



W.P.(MD)No.23865 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23865 of 2016

and

W.M.P(MD)Nos. 19674 of 2017 & 9584 of 2018

K.Thanasekaran

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat, Chennai.
2. The Registrar of Co-operative Societies,
Kilpauk, Chennai – 600 010.
3. The Joint Registrar of Co-operative Societies,
Madurai Region, Madurai – 625 002.
4. The Special Officer,
A.2826 Shivaji Co-operative Stores Limited,
9/34, Thalaiyari Gurunathan Kovil Street,
Madurai – 625 001.
5. The President,
A.2826 Shivaji Co-operative Stores Limited,
9/34, Thalaiyari Gurunathan Kovil Street,
Madurai – 625 001.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records of the proceedings, dated 29.11.2012 issued by the 4th respondent which was confirmed by the 3rd respondent and quash the same as illegal and consequently direct the respondents herein to reimburse a sum of Rs. 1,09,221/- and pay the Gratuity, Part Payment of Provident Fund and Leave Surrender Value to the Petitioner.

For Petitioner : Mr.R.R.Kannan

For R-1 to R-3 : Mr.K.S.Selva Ganesan
Additional Government Pleader

For R-4 & R-5 : Mr.V.O.S.Kalaiselvan

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus*, to quash the impugned proceedings, dated 29.12.2012, consequently direct the respondents to reimburse a sum of Rs.1,09,221 and pay Gratuity and other monetary benefits to the petitioner.

2. Heard Mr.R.R.Kannan, learned counsel appearing for the petitioner and Mr.K.S.Selva Ganesan, learned Additional Government Pleader



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appearing for R-1 to R-3 and Mr.V.O.S.Kalaiselvan, learned counsel appearing for R-4 & R-5. Perused the material documents available on record.

3. The petitioner was initially appointed as daily wage employee in the category of Assistant Salesman from 26.06.1982 and was paid a sum of Rs.7/- per day commencing from 01.07.1982. Subsequently, the 5th respondent vide, proceedings, dated 17.10.1988 has modified the salary in the category of consolidated monthly pay of Rs.240/-, with effect from 01.10.1988. Thereafter, the 3rd respondent, vide proceedings, dated 13.03.2007 had regularized the petitioner's service, with effect from 12.03.2001 and the petitioner has retired from service on attaining superannuation on 30.05.2015. The petitioner has rendered 33 years of service.

4. The 4th respondent has passed the impugned order, dated 29.11.2012 to recover a sum of Rs.1,09,221/- by stating excess salary was paid to the petitioner. The recovery order has granted installments of Rs.3,500/-per month for 30 months and Rs.4221/- to be recovered in the month of November 2012. Challenging the recovery order, the petitioner has preferred a revision petition



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under Section 154 of the Tamil Nadu Co-operative Societies Act and the same was dismissed. The petitioner has preferred another revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, and the same was returned since it was filed belatedly.

5. The contention of the respondents is that the petitioner has not completed 15 years of service, since the petitioner was regularized with effect from 12.03.2001 and retired on 30.05.2015. The petitioner would be entitled to selection grade on 30.05.2016, but the petitioner had retired on attaining superannuation. The claim of the petitioner is that the service prior to regularization ought to be taken into account for granting selection grade pay.

6. It is seen from the records that the petitioner was initially appointed as daily wager on 26.06.1982. Subsequently, the 5th respondent vide, proceedings, dated 17.10.1988 has modified the salary in the category of consolidated monthly pay of Rs.240/-, with effect from 01.10.1988. In this order the respondents have stated that the temporary appointment is changed in order to regularize the appointment as Assistant Salesman the salary is fixed on



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consolidated pay. Thereafter, the 3rd respondent, vide proceedings, dated 13.03.2007 had regularized the petitioner's service, with effect from 12.03.2001 and has also stated that the regularization is subject to the pending “writs”. In this order in the 2nd reference the respondents have referred to Justine case i.e.

“2. Orders of the Hon’ble High Court, Madras dated 24.10.2002 in Writ Appeal No.2501/2001 and 2502/2001.”

The Writ Appeal No.2501/2001 is filed by L. Justine and Writ Appeal No. 2502/2001 is filed by V. Haridass. It is unknown why the respondents have granted regularization from 12.03.2001.

7. This issue of regularization of Cooperative society employees was considered by a judgment passed by the Court in W.P.(MD)No.21440 of 2015, dated 19.02.2021, where the Court has directed the Government to regularize the left out employees and directed the Government to consider the persons who have not filed any Writ Petitions for regularization. The relevant portion of judgment is extracted here under:



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“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 place 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 appointed in a sanctioned post within the cadre strength, and are in regular scale of pay, are declared to have satisfied the



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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



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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.”

8. Based on this Judgment, the Government has issued Circular No.7 of 2021, dated 09.09.2021, thereby, considered to regularize all the employees who have been recruited from 09.07.1980 to 11.03.2001. In this case, the petitioner was appointed in the year 1988 and he is eligible to be considered. The respondents have rightly considered and granted regularization. Even in the aforesaid circular the employees who were appointed from 09.07.1980 to 11.03.2001 are considered for regularization. But it not known why the respondents have fixed the date of regularization from 12.03.2001 when the petitioner was appointed with effect from 01.10.1988. If 01.10.1988 is considered as date of appointment, then the petitioner would be entitled to selection grade.



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9. Accordingly, the impugned order is quashed and the respondents are restrained from recovering the said amount. If the respondents had recovered any installment, then the same shall be repaid to the petitioner. This order shall be implemented within a period of 12 weeks from the date of receipt of a copy of the order.

10. With these terms, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No

10.03.2023

Internet : Yes

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To

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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.23865 of 2016**

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