



W.P(MD)Nos.26416 of 2019, 4975 of 2020 & 3285 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.26416 of 2019, 4975 of 2020 and 3285 of 2021 and
WMP(MD) Nos.22825, 22823 of 2019, 776, 4350, 4352 of 2020,
2622, 2634, 2625, 13476 of 2021

Baby

... Petitioner in all WPs

Vs

1.Authority For Tamil Nadu,
Tamil Nadu Employees Permanency Act
1981/Assistant Commissioner of Labour,
Trichy.

2.The Deputy Registrar,
(Co-Operative Societies),
Tiruchirapalli.

3.M.M.297 Vaiyampatti Union Employees
Primary and Middle School Employees
Co-Op Thrift and Credit Society,
Through its President,
Main Road,
Vaiyampatti, Trichy.

...Respondents in
W.P(MD)No.26416 of 2019



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1. Authority For Tamil Nadu,
Tamil Nadu Employees Permanency Act
1981/Assistant Commissioner of Labour,
Trichy.

2. The Joint Registrar,
(Co-Operative Societies),
Tiruchirapalli.

3. M.M.297 Vaiyampatti Union Employees
Primary and Middle School Employees
Co-Op Thrift and Credit Society,
Through its President,
Main Road,
Vaiyampatti, Trichy.

...Respondents in
W.P(MD)No.4975 of 2020

1. The Registrar,
Co-operative Societies,
Chennai.

2. The Deputy Registrar,
Co-Operative Societies,
Trichirappalli.

3. The Joint Registrar/President,
Co-operative Societies District,
Recruitment Bureau,
Trichy.

4. Authority for Tamil Nadu,
Tamil Nadu Employees Permanency,
Act, 1981/Assistant Commissioner of Labour,
Karur.



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5.M.M.297 Vaiyampatti Union Employees
Primary and Middle School Employees
Co-Op Thrift and Credit Society,
Through its President,
Main Road,
Vaiyampatti, Trichy.

...Respondents in
WP(MD)No.3285 of 2021

PRAYER in W.P(MD)No.26416 of 2019: 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 of the 2nd Respondent dated 05-12-2019 in proceedings Pa.Ve.34/2019 and quash the same, as the same is arbitrary, ultravires, and consequently direct the first respondent to dispose of the petition No.676/2019 filed under Section 3 Tamil Nadu Industrial and Establishment (Employees Confer Permanent Status) 1981, within a time frame.

PRAYER in W.P(MD)No.4975 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records of the second respondent, dated 23.01.2020 in proceedings Pa.Ve.No.34/2019, quash the same, as the same is arbitrary, ultrvires.

PRAYER in W.P(MD)No.3285 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a



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Writ of Certiorari, calling for records of the third respondent, dated 12.03.2020, in Notification No.3/2020, quash the same in respect of the fifth respondent Society as the same is arbitrary, ultravires, contrary to the order, dated 08.11.2018 in proceedings Na.Ka.No. 93630/2015/Va.B1(1) passed by the second respondent and the orders dated 12.12.2019 and 10.03.22020 made in W.P.Nos.26416 of 2019 and WP.No.4975/2020.

For Petitioner : Mr.R.G.Shankar Ganesh
For Respondents : Mr.P.T.Thiraviam
Government Advocate
(In all writ petitions)

COMMON ORDER

The petitioner was appointed as an Accountant in M.M. 297, Vaiyampatti Union Employees Primary and Middle School Employees Co-Operative Thrift and Credit Society, Vaiyampatti, Trichy on 01.05.2012. According to the petitioner, she had been serving in the respondent Society for nearly seven years and therefore, she has submitted a representation to the third respondent for permanency of service as per Tamil Nadu Industrial and



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Establishment (Confer the Employees Permanent Status) 1981.

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However, the same was not considered by the respondents. While so, the Deputy Registrar of Co-operative Societies, Trichy has passed an order, in his proceedings in Pa.Va.No.34/2019, dated 05.12.2019, directing the Society to terminate the petitioner and eight others that their appointment is improper and in violation of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988. Challenging the same, the petitioner has filed WP(MD) No.26419 of 2019.

2.WP(MD) No.4975 of 2020 was filed by the same petitioner, challenging the order of the Deputy Registrar of Co-operative Societies, Trichy in his proceedings in Pa.Va.No. 34/2019, dated 23.01.2020, reiterating that the appointment of the petitioner along with eight others is improper and in violation of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, thereby a direction was issued to the Society to terminate them forthwith.



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3. Pending these writ petitions, the petitioner has filed another writ petition in WP(MD) No.3285 of 2021, challenging the Notification No. 3 of 2020, dated 12.03.2020 issued by the Society, calling for applications to fill up the post of Assistants in the Co-operative Societies.

4. Since the petitioner in all the writ petitions are one and the same and the issues to be decided in these writ petitions are interlinked, these writ petitions are taken up together and disposed of by this common order.

