



W.P. No.32691 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2024

Pronounced on : 29.11. 2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.32691 of 2012
and
M.P.Nos.1 of 2012 & 1 of 2013

R.Revathy Thomas

... Petitioner

Vs.

1.Industries Commissioner and Director of Industries
And Commerce
No.36, South Canal Bank Road
Mandavellipakkam
R.A.Puram
Chennai 600 028.

2.Special Officer
The Chennai Industrial Co-operative Analytical
Laboratory Limited No.IND 686
4th Avenue Road
Thiru Vi.Ka Industrial Estate
Guindy
Chennai 600 032.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus after calling for the concerned records from the respondents, quash the order of the 1st respondent bearing R.C.No.43322/ICF/2011 dated 26.10.2012 and the consequential order of the 2nd respondent dated 16.11.2012 and consequently direct the



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respondents to continue the services of the petitioner by extending all the service and monetary benefits in terms of the order of the 1st respondent bearing R.C.No.4216/ICF1/2007 dated 31.12.2008.

For Petitioner : Mr.Balan Haridas
For R1 : Mr.P.Kumaresan
Additional Advocate General
For R2 : Mr.N.Manokaran

ORDER

This writ petition has been filed seeking writ of certiorarified Mandamus to call for the records in connection with the order bearing RC.No.43322/ICF/2011, dated 26.10.2012 passed by the respondent No.1, and the consequential order dated 16.11.2012 passed by the respondent No.2 and also sought for a consequential direction to continue services of the petitioner by extending all service and monetary benefits in terms of the order bearing RC.No.4216/ICF1/2007, dated 31.12.2008 issued by the respondent No1.

2. The brief facts that are relevant for disposal of this writ petition are as under:

In response to an advertisement issued by the respondent No.2 Society in the month of May 1982 for filling up the post of Junior Chemist, the

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petitioner participated in the selection process and accordingly, she was appointed as Junior Chemist on 02.07.1982 on regular basis and thereafter, she was promoted as Senior Chemist on 13.03.1992. While working as a Senior Chemist, the petitioner submitted a resignation letter dated 01.09.1995, and the said resignation was accepted and the petitioner was relieved from services of the respondent No.2 Society on 03.11.1995. Accepting her resignation with effect from 01.09.1995, all her service benefits were settled.

3. While so, after a lapse of seven years, the petitioner approached the respondent No.2 Society, by submitting a letter dated 05.04.2002 offering her services to the respondent No.2 Society, and accordingly, the respondent No.2 through proceedings dated 26.06.2002 engaged the services of the petitioner on contract basis as Public Relations Officer on a consolidated pay of Rs.9,000 per month for a period of two years, while making it clear to the petitioner that, the said appointment on contract basis would not confer any right on the petitioner to claim for regular appointment. It was thereafter, the services of the petitioner was extended, by the respondent No.2 Society through a resolution No.82 dated 19.05.2004, for a further period of five



years from 26.06.2004 to 25.06.2009 with consolidated pay of Rs.9,500/- per month.

4. While so, through proceedings dated 06.06.2005, the respondent No.2 designated the petitioner Senior Chemist/General Manager/Public Relations Officer and granted time scale of pay of Rs.5500-175-9000 with usual allowances with fixation of pay at Rs.6,725/- with effect from 01.01.2005. While so, the respondent No.1 issued proceedings bearing RC.No.4216/ICF1/2007, dated 31.12.2008 ordering for sanctioning of annual increment, leave surrender, gratuity, provident fund and other service benefits to the petitioner on par with other regular employees of the Society, declaring that she stands regularized as on 01.01.2005 i.e., the date on which she was placed on time scale, and on various other counts. However, according to the respondents, the said proceeding was not given effect to in view of the audit objections and the objections raised by the Registrar of Industries Commissioner. However, the petitioner continued to work as Senior Chemist in the respondent No.2 Society.

5. While so, the respondents after having realised that extending the



benefit of time scale to the petitioner with effect from 01.01.2005 is erroneous, as the same was extended to her during the currency of the contract period which is valid upto 25.06.2009, made an attempt to recover the excess amounts that were paid to her. However, at that stage, the petitioner approached this Court by filing W.P.No.24753 of 2011 and this Court, by an order dated 10.04.2012 allowed the said writ petition on the ground of violation of principles of natural justice while granting liberty to the respondents herein to take appropriate steps either for revocation or cancellation of the proceedings dated 31.12.2008.

