



WEB COPY



W.P.No.18372 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 06.03.2023

Order delivered on 21.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.18372 of 2014

and

M.P.No.2 of 2014

S.Selvapandian

.... Petitioner

vs

1. The Registrar of Co-operative Societies,
170, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.
 2. The Additional Registrar of Co-operative Societies,
(Marketing and Development)
170, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.
 3. The Joint Registrar of Co-operative Societies,
Collector Office Campus,
Dharmapuri District,
Dharmapuri.
 4. The Managing Direct/Joint Registrar,
Dharmapuri District Central Co-operative Bank Limited,
No.10, Nethaji Bye Pass Road,
Dharapuri - 636 701.
- Respondents



W.P.No.18372 of 2014

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 4th respondent in Na.Ka.No.1609/2001(1) Vu.Me(Ni) dated 27.01.2012 and order in the Revision Petition passed by the 2nd respondent in Na.Ka.No.81615/2013 sa.pa 1 dated 25.11.2013 and to quash the same and consequently directing the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.J.C.Durairaj
Additional Government Pleader
for R1 to R3
Mr.P.Anbarasan for R4

ORDER

This Writ Petition has been filed challenging the order of dismissal passed by the 4th respondent dated 27.01.2012 and the order of the 2nd respondent dated 25.11.2013 rejecting the revision petition filed by the petitioner and consequently, direct the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

2. i) The case of the petitioner is that he was qualified in B.A. Co-operation and registered his qualification in Employment Exchange seeking appointment in Co-operative Institutions. His name was sponsored for



W.P.No.18372 of 2014

WEB COPY

selection and appointment to the post of Assistant in District Central Co-operative Bank Ltd., Dharmapuri District in the year 1998. The petitioner attended the interview on 19.06.1998 and 07.08.1998 and selected for the post of Assistant.

ii) The State Government issued orders in G.O.Ms.No.216, Co-operation Food and Consumer Protection Department dated 01.09.1998 imposing ban for selection of employees in Co-operative Institutions. Further, the 3rd respondent issued publication dated 22.11.2000, for appointment to the post of Assistant, without considering the earlier selection already concluded. The petitioner filed W.P.No.20639 of 2000 against the publication for appointment to the post of Assistant.

iii) Pending writ petition, the State Government issued G.O.Ms.No.249, dated 31.10.2006 directed that in respect of selection already initiated based on G.O.Ms.No.112, dated 21.05.1998, by calling for list of eligible persons from employment exchange, it is directed to conduct enquiry and to select the qualified persons following the Rule of Reservation. When W.P.No.20639 of 2000 came up for hearing on 21.11.2006 along with batch of cases, the Hon'ble Division Bench passed orders directing the respondents to consider the claim of the petitioners in



W.P.No.18372 of 2014

terms of G.O.Ms.No.249 dated 31.10.2006 and pass orders.

WEB COPY

iv) In compliance of the order passed in the aforesaid writ petition, the 3rd respondent issued orders dated 17.04.2007 appointing the petitioner in the post of Office Assistant due to non availability of vacancy in the post of Assistant with further undertaking that the petitioner would be considered for appointment to the post of Assistant, if any vacancies arises in future. The petitioner joined the post of Office Assistant on 27.02.2008. The petitioner was issued with an order of promotion dated 30.08.2008 promoting him in the post of Assistant in the 3rd respondent Bank in the regular time scale of pay and further, granted with annual increment periodically for two years.

v) While so, the 3rd respondent issued orders dated 17.05.2011 under Section 153(1) of Tamil Nadu Cooperative Societies Act, on suo motu revision, that the petitioner appointment to the post of Office Assistant as well as the promotion to the post of Assistant was made illegal and contrary to the provisions of the Act. The petitioner was issued with show cause notice dated 19.12.2011 calling upon him to offer explanation as to why he should not be removed from service. The petitioner submitted his explanation. In spite of explanation submitted, the 3rd respondent issued



W.P.No.18372 of 2014

impugned order dated 27.01.2012, dismissing the petitioner from service.

vi) The petitioner filed Revision Petition before the Joint Registrar of Cooperative Societies under Section 153 of the Act. But the Joint Registrar of Co-operative Societies has not passed any orders. The petitioner filed writ petition in W.P.No.20183/2013 and this Court by order dated 24.07.2013, directed the Joint Registrar of Cooperative Societies, Dharmapuri to transmit the entire file relating to Revision Petition No.1193 of 2012 to the Additional Registrar to pass orders on the revision petition on merits and in accordance with law. The Additional Registrar, passed the impugned proceedings, rejecting the revision filed by the petitioner vide order dated 25.11.2013. Hence, this writ petition with the aforesaid reliefs.

