



WEB COPY



7WA No. 2674 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2674 of 2022

C. Thiruppathi

.. Appellant

Versus

1. The Secretary to Government of Tamil Nadu
Co-operation, Food & Consumer Protection Department
Fort St. George, Chennai - 9

2. The Registrar of Co-operative Societies
Chennai - 10

3. The Joint Registrar of Co-operative Societies
Thoothukudi Region, Thoothukudi

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 05.08.2022 passed in Writ Petition No. 6353 of 2016 on the file of this Court.

For Appellant : Ms. N.R.Jasmine Padma
For Respondents : Mr. C. Kathiravan
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The challenge made in this intra-court appeal is to the order dated 05.08.2022 passed by the learned Judge, dismissing Writ Petition No. 6353 of 2016 filed by the appellant herein.



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2. The appellant has filed the aforesaid writ petition, praying to issue a Writ of Mandamus directing the respondents to regularise his service as Junior Inspector of Co-operative Societies from the date of his initial appointment on 01.10.1984 for the purpose of calculating his pension and consequently grant him the benefits payable to him.

3. According to the appellant, by an order of appointment dated 01.10.1984 issued by the Deputy Registrar of Co-operative Societies, Dharmapuri District, he was appointed as Junior Inspector of Co-operative Societies under Rule 10 (a) (i) of the General Rules for the Tamil Nadu State and Subordinate Service Rules corresponding to Section 17 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act 14 of 2016). During the course of his employment, for the purpose of regularising the services of the employees like the appellant, a qualifying test was conducted by the Tamil Nadu Public Service Commission. The appellant participated in the written test conducted on 15.10.1989, but he could not secure the minimum qualifying marks. Therefore, the appellant was ousted from service along with several others on the forenoon of 10.10.1990. Challenging the said order, similarly placed persons like the appellant filed Original Applications before the Tamil Nadu Administrative Tribunal,



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Chennai. The Tribunal, by order dated 01.07.1994 allowed those O.A. Nos. 3855 and 3856 of 1991 filed by similarly placed persons like the appellant, by directing the respondents therein to appoint the applicants therein and regularise their services as Junior Inspectors of Co-operative Societies from the date they were ousted from service, within two months from the date of receipt of the order relaxing the relevant rules and procedure, if need be, with all the consequential service and monetary benefits.

4. The appellant also stated that the respondents, instead of complying with the directions issued by the Tribunal in O.A. Nos. 3855 and 3856 of 1991, filed a Review Application No. 105 of 1994 for reviewing the Order dated 01.07.1994, whereas the applicant preferred contempt petition for the non-compliance of the said order. By a common order dated 07.04.2000, the Review Application was dismissed and the contempt petition was ordered by directing the appointing authority to appoint the applicant as Junior Inspector of Co-operative Societies. It was further directed that immediately after joining duty, the applicant therein shall submit a representation to the fourth respondent therein to grant age relaxation, if need be, to regularise his service. On receipt of such representation, the fourth respondent therein shall forward it to the first respondent therein, who shall consider it and pass



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necessary orders. As and when the order of age relaxation is passed by the first respondent therein, the fourth respondent therein shall regularise the service of the applicant therein, and issue appointment order within a period of six weeks.

5. It is further stated by the appellant that he also preferred OA.No.49 of 1992, which was allowed on 04.12.2003, directing the respondents therein to reinstate him in service, after following the earlier order passed in OA Nos.3855 and 3856 of 1991 by the Tribunal. The said order was not complied with, which compelled the appellant to file WP No. 6171 of 2006, seeking to issue a Writ of Mandamus directing the respondents therein to implement the order dated 04.12.2003 passed in O.A. No. 49 of 1992 filed by him. The writ petition was disposed of, on 03.03.2006 directing the respondents therein to implement the order of the Tribunal. Consequently, after obtaining opinion from the Tamil Nadu Public Service Commission, the Government passed G.O. (D) No.158 Co-operation, Food and Consumer Protection (CS2) Department, dated 22.05.2007 directing the Registrar of Co-operative Societies to issue necessary orders, with regard to reinstatement of the appellant. Accordingly, by proceedings dated 15.06.2007 of the Joint Registrar of Co-operative Societies, the appellant was appointed as Junior



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Inspector of Co-operative Services and posted to Vellore Region. On the basis of the same, the appellant joined duty on 09.07.2007. Subsequently, by proceedings dated 06.06.2014, the second respondent herein passed an order regularising the service of the appellant with effect from 09.07.2007 i.e., from the date of rejoining duty and not from the date of his original appointment i.e., on 01.10.1984. Feeling aggrieved, the appellant has filed the writ petition bearing No. 6353 of 2016 before the Writ Court.

6. The learned Judge, upon considering the rival submissions, dismissed the writ petition on 05.08.2022 by observing that the appellant had accepted the conditions imposed in the order dated 06.06.2014 passed by the second respondent and joined duty as Junior Inspector of Co-operative Societies on 09.07.2007, while so, he is not entitled to claim regularisation of his service from the date of his initial appointment i.e., on 01.10.1984. It was further observed by the learned Judge that the appellant did not challenge the proceedings dated 06.06.2014 by which his service was regularised with effect from 09.07.2007 and hence, the same has attained finality. In such circumstances, he is not entitled to file the writ to issue a Mandamus. Aggrieved by the order dated 05.08.2022 passed by the learned Judge, the appellant / writ petitioner has filed the present intra-court appeal.



