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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.26675 of 2021

- 1.D.Venkatakrisna Rao
- 2.M.Sadagopan
- 3.L.Chandrasekar
- 4.A.Mohammed Sahul Hameed
- 5.T.Nagarajan
- 6.S.Thayumanaswamy
- 7.D.L.Vijayadass
- 8.M.Dhakshnamurthy
- 9.M.Kumar
- 10.S.Padhmanaban
- 11.P.H.Balasubramaniyan
- 12.S.Natrajan
- 13.K.Radhakrishnan
- 14.D.Ganesan

... Petitioners

Vs.

- 1.The Registrar,
Office of the Registrar of Co-operative Societies,
Kilpauk, Chennai 600 010.
- 2.The Managing Director,
Triplicane Urban Co-operative Society Ltd.,
Triplicane, Chennai 600 005.
- 3.The Additional Registrar,
Office of the Additional Registrar of Co-operative Societies,
Chennai Zone, Chennai 600 018.

...



Respondents

PRAYER : This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in connection with the impugned order passed in Na.Ka.No.1324/2021/E2 dated 20.09.2021 and quash the same and consequently, direct the respondents to grant retrospective regularisation to the petitioners after successful completion of one year from the date of appointment for the purpose of timely promotion, revision of scales of pay and to all grant all monetary and service benefits including pension.

For Petitioners : Ms.Sharmila for

Mr.Krishnasamy Chinnasamy

For Respondents : Mr.T.Arunkumar, AGP for R1 & R3

Mr.U.Bharanidharan for R2

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in connection with the impugned order passed in Na.Ka.No.1324/2021/E2 dated 20.09.2021 and quash the same and consequently, direct the respondents to grant retrospective regularisation to the petitioners after successful completion of one year from the date of appointment for the purpose of timely promotion, revision of scales of pay and to all grant all monetary and service benefits including pension.



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2. Heard Ms.Sharmila, learned counsel for the petitioners and Mr.T.Arunkumar, learned Additional Government Pleader for R1 & R3 and Mr.U.Bharanidharan, learned counsel for R2

3. The petitioners were appointed as Sales Assistant on 25.09.1987 in the second respondent society on consolidated pay basis. Even in the appointment order it is stated that the probation period is for one year. As per the by-laws, the petitioners ought to have been regularized after the satisfactory completion of probation of one year. However, they were regularized only on 28.08.1989. Despite the petitioners have sent representations to the respondents, the same were not considered. The petitioners even got superannuation in the year 2015. Since the petitioners are due to be regularized on the completion of their one year service, they have filed this writ petition seeking regularization from the date of their appointment i.e. 25.09.1987 along with other attendant and consequential benefits.



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4. In support of his contention, the learned counsel for the second respondent relied on the following decision of the Hon'ble Supreme Court :

i) A.Umarani Vs. Registrar, Co-operative Societies and others reported in (2004) 7 SCC 112

ii) J.Justine and another Vs. The Registrar of Coop. Societies, Chennai -10 and two others reported in 2002 (4) CTC 385

iii) R.Rathakrishnan Vs. The Deputy Registrar of Co-operative Societies, Dindigul Circle, Dindigul

5. In *R.Rathakrishnan's case (cited supra)*, the Hon'ble Supreme Court has held as under:

“13. From the aforesaid findings of the Supreme Court in the case of A.Umarani, the following facts emerge:

i) G.O.Ms.No.86 dated 12th March, 2001, was declared as a nullity, the State Government having no powers to issue such order.

ii) Rule 149 framed under Act, 1983, reflect the legislative recruitment policy and such provisions are mandatory in nature.



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iii) Regularization cannot be the mode of recruitment by any State within the meaning of Article 12 of the Constitution of India or any body or authority governed by the statutory Act or Rules framed thereunder.

iv) Appointments made in violation of mandatory provision of the statute ignoring the minimum educational qualification, etc. is wholly illegal, which cannot be cured by taking recourse to regularization. Those who have come by the backdoor should go through that and for that no show cause notice is required to be issued.”

