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W.P.Nos. 27274 of 2022 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos. 27274, 27275, 27277, 27279, 27280, 27282, 27283, 27285,
27287 & 27289 of 2022

and

W.M.P.Nos. 26470, 26471, 26472, 26475, 26476, 26477, 26478, 26479,
26480 & 26481 of 2022

W.P.No.27724 of 2022

G.Siva

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Petitioner

Vs

1. The Joint Registrar of Cooperative Societies,
Tiruvallur Region, Tiruvallur, Tiruvallur District.

2. The Deputy Registrar of Cooperative Societies,
Ponneri Circle, Ponneri Tiruvallur District.

3. The President,
J.J.166, Devadhanam Primary
Agricultural Cooperative Credit Society,
Devadhanam Post, Ponneri Taluk,
Tiruvallur District – 601 203.

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Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to regularise the petitioner's service by passing necessary order for approving third respondent society regularize the petitioner service for



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the post of Attender consequently by fixing revision of pay scale by disposing the petitioner's written representation dated 17.08.2022.

In all the Writ Petitions

For Petitioners : Mr.C.Prakasam

For R1 & R2 : Mrs.R.L.Karthiga
Government Advocate

COMMON ORDER

These Writ Petitions have been filed for a direction directing the third respondent to regularise their services in the post of Office Assistant / Attender by fixing revision of pay scale.

2. Heard Mr.C.Prakasam, learned counsel appearing for the petitioners, Mrs.R.L.Karthika, learned Government Advocate appearing for the respondents and perused the materials available on record.

3. The petitioners were appointed as Office Assistants in the third respondent Society in the year 2015. They were promoted to the post of Attender in the year 2020. While being so, the second respondent ordered inspection as contemplated under Section 82 of Tamil Nadu Co-operative Societies Act. During inspection, it was found that the appointments of the petitioners were irregular and were not made



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through Employment Exchange. Therefore, the second respondent issued proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies Act. Thereafter, it was declared that the appointments of the petitioners are illegal and ordered for recovery of salary which were received by the petitioners from the date of their appointment under Section 87 of the Tamil Nadu Co-operative Societies Act. Therefore, the petitioners filed a writ petition before this Court and obtained interim order of *Status Quo*. Thereafter, the respondents took steps to terminate their service. Hence, the petitioners had submitted their representation seeking regularisation of their service and permitting them to continue in service. It was not considered. Hence, this writ petition.

4. A perusal of the counter filed by the second respondent reveals that these writ petitions itself are not maintainable either in law and on facts in view of the Full Bench Judgment of this Court in the case reported in **2006 (4) CTC 689** as an alternate remedy under Section 153 of the Act, 1983 is available. Further, the appointment of the petitioners itself is declared as illegal on the enquiry conducted under Section 82 of the Tamil Nadu Co-operative Societies Act. The third respondent Society has no authority to appoint the petitioners as Office Assistant by-passing



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the mandatory provisions contained in Section 74 of the Act, 1983 and the provisions contained in Rule 150 and 151 of the Rules, 1988.

5. In the enquiry, the Inspection Officer submitted his report, wherein he recommended initiation of Surcharge Proceedings under Section 87 of the Act, 1983 for the loss caused by the third respondent Management. Based on the said recommendation, the second respondent issued show cause notice under Section 87 of the Tamil Nadu Co-operative Societies Act. Subsequently, an order has been passed to recover the salary which was paid to the petitioners. The said recovery order was challenged before this Court and these writ petitions are pending. At this juncture, the petitioners submitted their respective representations seeking regularisation of their service. When their appointment itself is under stake, the request made by the petitioners for regularisation cannot be considered. Further the Hon'ble Supreme Court of India in the case reported in *2004 (7) SCC 112*, held that as to whether the State had the requisite authority to direct regularisation of services of the employees of the Co-operative Societies by reason of the impugned G.O.Ms.No.86, dated 12.03.2001 has held that those who come by back door should go through that door and held that no regularisation is



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permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India, if the appointments have been made in contravention of the statutory Rules and it was held that if the State had no power to issue the said G.O.Ms.No.86, dated 12.03.2001 the same must be held to be a nullity. Further, the vacancies have to be filled up only by the Recruitment Bureau constituted in the light of Section 74 of the Act, 1983 and provisions contained in Rule 150 and 151 of the Rules, 1988. Therefore, the third respondent has no authority to make any appointment violating the above mandatory provisions. Hence, the request made by the petitioners cannot be considered and all the writ petitions are devoid of merits and are liable to be dismissed.

6. Accordingly, these Writ Petitions stand dismissed.

Consequently, connected miscellaneous petitions are closed. No costs.

07.03.2024

Internet : Yes/No

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN, J.

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To

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