6. It was pursuant to the said order, the respondent No.1 issued a show cause notice to the petitioner in proceedings RC.No.43322/ICF/2011 dated 06.07.2012 and in response thereto, the petitioner submitted her explanation dated 16.08.2012. It is on considering the said explanation submitted by the petitioner, the respondent No.1 issued impugned proceedings bearing RC.No.43322/ICF/2011, dated 26.10.2012, revoking the orders issued in proceedings dated 31.12.2008, rejecting the claim of the petitioner for the benefits of regular employees. Consequentially, the respondent No.2 herein issued proceedings dated 16.11.2012 terminating the



services of the petitioner with effect from 26.12.2012. It is aggrieved by the said proceedings dated 26.10.2012 and the consequential proceedings dated 16.11.2012, the petitioner approached this Court by filing the present writ petition.

7. Heard Mr.Balan Haridas, learned counsel for the petitioner and Mr.Kumaresan, learned Additional Advocate General for the respondent No.1 and Mr.N.Manokaran, learned counsel for the respondent No.2.

8. The petitioner herein is not claiming any benefit out of the service rendered by her during the years 1982 to 1995, till she resigned from the post of Senior Chemist. It is not in dispute that, the services of the petitioner was re-engaged in the year 2002 purely on contract basis and on consolidated pay of Rs.9,000/- initially for a period of two years. Though the petitioner contended that even after expiry of the said contract period, the petitioner was continued in service, the respondents have taken a specific stand in the counter affidavit that the said contract period was extended by passing a resolution No.82 dated 19.05.2004 extending the contract period for a period of five years on consolidated pay of Rs.9,500/- i.e., upto 25.06.2009. As



against the said specific contention raised by the respondents, the petitioner has not chosen to contradict the said statement of the respondents.

9. No doubt, the petitioner was extended the benefit of regular time scale through proceedings dated 06.06.2005 with effect from 01.01.2005 and the same was paid for a quite some time. It is also not in dispute that once the respondents realized that extending the benefit of regular time scale to the petitioner was erroneous, they initiated steps for recovery of the excess amounts paid to the petitioner. But the same was interdicted by this Court for want of compliance with the principles of natural justice.

10. The entire claim of the petitioner in this writ petition is based upon the proceedings dated 31.12.2008 through which the respondent No.1, ordered for extending all the service benefits on par with regular employees while declaring that, the services of the petitioner stand regularized with effect from 01.01.2005. While issuing the said proceedings and in support of the said decision, the respondent No.1 has mentioned the following grounds:

“(i) When most of the employees of MICAL are found to have been appointed, after having been drafted from



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among the list of Technically qualified candidates from the Board of Apprentices, Tharamani, Chennai, under the provisions of Section 22 of the Apprentices Act, 1961 (Central Act), the individual cannot be denied the attendant service benefits availed by the other employees of MICAL.

(ii) When the individual was placed on time-scale of pay and having been continued in service for more than 6 years, she automatically gets conferment of permanent status as per the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act and in the event of the aggrieved employee moving the judicial forums for remedy, the society is likely to lose the case.

(iii) The present Special Officer of the Society and his predecessor have both confirmed that the services of the said individual, Tmt R.Revathy Thomas, being technically qualified and having years of rich experience in analytical tests, are highly essential, seeking regularization of her service.

(iv) The individual's job requirement is of a technical nature and the Society's primary activities are also of a



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technical nature, differing from the normal business of other industrial cooperative societies.

(v) Ever since her re-appointment on 26.6.2002, the individual has substantially contributed to the service-charge earnings of MICAL for the past 6 years from the Tea Testing Centre at Coonoor which was under her charge and also for the viable functioning of MICAL.”

11. The said proceedings dated 31.12.2008 is the one which was revoked through the impugned proceedings dated 26.10.2012. As seen from the counter affidavit filed by the respondents, the said proceedings dated 31.12.2008 which is the basis for the claim being made by the petitioner in the present writ petition was not given effect to in view of the audit objections raised by the audit and also in view of the objections raised by the Registrar of Societies. Such a stand of respondents is also not in dispute or the said contention was disputed by the petitioner before this Court. It is also not the case of the petitioner that the said proceedings dated 31.12.2008 was given effect to.



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12. The selection, appointments and other service conditions of the employees of the respondent No.2 Society including cadre strength, etc are governed by the provisions of Tamil Nadu Co-operative Societies Act, 1983(in short 'Act, 1983') and the Rules made thereunder with specific reference to Rule 149 of the said Rules. Admittedly, the appointment of the petitioner in the year 2002 is not in accordance with the said Rules. The said appointment was purely on contractual basis. The said contract period was also extended upto 25.06.2009. When the respondents themselves have realized that the proceedings dated 31.12.2008 was issued erroneously and the petitioner was also extended the benefit of regular time scale erroneously, there is nothing wrong in rectifying the said mistake in case, if the petitioner is not otherwise entitled for such benefits.