6. The contention of the respondents is that the petitioners were not appointed through proper selection process and they have been appointed in non-sanctioned vacancies; though the petitioners were irregularly appointed, as an one time measure the Government has regularized their services from the year 1999; since the petitioners were appointed in non-sanctioned posts, they cannot claim regularization with effect from the date of their appointment; after they have been regularized on 12.02.2001, they continue to serve without raising any objection; the petitioners did not file any Revision Petition under Section 153 of the Tamil Nadu Cooperative Societies Act and they have filed this writ



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petition without exhausting the statutory remedies.

7. However the learned counsel for the petitioners submitted that as per the direction given in the earlier writ petition, the petitioners had exhausted the statutory remedy available to them.

8. It is submitted on behalf of the respondents that the petitioners' appointment is in violation of the Cooperative Societies Rules and regulations 1997. However, in cases of similarly placed batch of Salesmen, the Government was considerate and regularized their services from the date of their appointment.

9. The learned counsel for the second respondent submitted that the earlier order passed in W.P.No.2358 of 2015 dated 16.06.2014 the monetary benefits have been given for the similarly placed persons from the date of appointment. But the said order was challenged by way of preferring W.A.No.542 of 2015 and in which, the position has been settled by setting aside the order of the Single Judge made in W.P.No.2358 of 2005. After referring to the various judgments of the



Hon'ble Supreme Court, ultimately the Writ Appeal was allowed and the following order has been passed.

*"22. In the light of the decision of the Hon'ble Supreme Court in **Ilmo Devi's case**, the petitioner's being casual labourers, are not entitled for regularization and they cannot seek regularization as a matter of right, dehors the regularization policy. In the case on hand, the petitioners were granted regularization by way of concession by passing G.O.(2D)No.137,dated 28.09.2007, on humanitarian grounds in order to accommodate them in regular posts.*

*23. The writ petitioners continued their services right from 1995 in non-sanctioned posts without any cadre strength and their appointments at the outset can be considered only as illegal appointment. Unless all the requirements as contemplated under Rule 149 of the Tamil Nadu Cooperative Societies Rules 1988 such as cadre strength, age, educational qualification and cooperative training etc. has been complied with, as laid down in **Justin's case** cited supra, the claim of the writ petitioners/respondents 2 to 7 cannot be considered. The respondents/writ petitioners have not*



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produced any material to justify that the Government has accepted that there is no excess cadre strength.

*24. Though legally the writ petitioners were not entitled for regularization in the light of the decision of the Hon'ble Supreme Court in **Uma Devi's case**, on account of their continuous engagement of their services, the Commissioner for Milk Production and Dairy Development has sent proposals for regularizing their services and based on the said proposal, the Government has taken a sympathetic view and issued G.O.(2D)No.137 dated 28.09.2007, regularizing their services with effect from 12.03.2001 in the downgraded posts of Junior Factory Assistants and they have joined in the said posts on 16.10.2007 and subsequently promoted as Senior Factory Assistants on 11.03.2008. When the appointment of the writ petitioners itself is illegal, their claim for monetary benefits from the date of their initial appointment based on G.O.Ms.No.75 dated 21.04.1998 is legally unsustainable. There is no discussion by the Writ Court on the aforesaid aspects. This Court finds considerable force in the contentions made by the learned counsel appearing for the appellant and therefore, the order of the Writ Court*



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warrants interference and consequently, the same is liable to be set aside.

25. In the light of the aforesaid discussions, the Writ Appeal Stands allowed and the order of the Writ Court dated 16.06.2014 dated W.P.No.2358 of 2005 is set aside. No costs. Consequently, connected miscellaneous petition is closed. "

10. Since the petitioners' case squarely falls under the above position settled by the learned Division Bench, the petitioners claim that they have to be given with the monetary benefits from the date of their appointment cannot be considered.

11. In the result, this Writ Petition is dismissed. No costs.

14.12.2023

Index : Yes

Internet : Yes/No

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R.N.MANJULA, J.

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To

1.The Registrar,
Office of the Registrar of Co-operative Societies,
Kilpauk, Chennai 600 010.

2.The Managing Director,
Triplicane Urban Co-operative Society Ltd.,
Triplicane, Chennai 600 005.

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3.The Additional Registrar,
Office of the Additional Registrar of Co-operative Societies,
Chennai Zone, Chennai 600 018.

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