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7. The learned counsel appearing for the appellant would vehemently contend that the first respondent issued G.O. (D) No. 158, Cooperation, Food and Consumer Protection Department dated 22.05.2007 ordering to implement the Order passed by the Tribunal in O.A. No. 49 of 1992 dated 04.12.2003. However, contrary to the said Government Order, the respondent authorities refused to regularise the service of the appellant from the date of his initial appointment on 01.10.1984. Even assuming that the appellant did not challenge the proceedings dated 06.06.2014 of the second respondent, by which his service was regularised only from 09.07.2007, the date on which he re-joined duty, that by itself will not disentitle him to seek regularisation of his service from 01.10.1984, on the basis of G.O. (D) No. 158 dated 22.05.2007. The Order passed by the Government in G.O. (D) No. 158 dated 22.05.2007 will prevail over the proceedings of the second respondent in regularising the service of the appellant with prospective effect. Such non-compliance of the order of the Tribunal by the respondents would amount to contemptuous act. While so, the learned Judge, instead of dismissing the writ petition, ought to have initiated contempt proceedings against the respondents. The learned counsel further submitted that the learned Judge also did not take note of the fact that the respondents, without complying with the directions issued by the Tribunal for regularisation of service, have technically denied the



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lawful and legitimate service right of the appellant. Therefore, the learned counsel sought to set aside the order of the learned Judge.

8. Per contra, the learned Special Government Pleader appearing for the respondents submitted that the Tribunal has not issued any positive direction for considering the claim of the appellant and the question of regularising his service was left open to the respondents for consideration. As the appellant was ousted from service on the forenoon of 10.10.1990 and reinstated only on 09.07.2007, his services cannot be regularised from the initial date of his appointment on 01.10.1984. Even otherwise, on 01.10.1984, the appellant was appointed only under Rule 10 (a) (i) of the General Rules for the Tamil Nadu State and Subordinate Service on temporary basis and he cannot seek for retrospective regularisation of his service. In fact, a special qualifying examination was conducted for regularising the service of the appellant, but he did not secure the minimum qualifying marks. While so, he has no right to seek for regularisation of his service from 01.10.1984, when the appellant was appointed temporarily to the post of Junior Inspector of Co-operative Societies. Further, after his re-appointment on 09.07.2007, the appellant's service was regularised by the proceedings dated 06.06.2014 with effect from 09.07.2007. The appellant, without challenging the said order



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dated 06.06.2014 has chosen to file the writ petition only for issuing a Mandamus to direct the respondents to regularise his service from 01.10.1984.

In such circumstances, the learned Judge is right in refusing to issue a Mandamus as prayed for by the appellant, by the order impugned herein, which does not call for any interference by this court.

9. We have heard the learned counsel for the appellant as well as the learned Special Government Pleader for the respondents and also perused the materials placed on record.

10. The grievance projected by the appellant/writ petitioner is that the respondent authorities instead of regularising his service from the initial date of his appointment i.e., on 01.10.1984, have passed the order dated 06.06.2014, regularising his service only from 09.07.2007, i.e., from the date of rejoining duty.

11. It is not in dispute that the appellant joined as Junior Inspector of Co-operative Societies under Rule 10 (a) (i) of the General Rules for the Tamil Nadu State and Subordinate Service Rules, on 01.10.1984, on temporary basis.

It is also not in dispute that he did not pass the special qualifying test



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conducted by the TNPSC for the purpose of regularising the services of the temporary employees and therefore, the appellant was ousted from service on the forenoon of 10.10.1990 along with others. When the order of termination was challenged by similarly placed persons by filing OA Nos.3855 and 3856 of 1991 before the Tribunal, a direction was issued to consider the claim of the applicants therein for reinstatement. Following the same, similar direction was issued by the Tribunal in O.A. No. 49 of 1992 filed by the appellant herein. It is on the basis of the direction issued by the Tribunal, and after obtaining opinion from the Tamil Nadu Public Service Commission, the Government passed G.O.(D)No.158 Co-operation, Food and Consumer Protection (CS2) Department, dated 22.05.2007 for reinstatement of the appellant. In the said G.O., it was plainly mentioned that the appellant has to be reinstated in service as Junior Inspector and necessary orders be issued by the Registrar of Cooperative Societies for the same. Except the same, there is nothing stated about the payment of backwages or regularising the service of the appellant from the date of his initial appointment i.e., on 01.10.1984. The appellant accepting the same, joined duty as Junior Inspector on 09.07.2007 and he did not challenge the said G.O. (D) No.158 dated 22.05.2007 with respect to non-issuance of direction to regularise his service from the date of his initial appointment. Subsequently, by order dated 06.06.2014, the service of the



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appellant was regularised with effect from 09.07.2007 i.e., from the date of rejoining duty. Even the said order was not challenged by the appellant by filing petition seeking to regularise his service from the date of his initial appointment. But, he preferred the writ petition only for a Mandamus. Therefore, the appellant, having accepted the order regularising his service from the date of rejoining duty on 09.07.2007, is estopped from filing the present writ petition seeking regularisation of his service from the date of his initial appointment on 01.10.1984. Having noted the same, the learned Judge has rightly declined to entertain the writ petition filed by the appellant for a Mandamus.

12. Though the learned counsel for the appellant made a feeble attempt by stating that the respondent authorities have regularised the services of the similarly placed persons from the date of their initial appointment and hence, such benefit may be extended to the appellant herein, the same cannot be countenanced by this court, as the orders so passed are only by an extraordinary gesture and the Government has shown an act of benevolence to the similarly placed persons. Moreover, it is settled law that when any extraordinary gesture *dehors* the rules is shown by the Government and if that gesture is coupled with a condition, the acceptance of the same would estop



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the writ petitioner from challenging the very same G.O. thereafter. Therefore, this court does not find any reason to interfere with the order of the learned Judge.

13. In the result, the Writ Appeal fails and it is dismissed. No costs.

[R.M.D., J] [M.S.Q., J]
12.04.2023

Index : Yes / No
Internet : Yes / No
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To

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