3. Heard the learned counsel for the petitioner and the learned counsels appearing for the respondents.

4. Learned counsel for the petitioner would submit that the respondents have not considered the fact that the petitioner had already appeared for selection through employment exchange for appointment to the post of Assistant based on G.O.Ms.No.112 dated 21.05.1998, however, the selection was withheld and delayed for the reasons best known to the respondents. The appointment of the petitioner was made in the post of



W.P.No.18372 of 2014

Office Assistant in the 3rd respondent Bank as per the procedures laid down in G.O.Ms.No.112 dated 21.05.1998 and the same has been upheld by the Government vide G.O.Ms.No.249 dated 31.10.2006 which was later confirmed by this Court in W.P.No.20649 of 2000 dated 27.11.2006. The 3rd respondent issued order dated 17.05.2011 under Section 153(1) of Tamil Nadu Cooperative Societies Act on suo motu revision that the petitioner's appointment to the post of Office Assistant as well as the promotion to the post of Assistant was made illegal and contrary to the provisions of the Act, without providing any opportunity to the petitioner. In spite of explanation submitted by the petitioner for the show cause notice stating that his appointment was made through employment exchange and in pursuance to the selection conducted as per G.O.Ms.No.112 dated 21.05.1998 and as per the order of this Court, the 3rd respondent issued impugned order dated 27.01.2012, dismissing the petitioner from service. Against which, the revision petition filed by the petitioner was also rejected vide order dated 25.11.2013, stating that the appointment of the petitioner was made contrary to Rule 149(2) and 149(3) of the Rules, whereas the appointment of the petitioner was made only as per proper procedure by sponsoring through employment exchange and selection through interview. Therefore, the



W.P.No.18372 of 2014

impugned orders are liable to be set aside.

5. i) Per contra, the learned counsel for the respondents 1 to 3 would submit that the petitioner came to be appointed not through Employment exchange and he was also not qualified on the date of his appointment. Thus, the entry of the petitioner was through back door and after issuing show cause notice only he was terminated from service.

ii) Learned counsel would further submit that the 3rd respondent took up suo motu revision of the appointment orders of the 4th respondent. As the appointment was patently erroneous and illegal, the 3rd respondent passed orders on 17.05.2011 that the appointment of the petitioner in the bank was illegal. As it was a suo motu proceedings, only the action of the Bank was the subject matter of the proceedings and there was no need to provide any opportunity to the petitioner. The 4th respondent bank gave him notice and obtained his explanation and then only took the decision to terminate the illegal appointment of the petitioner. The Regional Joint Registrar are vested with the powers of the Registrar, exercisable under Section 153 of the Act. Hence, the first respondent directed the petitioner to file a revision petition before the Joint Registrar, Dharmapuri.

iii) Learned counsel would further submit that the functions of the



W.P.No.18372 of 2014

WEB COPY

1st, 2nd and 3rd respondents are regulatory in nature and their duty is to ensure that the provisions of Tamilnadu Cooperative Societies Act and the rules made thereunder are observed by every Cooperative Society. The appointment or cancellation of any appointment is the power of the 4th respondent. Therefore, the order dated 27.01.2012 came to be passed by the 4th respondent, in which, it is clearly stated that the appointment of the petitioner was contrary to the Tamilnadu Cooperative Societies Rules, Government Orders and Instructions of the Registrar. There can be no denial of the facts that the petitioner was not, at the time of his appointment, sponsored by the Employment exchange and that he had crossed the age limit of 35 years. The 3rd respondent only examined the legality and propriety of the action of the 4th respondent and in such process, there was no need to give any opportunity to the petitioner. The petitioner was first sponsored by the Employment exchange when he was fully qualified. At the next time, when the bank requested for a list, the Employment exchange did not sponsor the name of the petitioner as he had crossed the required age limit of 35 years. The action of the 4th respondent Bank in having appointed the petitioner subsequently, without proper understanding of the order of this Court dated 27.11.2006 in W.P.No.20639/2000 batch was not legally



W.P.No.18372 of 2014

WEB COPY

sustainable. The petitioner was not at all qualified for appointment to the post of Assistant or to the post of last grade servant as he had crossed the age limit and his appointment is thus void abinitio.

