, in view of the above findings and discussions, the petitioner's father is deemed to have been 'regularised' in service under the orders of this Court and since an irregular appointee, who has put in more than 10 years of service is also entitled for the benefit of regularisation of his services, the reason assigned in the impugned order cannot be sustained. Accordingly, the impugned order passed in Na.K.225/2022/Tho.Ve.Ko.Ka.Sa dated 21.01.2023, is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders on the petitioner's application dated 09.12.2022, granting appointment on compassionate ground, within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index:Yes/No
Order: Speaking/Non-speaking
Neutral Citation :Yes/No
DP

To

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Tiruvannamalai District.
- 2.The Deputy Registrar of Co-operative Societies,
Cheyyar Circle,
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M.S.RAMESH,J.

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