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W.P.No.13776 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.13776 of 2020
and
W.M.P.No.17128 of 2020

R.Nandagopalakrishnan

Vs

....Petitioner

1. The Government of Tamil Nadu,
rep. By the Principal Secretary to Government,
Co-operation, Food and Consumer
Protection Department, Fort St George
Chennai- 600 009
2. The Registrar of Co-operative Societies,
Chennai – 600 010.
3. The Joint Registrar/Managing Director,
Cuddalore District Central Co-operative Bank,
Cuddalore.
4. The President,
Kattumannarkoil Primary Co-operative and
Rural Development Bank,
Kattumannarkoil, Cuddalore District

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third respondent in R.C.No.3504/2008-2009 P2(2) dated 11.05.2020 and quash the same and



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direct the respondents to extend the same benefit to the petitioner as granted to the other employees in G.O.(D) No.173, Co-operation, Food and Consumer Protection Department, dated 31.07.2013 and absorb him as Assistant in the third respondent bank on regular basis.

For Petitioner : Mr.P.Rajendran
For R1 & R2 : Mr.V.Nanmaran
Additional Government Pleader
For R3 & R4 : Mr.L.P.Shanmuga Sundaram

ORDER

The instant Writ Petition has been filed against the refusal to regularize the petitioner.

2. The learned counsel for the petitioner would submit that, petitioner was working as Assistant on deputation at Cuddalore District Central Cooperative Bank at Pudupalaym. It is his further submission that, petitioner was initially appointed as Supervisor at Kattumannarkovil Primary Cooperative Agricultural and Rural Development Bank since 01.07.2000, and had degree of M.A., & Diploma in Co-operation and Diploma in Computer Programming. It is his specific submission that, he was appointed by the Board of Directors of the Bank, and made permanent from 2001, in time scale of pay, in the pay scale of Rs.1360-50-1560-60-1920-2340 with all usual allowances.



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3. It is the further submission of the learned counsel for the petitioner that, he was shifted between Chidambaram Primary Cooperative Agricultural and Rural Development Bank to the 4th respondent Bank several times till 03.02.2009, and finally he was transferred to Cuddalore District Central Cooperative Bank on 04.12.2009.

4. The learned counsel for the petitioner further submit that, when he was serving in Cuddalore District Central Cooperative Bank from 06.01.2017 on deputation basis, 67 similarly placed persons were regularized by following the G.O.(D).No.173, Co-operation, Food and Consumer Protection Department, dated 31.07.2013. However the petitioner having all the qualification and being a similarly placed person, he was discriminated from regularization. It is in this background, he prayed to order the present Writ Petition. In support of his submission, he relied upon the judgement of the Hon'ble Supreme Court in the case of **Vinod Kumar and Others Vs. Union of India and others reported in 2024 LiveLaw (SC) 330**

5. The above contention was resisted by the learned Additional



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Government Pleader by contending that, petitioner's initial appointment was on daily wage basis, and that only on humanitarian ground, the erstwhile Management conferred permanent status to the petitioner and fixed the time scale pay. It is the further submission that the erstwhile Management ought not have conferred the permanent status and such order is in contravention to the Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

6. It is the further submission of the learned Additional Government Pleader that, since petitioner's initial appointment was illegal as he was not sponsored by the employment exchange, his non-consideration for regularization is well within the contours of law. Therefore, based upon the mere unenforceable permanent status order of the 4th respondent, the petitioner cannot be termed as a similarly placed persons, and cannot seek for regularization and therefore prayed to dismiss the present Writ Petition.

7. I have given my anxious consideration to the either side submissions.

8. The main contention of the learned counsel for the petitioner is that, the petitioner was not sponsored by the Employment Exchange and



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that he was not the permanent employee and furthermore, the permanent status granted by the 4th respondent is in contravention to the Conferment of Permanent Status Act. However, while looking at the order dated 01.02.2001, petitioner was appointed on a sanctioned permanent post on a time scale pay. This order has not been objected by the respondent. However, it is the contention of the petitioner that the 4th respondent has no authority to pass such an order. Having said so, the respondent is not in a position to produce any document overcoming the permanent status order. According to G.O.(D).No.173, if the persons are deputed to one Cooperative Society to other Co-operative Society and have been functioning for more than three years, they are entitled to be regularized. As such the petitioner who was made permanent since 01.02.2001, and completed more than 10 years of service is on the date of G.O.(D).No.173. Hence, there are no grounds to discriminate him from the permanency.

9. It is pertinent to mention here that, the petitioner had been in service since 2000 and has been functioning as a permanent employee from 2001 onwards that too in the sanctioned post. As such, his continuous service is akin to permanent employee. Therefore, the discrimination of the petitioner from regularization runs counter to principles of equity, fairness



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and intent behind the employment regularization.

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10. The Hon'ble Supreme Court in the case of **Vinod Kumar and Others Vs. Union of India and others reported in 2024 LiveLaw (SC) 330** held as follows:

In the light of the reasons recorded above, this Court finds merit in the appellants' arguments and hold that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness and the intent behind employment regularizations.

11. The learned Additional Government Pleader would contend that the petitioner did not comply 480 days as contemplated under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, but the fact of permanency conferred upon the petitioner by the 4th respondent would confer the above argument, further no document has been submitted to substantiate the above contention. In this background, the exclusion of the petitioner from the purview of G.O.(D).No.173 is irrational and the petitioner's case squarely comes within the condition



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imposed in the said G.O. As such, the mere rejection of the petitioner on the ground that he was not sponsored by the employment exchange is contrary to the equity and fairplay. Accordingly, this Court finds merits in the Writ Petition.

12.In the result, the Writ Petition is allowed as prayed for. No costs.

Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Neutral Citation : Yes

Speaking order : Yes

Sma

To

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C.KUMARAPPAN, J

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