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W.P.(MD)No.287 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.287 of 2019 and

W.M.P.(MD)No.240 of 2019

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... Petitioner

vs.

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Joint Registrar of Cooperative
Societies,
Kanyakumari Region,
Nagercoil, Kanyakumari District.
- 3.The Deputy Registrar of Cooperative
Societies,
Thuckalay, Kanyakumari District.
- 4.The President,
Y-198, Vencode Primary Agricultural
Co-operative Credit Society,
Vencode Post, Vilavancode Taluk,
Kanyakumari District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 28.12.2017, in Na.Ka.No. 7796/201/SaPa passed by the 2nd respondent and to quash the same, consequently, to direct the 2nd respondent to pay a sum of Rs.1,38,355/- towards the earned leave salary and to pay the variation of salary paid during the year 2010 to 2016 along with interest.

For Petitioner : Mr.V.Sasikumar
For R1 to 3 : Mr.K.S.Selvaganesan
Additional Government Pleader
For R4 : Mr.V.H,S.Prathap

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order, dated 28.12.2017, passed by the 2nd respondent and consequently, to direct the 2nd respondent to pay a sum of Rs.1,38,355/- towards the earned leave salary and to pay the variation of salary paid during the year 2010 to 2016 along with interest.



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2. The brief facts of the case are that the petitioner was appointed as Clerk on 02.01.1991. The respondents have stated that the petitioner's appointment is irregular, since the petitioner was not selected through employment exchange and hence she was removed from service on 07.08.1991. Later on again appointed on 26.10.1992. Subsequently the Board had regularized the break in service from 07.08.1991 to 26.10.1992 and paid salary of Rs.36,963/- as arrears, but the audit for the year 1998-1999 objected to the same. Since the petitioner's service were wrongly regularized the salary fixation for the period from 01.04.1999 to 31.03.2008 was also wrong. Hence the same was rectified and the correct payment of leave salary was paid to the petitioner.

3. The only contention of the respondents is that the petitioner appointment is not through employment exchange and the same is irregular, hence the consequential regularization is illegal and further



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consequential fixation of salary is wrong. The employment of candidates dehors of employment exchange was dealt in Justin's case. Thereafter, the Government has taken a policy decision to regularize such candidates to regularize as one-time measurement. The Government has also formulated a scheme and regularized more than 35,000 such employees and some 26,000 employees were regularized.

4. In the meanwhile, the Government issued G.O.Ms.No.131, dated 04.06.1991, wherein the Societies were directed not to recruit any employees dehors the conditions stated in the Cooperative Societies Act, especially, they cannot employ anybody without referring to employment exchange. Moreover, a Committee was constituted for recruiting the employees. Citing this G.O., the respondents did not regularize the other employees. One such person is the present writ petitioner.



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5. The issue of regularization is considered by a Learned Single Judge of this Court in Writ Petition in W.P.No.21440 of 2015 dated 19.02.2021. Based on the judgment, the Government has issued Circular No.7 of 2021 dated 09.09.2021. The relevant portion of judgment is extracted here under:

“16. This is an unfortunate case where luck has played its part. The Government took a decision to regularize the services of nearly 35,000 employees who were appointed in various Co-operative Societies by drawing a cut-off dated as 12.03.2001 and out of the same, the lucky 26,000 employees got their services regularized and the rest of the employees were facing the wrath of their destiny. They were eagerly expecting their services to be regularized like that of the similarly placed employees but bad luck came in their. The process of regularization was undertaken even for the petitioners and due to various administrative delays, it did not reach its logical end. By then there were huge shift in law with regard to illegal and irregular appointments.

37. In view of the above discussion, all 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



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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 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."



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The Learned Single Judge has directed to grant regularization to the persons who are covered under the Justin's case. Following the direction of the Learned Single Judge, the Government has also issued, Circular No.7. If the circular and the above said judgment is applied to the petitioner's case, the petitioner is entitled to regularization from the date of the initial appointment. In such circumstances, the alleged excess payment will never arise.

6. Therefore, the respondents are directed to regularize the petitioner in the light of the judgement passed in W.P.No.21440 of 2015 dated 19.02.2021 and in the light of the Circular No.7, dated 09.09.2021. Consequently, the respondents are directed to pay the alleged excess payment which the respondents have withheld to the tune of Rs. 1,38,355/-.



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7. The petitioner further alleges that there is variation in salary also. The respondents shall consider the same and pass orders. The aforesaid directions shall be completed within a period of eight weeks from the date of receipt of a copy of this order. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

10.04.2023

Internet : Yes

NCC : Yes / No

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To

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Joint Registrar of Cooperative Societies,
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S.SRIMATHY, J

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