



W.P(MD)No.12851 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12851 of 2022

and

W.M.P.(MD)No.7777 of 2023

S.Selvam

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep by its Additional Chief
Secretary to Government,
Co-Operation, Food and Consumer
Protection Department,
Secretariat, Fort. St. George,
Chennai – 600 009.
- 2.The Registrar of Co-Operative Society,
Office of Registrar of Co-Operative Society,
No.170, NV Natarajan Maaligai,
Periyar EVR High Road,
Poonamallee High Road Kilpauk,
Chennai – 600 010.
- 3.The Joint Registrar of Co-Operative Society,
Madurai Region, T.P.K. Road,
Palanganatham Roundana,
Madurai - 625003.
- 4.The Deputy Registrar of Co-Operative Society,
Madurai Circle, Madurai.



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5. The Secretary,
A 2494, Sarguvalaiyapatti Primary
Agricultural Co-Operative Bank,
Sarguvalaiyapatti, Melur,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records related to the impugned proceedings of the 3rd respondent dated 04.10.2019 in Na.Ka.No.281/2018/2020/sp (Revision Petition No.04/2018/sp) and quash the same and consequently direct the Respondents to regularise the service of the Petitioner since date of her appointment i.e. 21.05.1993 as per G.O.Ms.No.222, Co-operation, Food and Consumer Protection Department dated 13.07.2007 and grant all consequential attendant of service and monetary benefits, including revision of scale of pay, arrears of salary and all service benefits, within a time frame to be fixed by this Court.

For Petitioner : Mr.N.Dilip Kumar,

For Respondents : Mr.R.Ragavendran,
Government Advocate for R1 to R4.
Mr.P.R.Prithviraj for R5.

ORDER

The writ petitioner after acquiring B.Sc degree and Diploma in Cooperation got herself registered in the employment exchange in the



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year 1990. She was sponsored by the district employment exchange for the post of Clerk in the fifth respondent bank on 22.12.1992. She was appointed as Clerk on 19.05.1993. She was promoted as Senior Clerk / Assistant and Accountant on 01.04.1997. The petitioner reached the age of superannuation on 31.01.2023.

2.The strange feature of the petitioner's service is that she was never regularized. The petitioner was informed vide proceedings dated 13.09.2007 that her service could not be regularized. The petitioner chose to come to the Court only in the year 2017. W.P.(MD)No.20531 of 2017 filed by her was dismissed on 09.11.2017 with liberty to pursue her remedy by filing revision before the Registrar of Co-Operative Societies. The Registrar of Co-Operative Societies by the impugned order had taken a stand that since she had crossed the age limit of 30 years on the date of her appointment, it is not open to the authority to regularize her service. Challenging the said stand of the Registrar, this present writ petition came to be filed and during its pendency, the petitioner reached the age of superannuation.



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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Government Advocate took me through its contents. He submitted that the impugned order is strictly in accordance with relevant rules and that it does not call for interference. He pressed for dismissal of this writ petition.

5.I carefully considered the rival contentions and went through the materials on record.

6.The writ petitioner is present in person. Through her counsel, she made a statement before this Court that she will not press for wage arrears and she would be satisfied if her pay is notionally calculated for the purpose of computing her retirement and terminal benefits. This undertaken given by the petitioner is placed on record.



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7.It is true that the petitioner was born on 03.01.1963 and she had crossed the upper age by four months when she was actually appointed on 19.05.1993 in the fifth respondent bank. But then, the learned counsel for the petitioner relied on quite a few circulars. The circular issued by the second respondent on 28.08.1987 states that the date when the employment exchange sponsored the candidate can be taken as the cut off date. In this case, the petitioner was sponsored on 22.12.1992. Therefore, the date of appointment need not be put against the petitioner. The petitioner belongs to backward class community. For backward class candidates, the maximum age limit for public employment was fixed as 35 years vide circular dated 07.10.1996. That has been extended to cooperative employees also.

8.The second respondent issued yet another circular dated 08.05.2015 whereby the first January of the year of appointment will be taken as cut off date. The petitioner was appointed in May 1993. If 01.01.1993 is taken as cut off date, she still passes muster. Thus, looked at from any angle, it is possible to insulate the petitioner from the vice of over-age.



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9. In my view, the issue ought not be seen from a purely technical angle. The petitioner has served the institution for close to three decades. She was sponsored by the employment exchange. She was selected by a duly constituted selection committee. She is not a back door entrant. Notwithstanding the service of such a person would be grossly unfair and breaching the constitutional mandate set out in Article 14 of the Constitution of India.

10. In this view of the matter, the order impugned in this writ petition is set aside and the second respondent is directed to pass order regularizing the service of the petitioner. The petitioner's pay will be accordingly reworked. It is submitted across the bar that identically placed employees were given the benefit of regularization in the year 2017. There is no justification for treating the writ petitioner differently.

11. The fifth respondent shall issue formal proceedings declaring that the petitioner was a regular employee and that she reached the age of superannuation on 31.01.2023 and that she had been permitted to retire.



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The retirement and terminal benefits shall be disbursed to the petitioner.

The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition is allowed accordingly. No costs. Consequently, connected, miscellaneous petition is closed.

22.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Additional Chief Secretary,
Co-Operation, Food and Consumer
Protection Department,
Secretariat, Fort. St. George,
Chennai – 600 009.
- 2.The Registrar of Co-Operative Society,
Office of Registrar of Co-Operative Society,
No.170, NV Natarajan Maaligai,
Periyar EVR High Road,
Poonamallee High Road Kilpauk,
Chennai – 600 010.
- 3.The Joint Registrar of Co-Operative Society,
Madurai Region, T.P.K. Road,
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4.The Deputy Registrar of Co-Operative Society,
Madurai Circle, Madurai.

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G.R.SWAMINATHAN, J.

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