5. The learned counsel appearing for the petitioner submits that the petitioner is having all the requisite qualification to be appointed as an Accountant in the third respondent Society and there was a vacancy in the Society. Therefore, the third respondent has appointed her as an Accountant, by order dated 01.05.2012 and since then, she is working in the third respondent Society. In the



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event, if the third respondent is not having any power to appoint the petitioner, then, it must be treated as an irregular appointment it should be regularised in the light of the order passed by the Hon'ble Supreme Court in *Secretary, State of Karnataka and others Vs Uma Devi and others* reported in **2006 4 SCC 1**, as the petitioner is having the requisite qualification for appointment to the post of Assistant, now called for vide Notification No.3/2020, dated 12.03.2020. The learned counsel has also relied on paragraphs 27 and 44 of the said Judgment and submits that the Hon'ble Supreme Court has discussed the earlier judgment of the Hon'ble Supreme Court in Uma Rani's case and passed an order that these type of appointments have to be treated only as irregular appointments and they have to be regularized, provided, if they are having the required qualification. According to the learned counsel, since the petitioner is having the required qualification, her service has to be regularised by the respondents.



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6.The learned Government Advocate appearing for the respondents submits that any appointment in the Co-operative Society is governed by Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, 1988, as such, the Registrar is the competent authority to make such appointments. In this case, the Special Officer, the elected person, has appointed the petitioner without calling for any applications, when there was no vacancy in the Society. This was brought to the knowledge of the Deputy Registrar only in the year 2019. Therefore, by a communication, dated 05.12.2019, the Society was directed to relieve the petitioner from service. Challenging the same, the petitioner has filed W.P.(MD)No. 26416 of 2019. Pending the writ petition, another proceedings was issued to the Society on 23.01.2020, once again directing the Society to terminate the petitioner and the same was challenged by her in W.P.(MD)No.4975 of 2020, wherein, an order of interim stay was granted. Therefore, the petitioner is still serving as an Assistant in the third respondent Society.



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7.The learned Government Advocate, by relying upon the order passed by this Court in a batch of writ petitions in W.P.(MD)No.3622 of 2020 etc., dated 23.01.2023 submits that similar appointments made by the third respondent Society were subjected in the above writ petitions and it was decided against the appointments made by the Society. The learned Government Advocate further submits that the order of the Supreme Court referred by the petitioner's counsel in ***Secretary, State of Karnataka and others Vs Uma Devi and others*** reported in ***2006 4 SCC 1*** is not applicable to the present case on hand as it is with respect the irregular appointments made by the Societies.

8.This Court considered the rival submissions made and also perused the materials placed on record.

9.The petitioner was appointed as an Accountant in M.M.297, Vaiyampatti Union Employees Primary and Middle School Employees Co-Operative Thrift and Credit Society,



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Vaiyampatti, Trichy in the year 2012 by the Special Officer of the Society, without calling for any notification and that too, without any vacancy. Appointments in the Societies are governed by Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, 1988. For better appreciation, the above rule is extracted as under:-

149. Conditions of service of paid officers and servants of societies.

(1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Registrar a special by-law covering the service conditions of its employees. The special by-law shall, inter- alia prescribe the following:-

- (i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such post.*
- (ii) The method of recruitment for each such post.*
- (iii) The scale of pay and allowances for each such post.*
- (iv) Conditions of probation for each such post.*
- (v) Duties and responsibilities for each such post.*
- (vi) Leave of various kinds admissible and, the*



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conditions thereto for each such post.

(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

(viii) Conditions relating to acquisition and disposal of movable and immovable property:-

Provided that in the case of the post, other than the post of manager, superintendent and above a minimum period of three years satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that no person shall be eligible for appointment to the post of manager, superintendent and above by promotion, unless he has completed atleast one year of satisfactory service in the category of post in which he is working and not less than six years of satisfactory service in the category of posts in which he is working and the feeder category of post to which he is working



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combined together:

Provided also that the co-operative training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

(2) No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the society and also of the affiliated societies, inviting application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State:

10. In this case, the Special Officer of the concerned Society/ the incompetent authority has appointed the petitioner as an Accountant, without any notification, calling for applications by declaring the number of vacancies. This appointment has to be



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construed as an illegal appointment and not an irregular appointment. As rightly pointed out by the learned Government Advocate, the decision of the Honourable Supreme Court in ***Secretary, State of Karnataka and others Vs Uma Devi and others*** reported in **2006 4 SCC 1** is pertaining to the irregular appointments made in the Societies and not deals with the illegal appointments and the relevant portion from the above cited Judgment is extracted as under:-

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA(supra), R.N. NANJUNDAPPA(supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State



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Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. In view of the above, this Court is not inclined to interfere with the proceedings of the Deputy Registrar of Co-operative Societies, Trichy in Pa.Va.No.34/2019, dated 05.12.2019 and 23.01.2020 as well as the Notification No.3/2020, dated 12.03.2020. Accordingly, these writ petitions are dismissed. However, the petitioner is at liberty to apply for the post of



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Assistants, called for in the Notification No.3/2020, dated 12.03.2020 and participate in the selection process, provided if she is eligible. No costs. Consequently, connected Miscellaneous petitions are closed.

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NCC:Yes/No
Index:Yes
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