



W.P.(MD).Nos.28390 to 28393 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM

THE HONOURABLE MRS.JUSTICE R.N.MANJULA

W.P.(MD).Nos.28390 to 28393 of 2023
and W.M.P(MD) Nos.24431 to 24434 of 2023,
285, 419, 421, 423, 681 & 684 of 2024

M.Tamilselvan

... Petitioner in W.P.(MD) No.28390 of 2023

C.Mangalanatha Sethupathy

... Petitioner in W.P.(MD) No.28391 of 2023

V.Rajakarunanithi

... Petitioner in W.P.(MD) No.28392 of 2023

M.Monimozhian

... Petitioner in W.P.(MD) No.28393 of 2023

Vs

1. The Registrar of Co-operative Societies,
170, E.V.R.Street, Keelpakkam, Chennai.
2. The Joint Registrar (Co-operative Societies),
Ramanathapuram Region,
Ramanathapuram.
3. The Deputy Registrar (Co-operative Societies),
Ramanathapuram Circle, Ramanathapuram.



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4. The Managing Director / Administrator,
A 215/1548, The Ramanathapuram Co-Operative Urban Bank Ltd.,
24, Sigilkadai Vamban Santhu,
Sigilraja Veethi, Ramanathapuram.

5. S.Rakeshwaran
*(R5 is Impleaded vide order of this Court
in WMP(MD) Nos.676, 678, 679 & 683 of 2024,
dated 06.03.2024)*

... Respondents in all the petitions

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the record of the impugned order passed by the 4th respondent, dated 21.11.2023 bearing Na.Ka.No.11/2023/se.(1), Na.Ka.No.11/2023/se.(3), Na.Ka.No.11/2023/se.(4), Na.Ka.No.11/2023/se.(2) and consequential order, dated 21.11.2023 bearing Na.Ka.No.11/2023/se.(5) and quash the same and direct the respondents to regularize the petitioner based on the order passed by this Court order W.P.No.21440 of 2015 with all attendant benefits.

In all the petitions:

For Petitioners : Mr. R.Saravanan

For Respondents : Mr.S.Shaji Bino (R1-R4)
Special Government Pleader

Mr.D.Shanmugaraja Sethupathy (R5)



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COMMON ORDER

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These writ petitions have been filed challenging the impugned order passed by the 4th respondent, dated 21.11.2023 bearing Na.Ka.No. 11/2023/se.(1), Na.Ka.No.11/2023/se.(3), Na.Ka.No.11/2023/se.(4), Na.Ka.No. 11/2023/se.(2) and the consequential order, dated 21.11.2023 bearing Na.Ka.No.11/2023/se.(5) and to direct the respondents to regularize the petitioners based on the order passed by this Court in W.P.Nos.21440 of 2015 with all attendant benefits.

2.Heard, Mr.R.Saravanan, learned counsel for the petitioners, Mr.S.Shaji Bino, learned Special Government Pleader for the respondents 1 to 4 and Mr.D.Shanmugaraja Sethupathy, learned counsel for the fifth respondent.

3.The learned counsel for the petitioners submitted that the petitioners are the beneficiaries of G.O.Ms.No.86, dated 12.03.2001, which was issued by the Government to regularize the service of persons, who are employed in the respondent societies without undergoing the regular selection process. As per the said G.O, permission has been granted to regularize the service of those employees, who had been in continuous service for 480 days



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and who had got appointed on 08.07.1980 to be regularized from the date of G.O.Ms.No.86, ie., on 12.03.2001. In spite of the continuous service put by the petitioners in the fourth respondent Society, they were not given with seniority benefit. Earlier, the petitioners were removed from service, as they have been appointed only on temporary basis and they did not have any benefit of temporary service. So, the petitioners have challenged the same before the second respondent by filing a revision petition and the revision petition was allowed by the second respondent by setting aside the termination order, dated 15.06.2001. Consequent to the order passed in the revision petition, dated 17.09.2008, the petitioners got reinstated into service in the same position as how they have worked prior to the termination. However, the status of the petitioners as 'irregular employees' could not be removed until their services have been regularized as per G.O.Ms.No.86, dated 12.03.2001.

4.The learned counsel for the fifth respondent submitted that the G.O.Ms.No.86, dated 12.03.2001 itself has been set aside by the Hon'ble Supreme Court in 2004 (7) SCC 112. However, in the said Judgment, the persons, who have got the required educational qualifications and who have had sanctioned posts were allowed to be regularized. As per the contention of the learned counsel for the fifth respondent, the petitioners did not come under



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the said purview as their services have not been regularized consequent to the order of the Hon'ble Supreme Court. However, it appears that none of those persons, who said to have been employed irregularly, were dismissed from service, as they had continuous 482 days of service. It appears that they have been accommodated as and when the vacancies arose.

5.As there was a disparity between those who have got regularized and those who are yet to be regularized, the writ petition filed by similarly placed persons before this Court in W.P.Nos.21440 of 2015 etc., batch and the learned Single Judge of this Court has dealt the issue in its entirety, by relying on the earlier Hon'ble Supreme Court's decision made in *Umarani's* case and had given the following directions:

“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 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;



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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 similarly placed even though they have not knocked the doors of this Court.”

