



W.P.No.9945 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.9945 of 2014

1. S.Pitchai (Died)
2. Gunajothi
3. Chitra
4. Venkatesan

[Petitioners 2 to 4 substituted as Legal Representatives
of the deceased sole petitioner vide order dated
22.02.2023 in W.M.P.No.14091 of 2022]

..... Petitioners

-Versus-

- 1.YA 84, Ariyalur Co-operative Primary Agricultural
Rural Development Bank,
Rep. by its President,
Kamaraj Nagar,4th Cross, Ariyalur.
- 2.The Regional Manager,
Tamil Nadu Co-operative Primary Agricultural
Rural Development Bank,
2, Collector's Office Road,
Tiruchirappalli-1.
- 3.The Joint Registrar,
Ariyalur Regional Co-operative Societies,
Ariyalur.

..... Respondents



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Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the Joint Registrar of Co-operative Societies at Ariyalur, in Revision Petition No.13/2011 (Na.Ka.4291/2011 Sa.Ba.) dated 31.08.2012 and quashing the same and directing the respondents to calculate and arrive at the monetary benefits after treating the period between 12.08.2009 and 31.10.2010, the date of retirement of the petitioner and to pay all the terminal benefits after providing the petitioner's benefit of an alternative service with the same salary and all the attending benefits thereof.

For Petitioner(s) : Mr.S.K.Mani

*For Respondents : Mr.L.P.Shanmugasundaram
for R1*

*Mr.U.M.Ravichandran,
Spl. Government Pleader
for RR2 & 3*

ORDER

This is a case where the petitioner seeks benefits under the provisions of “The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” [Central Act 1 of 1996].

2. The petitioner was originally appointed as Office Assistant and was working as a Supervisor from 01.04.2008. He was affected with mental illness and therefore, had to apply for medical leave. He was undergoing treatment from 07.01.2008 to 05.03.2008. Since illness was not cured, he was referred to a medical board. The medical board was headed by the Joint Director, Medicine



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and Rural Welfare, Family Welfare, Perambalur. He appeared before the medical board on 18.08.2008.

3. The learned counsel appearing for the 1st respondent has produced a certificate from the Regional Medical Board, Thanjavur Medical College and Hospital, Thanjavur.

4. The said certificate shows that the petitioner has been suffering from bipolar disorder and recovery was not possible. The remarks of the medical board dated 21.08.2009 is extracted hereunder:-

“The individual was suffering from bipolar disorder as per Chief Psychiatrist, RMH – Thanjavur. A chance of his illness going under remission is very unlikely in the near future. Hence, he is recommended invalidation under psychiatric illness. Now, the Board recommends leave from 12.08.2009 to 21.08.2009.”

5. On the basis of the recommendation of the medical board that the petitioner cannot be cured, the respondents recommended for medical invalidation of the petitioner. On that basis, he was relieved from service on 15.08.2009. Aggrieved by that order, the petitioner had filed a writ petition and the same was dismissed permitting him to approach the revisional authority. Accordingly, the petitioner filed a revision which was numbered as RP No.13 of 2011.



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6. The Joint Registrar of Cooperative Societies cum Revisional Authority had dismissed the revision. Aggrieved by the same, the present writ petition has been filed.

7. Heard both sides.

8. It is not in dispute on either side that the petitioner is suffering from bipolar disorder. As per Section 2(i) (vii) of the Act 1 of 1996, bipolar disorder is a mental illness. The only exclusion under the definition “mental illness” [as per Section 2(q) of the Act 1 of 1996] is mental retardation. Therefore, on the basis of Section 2 (i) (vii) of the Act r/w 2(q), one can conclude that the petitioner is a person with disability as required under Section 2(t) of the Act 1 of 1996.

9. Mr.L.P.Shanmugasundarm, learned counsel appearing for the 1st respondent would submit that the Central Act 1 of 1996 does not apply to cooperative societies.

10. I am unable to agree with the said contention because the definition of establishment stated by the said Act under Section 2(k) of the Act 1 of 1996, reads as follows:-

2. In this Act, unless the context otherwise requires.-

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k. **"establishment"** means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;”

11.A cooperative society is a body corporate, which has been established under the provisions of the Tamil Nadu Cooperative Societies Act. Therefore, the 1st respondent cooperative society is an establishment for the purpose of Section 2(k) of the Act 1 of 1996. I am unable to agree with the contention of Mr.L.P.Shanmugasundaram, learned counsel for the 1st respondent, that the 1st respondent cooperative societies are not covered by the said legislation. The medical board also states that the petitioner requires continuous treatment and therefore, would be entitled to the benefit of Section 47 of the Act of 1996.

12. Mr.L.P.Shanmugasundaram, learned counsel would state that there was no alternative post to the post of Supervisor available since it was the only one post in the Office. This ignores the second proviso to Section 47 of the Act 1 of 1996, which reads as follows:-

**“47. Non-discrimination in Government
Employment - (1) No establishment shall**



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dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.”

13. The Supreme Court in **Kunal Singh v. Union of India [(2003) 4 SCC 524]**, while interpreting Section 47 of Act 1 of 1996 has held that it is the duty of the establishment to adjust an employee in any available post and if no such post is available, he should be kept in a supernumerary post till a suitable post is available or until he attains the age of superannuation whichever is earlier. In the instant case, the petitioner had attained the age of superannuation on 31.12.2009.

14. At this juncture, Mr.L.P.Shanmugasundaram would state that all dues till 21.09.2009 has been settled. That leaves the period from 22.09.2009 till 31.12.2009 to be paid.



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In the result, this writ petition is allowed. It is declared that the petitioner is entitled to the benefit of Section 47 of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [Central Act 1 of 1996]. The dues having been paid till 21.09.2009, the remaining amount that the petitioner is entitled to, will be calculated and paid within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

- 1.The Regional Manager,
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2, Collector's Office Road,
Tiruchirappalli-1.
- 2.The Joint Registrar,
Ariyalur Regional Co-operative Societies,
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V.LAKSHMINARAYANAN, J.

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