6. i) The learned counsel appearing for the 4th respondent would submit that in order to set right the illegality crept in the matter of appointment of the petitioner, the 3rd respondent took up suo motu revision to examine the correctness and legality of the order of appointment. The order dated 17.05.2011 does not suffer from any illegality and the 3rd respondent has passed the same not in violation of principles of natural justice.

ii) Learned counsel would further submit that the petitioner name was sponsored by the employment exchange in June 1998 when he did not complete the age of 35 years. Again when recruitment was made in 2000, his name was not sponsored as he had completed the age of 35 years. When he was appointed on 30.08.2008, there was no procedure of appointment at all. He did not come through employment exchange and he had crossed the age limit of 35 years and the Bank did not publish the vacancy for regular recruitment through the prescribed procedure. The petitioner came through back door and he has to go only through that. Therefore, he would pray to



W.P.No.18372 of 2014

dismiss the writ petition.

7. In reply to the above submission, learned counsel for the petitioner would submit that the reason stated in the counter affidavit that the petitioner's appointment has been made contrary to rule 149(2) and 149(3) is untenable for the reason that the petitioner was first sponsored by the Employment Exchange and participated in the interview on 27.07.1998 and as on the date of interview, the petitioner was fully qualified and came within the zone of consideration as per G.O.Ms.No.112 dated 21.05.1998. Secondly, the contention of the respondents that the petitioner has crossed the age limit of 35 years, on the date of his appointment is not tenable for the reason that as on the date of original selection, the petitioner was within 35 years of age and the inordinate delay in completing the original selection cannot be put against the petitioner. Further, the 3rd respondent passed suo motu revision order dated 17.05.2011 in utter violation of principles of natural justice without providing any opportunity to the petitioner and the same formed the basis for passing the impugned order by the 4th respondent and for passing the revision order by the 1st respondent. The impugned proceedings are vitiated by errors of law and facts.

8. This Court, considered the submissions made on either side and



W.P.No.18372 of 2014

perused the materials available on records.

WEB COPY

9. In the Government Order in G.O.Ms.No.112 Cooperation, Food and Consumer Protection Department dated 21.05.1998, regulations were framed for appointment of employees in Co-operative Banks by constituting selection committee by considering the list of qualified persons from Employment Exchange, the petitioner's name was sponsored for selection and appointment to the post of Assistant in District Central Cooperative Bank Limited, Dharmapuri District/4th respondent in the year 1998. The petitioner was called for the interview on 19.06.1998 and the said interview was cancelled. Subsequently, interview was conducted on 07.08.1998, in which, the petitioner participated and selected. Based on the selection, orders have to be passed by the 3rd respondent for appointment to the post of Assistant in the existing vacancy.

10. While so, Government issued G.O.Ms.No.216 Cooperation, Food and Consumer Protection Department dated 01.09.1998 imposing ban for selection of employees in Cooperative Institutions. In view of the same, though the petitioner's selected was concluded, he was not provided with order of appointment. In the year 2000 the 3rd respondent issued publication dated 22.11.2000, for appointment to the post of Assistant,



W.P.No.18372 of 2014

without considering the earlier selection already concluded. Therefore, the petitioner filed W.P.No.20639 of 2000 seeking Writ of Mandamus forbearing the 3rd respondent from in any way appointing candidates for the post of Assistant as per their paper publication dated 22.11.2000 without considering the petitioner's employment based on his seniority in the employment exchange and the Division Bench of this Court passed orders directing the respondents to consider the claim of the petitioner in terms of G.O.Ms.No.249 Cooperation, Food and Consumer Protection department dated 31.10.2006 and to pass appropriated orders expeditiously. As per G.O.Ms.No.249, the selection already initiated as per G.O.(D) No.112 dated 21.05.1998 is to be pursued and appointments to be made following Rule of reservation. Subsequently, the petitioner was appointed in the post of Office Assistant due to non-availability of vacancy in the post of Assistant with an undertaking that the petitioner would be considered for appointment to the post of Assistant, if any vacancies arises in future. Thus, the petitioner was appointed as per the orders of the Government and as per the directions issued by this Court in the aforesaid writ petition.