13. Though the learned counsel for the petitioner placed reliance on the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'Act, 1981') and the Rules made thereunder, to claim permanent status on completion of 480 days of service and also to sustain the proceedings dated 31.12.2008, in the



considered view of this Court, the provisions of the said Act, 1981, under no circumstances will come to the aid of the petitioner for the simple reason that the provisions of the said Act, 1981 would apply only to the Workmen who fall within the definition of Workmen as defined under Sub section 4 of Section 2 of the said Act, 1981.

14. In terms of the said definition, certain categories of persons were excluded and one such category is a person employed in a Supervisory capacity drawing wages exceeding Rs.3,500/-. Admittedly, the petitioner herein was engaged on consolidated pay of Rs.9,000/- initially and subsequently, the same was enhanced to Rs.9,500/-. As seen from the affidavit filed in support of the writ petition, the petitioner was initially appointed as a Public Relations Officer and such a position, under no circumstances can be said to be a Workmen category. Therefore, under no circumstances, the petitioner can be said to be a person/employee fall within the definition of workmen as defined under Sub section 4 of Section 2 of Act, 1981. Therefore, the provisions of the said enactment have no application to the case on hand. Except the contention raised, basing upon the provisions of Act 1981, there is no other provisions or scheme that is brought to the notice



of this Court to sustain the proceedings dated 31.12.2008, through which the petitioner is claiming regularization of her services.

15. In the absence of any legal entitlement for regularization of services, this Court is unable to find fault with the respondents in rectifying their own mistake in issuing the proceedings dated 31.12.2008. The reasons that were mentioned by the respondent No.1, in the proceedings dated 31.12.2008, are all result of ignoring the fact that, the petitioner was appointed on contract basis and the said contract was very much subsisting. The other grounds are all totally irrelevant and the said grounds are all based upon the service rendered by the petitioner on contract basis and therefore, the same cannot be said to be the basis for issuing the proceedings dated 31.12.2008.

16. Admittedly, it is not the case of the petitioner that she was appointed as Public Relations Officer or Senior Chemist by following the mandatory provisions contained under Act, 1983 and the Rules made thereunder. Further, in the impugned order dated 26.12.2012 it is categorically mentioned that the District Registrar, Chennai in her Letter



No.1153/IC2/2005 dated 25.05.2008 raised objection on the appointment of the petitioner, as the same was against the by-laws and the provisions of the Societies Act,1983 and the Rules made thereunder.

17. It is also evident from the impugned order that the District Registrar has already order for surcharge enquiry under Section 87 of Act, 1983 for recovery of the irregular payment of the salary paid to the petitioner in the light of the audit objections. In the light of the above, and in the absence of any material placed before this Court to establish the legal entitlement of the petitioner for claiming regularization of her services in the respondent No.2 Society and for extending all other benefits on par with regular employees, this Court doen not find any error or illegality in the impugned orders passed by the respondents.

18. However, it is necessary to notice that this Court, while entertaining this writ petition, by an order dated 10.12.2012 granted interim stay of the operation of the impugned orders and by virtue of the said orders, the petitioner continued in service and she was also permitted to retire on attaining the age of superannuation on 31.10.2006 and she was accordingly



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relieved from the respondent No.2 Society. It is also brought to the notice of this Court that the petitioner was already paid the provident fund.

19. In the light of the conclusions arrived at by this Court as above upholding the impugned orders, the question of extending the benefit of proceedings dated 31.12.2008 to the petitioner does not arise. In the light of the above, this writ petition is liable to be dismissed and the same is accordingly dismissed. However, the salary/any other amounts that were already paid to the petitioner while she was in service are directed not to be recovered in the light of the law laid down by the Hon'ble Apex Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer)* reported in *2015 (4) SCC 334*.

20. Subject to above, the writ petition is dismissed. The connected miscellaneous petitions, if any, shall stand closed. No closed.

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Index : Yes/No
Speaking Order : Yes/No
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To:

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And Commerce
No.36, South Canal Bank Road
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The Chennai Industrial Co-operative Analytical
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MUMMINENI SUDHEER KUMAR,J.
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Pre-Delivery Order made in
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and M.P.Nos.1 of 2012 & 1 of 2013



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