11. Subsequently the petitioner was promoted to the post of Assistant in the 3rd respondent bank in the regular time scale of pay vide order dated



W.P.No.18372 of 2014

WEB COPY

30.08.2008 and was further granted with annual increment periodically for two years. While so, the 3rd respondent issued order dated 17.05.2011 under section 153(1) of Tamil Nadu Cooperative Societies, Act, on suo motu revision stating that the petitioner's appointment to the post of office Assistant as well as promotion to the post of Assistant was made contrary to the provisions of the Act. The petitioner was issued with show cause notice dated 19.12.2011 as to why he should not be removed from service and the petitioner submitted his explanation but the 3rd respondent rejected the explanation of the petitioner and passed an order of removal from service. Against which, the petitioner preferred revision petition before the Joint Registrar of Cooperative Societies who did not pass any orders. Hence, the petitioner filed W.P.No.20183 of 2013 and this Court passed an order to transmit the entire file from the Joint Registrar to Additional Registrar to pass orders on the revision. The Joint Registrar, passed the impugned proceedings dated 25.11.2013 rejecting the revision petition filed by the petitioner stating that the appointment of the petitioner was made contrary to Rule 149(2) and 149(3) of the Rules.

12. It is pertinent to point out that the petitioner was sponsored through employment exchange for appointment to the post of Assistant



W.P.No.18372 of 2014

WEB COPY

based on G.O.Ms.No.112 dated 21.05.1998 and he was selected. However, the said selection was withheld. Subsequently, as per the order passed by this Court in W.P.No.20649 of 2000 dated 27.11.2006, to consider the petitioner for appointment, based on G.O.Ms.No.249 dated 31.10.2006, he was appointed in the vacant post of Office Assistant and thereafter, promoted to the post of Assistant. The appointment of the petitioner was made as per proper procedure. Therefore, the reasons stated in the counter that the petitioner's appointment was contrary to Rule 149(2) and 149(3) cannot be countenanced. Further, as on the date of interview, the petitioner was fully qualified and came within the zone of consideration as per G.O.Ms.No.112 dated 21.05.1998. The contention of the respondents that the petitioner has crossed the age of 35 years on the date of his appointment also cannot be accepted because, as on the date of original selection, the petitioner was within 35 years of age and the inordinate delay caused by the respondents in completing the selection, cannot be put against the petitioner. Further, the suo motu revision order passed by the 3rd respondent is in violation of principles of natural justice, as the same was passed without providing opportunity to the petitioner. Therefore, this Court is of the opinion that the impugned orders are vitiated and hence, liable to be



W.P.No.18372 of 2014

quashed.

WEB COPY

13. In the result, the Writ Petition is allowed. The impugned orders dated 27.01.2012 and 25.11.2013 are hereby quashed. The respondents are directed to reinstate the petitioner into service with all consequential and other attendant benefits. No costs. Consequently, connected miscellaneous petition is closed.

21.04.2023

Index: Yes/No
Speaking/Non-speaking order
vsi

To

1. The Registrar of Co-operative Societies,
170, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.
2. The Additional Registrar of Co-operative Societies,
(Marketing and Development)
170, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.
3. The Joint Registrar of Co-operative Societies,
Collector Office Campus,
Dharmapuri District,
Dharmapuri.



W.P.No.18372 of 2014

WEB COPY

4. The Managing Direct/Joint Registrar,
Dharmapuri District Central Co-operative Bank Limited,
No.10, Nethaji Bye Pass Road,
Dharapuri - 636 701.



WEB COPY



W.P.No.18372 of 2014

J.NISHA BANU,J.

vsi

Pre-delivery order made in
W.P.No.18372 of 2014

21.04.2023