6.The petitioners claimed that the regularization process was continuing, but the same was not done for these petitioners. As per the contention of the petitioners once the petitioners were reinstated into service, in pursuant to the order of the Revisional Authority, dated 12.03.2001 itself, the vacant posts for the petitioners were identified and the petitioners were reinstated against those posts. So, it is claimed that the petitioners have been considered and appointed only as against the sanctioned posts, which were vacant at the relevant point of time and hence, the seniority ought to have been kept above those persons, who have been recruited at a later point of time through regular recruitment process.



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7.Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the petitioners cannot claim parity with those who have been appointed through regular selection process and claim to be placed above them in the order of seniority and eventually for promotion. Even though the petitioners got reinstated as per the order of the Revisional Authority, dated 12.03.2001 stating that there were vacancies in the posts of the petitioners, no order has been passed so far to absorb the petitioners as against the said posts. The petitioners were reinstated into service with an expectation that they will be regularized at some point of time.

8.The order of the Revisional Authority has given the relief to the petitioners in respect of their reinstatement, but regularization was not made, even though directions have been issued in W.P.Nos.21440 of 2015 etc., batch.

9.The learned counsel for the petitioners attracted the attention of this Court to the Circular, dated 09.11.2022 in connection with the question of seniority as against those persons, who have got their service regularized,



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consequent to the G.O.Ms.No.86, dated 12.03.2001 and the order of the Hon'ble Supreme Court in ***Umarani's*** case.

10.The said circular of the first respondent would state how the matter of seniority has to be understood in respect of those persons, who have regularized consequent to the G.O.Ms.No.86, dated 12.03.2001, the order of the Hon'ble Supreme Court and the order dated 19.02.2021 made in W.P.Nos. 21440 of 2015 etc., batch. The relevant portions are extracted hereunder:

“4. The State Government took into consideration the employment of a large number of salesmen and packers in various societies whose services was utilised continuously for years together and decided to regularize their services. A government order was issued in GO (MS) No. 86 dt. 12.03.2001, by the Cooperation, Food and Consumer Protection Department (hereinafter referred to as “department”), through which the Registrar of Cooperative Societies was vested with the power to regularize the services of those employees who have been appointed after 08.07.1980, by way of an irregular appointment, by means other than through an employment exchange provided, they have completed 480 days of continuous service within a period of two calendar years (or 24 service months), as provided under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The Government Order provided that if any such irregular appointments are made



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subsequent to the said Order, action may be taken against such societies, as provided for under the Tamil Nadu Co-Operative Societies Act, 1983 and that the government shall not take responsibility for any such irregular appointments made thereof. The Registrar of Co-Operative Societies was directed to instruct/inform the concerned managements of various societies in this regard.

5. The validity of the said Government Order in GO (MS) No. 86, dt. 12.03.2001, came to be challenged before the Division Bench of this Court in L. Justine &Anr. v. The Registrar of Cooperative Societies and 2 Ors. reported in 2002 (4) CTC 385 and this Court upheld the Government Order and directed that regularization of services of these employees appointed after 08.07.1980 and before 12.03.2001 be done based on and subject to the findings and directions given thereto.

6. The above-mentioned judgement in L. Justine (cited supra) was taken on an appeal by way of a Special Leave Petition and it was heard along with other connected appeals in A. Umarani v. Registrar, Cooperative Societies reported in (2004) 7 SCC 112, wherein the Hon'ble Supreme Court while dismissing the appeals, reversed some of the findings of this Court in L. Justine, with respect to the power of the State Government under Sections 170 and 182 of the Cooperative Societies Act, 1983 and the Executive Power under Article 162 of The Constitution of India, 1950.



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11.By citing the above circular, the petitioners claim that they got the right of placed above the persons who had been appointed through regular recruitment in the year 2015. As stated already, the petitioners were not given with regularization order, despite they were allowed to be reinstated by considering the fact that there were vacancies in the posts, in which, they worked earlier. Unless the petitioners services were regularized as against any sanctioned posts, the petitioners cannot claim any place in the list of seniority. Since the petitioners have completed 480 days of continuous service, their service were not disturbed. However, the benefit of regularization has not been extended to the petitioners. Only if the respondents 1 & 2 have taken a decision as to the regularization of the petitioners as against any sanctioned vacancy, the petitioners can claim a place in the seniority list.

12.So far as the fifth respondent is concerned, though he has got his appointment at a belated stage in the year 2008, his appointment was against a substantive vacancy which existed in the regular establishment. So, there cannot be any confusion in fixing the seniority of persons who have been appointed through regular selection process, prior to the regularization of those persons who said to have been appointed irregularly and placed above the



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petitioners in the seniority list, whose regularization is yet to be done, cannot be considered.

13.The petitioners have been promoted from the post of Assistant to Assistant Manager and from the post of Assistant Manager to Managers. Even if, the reinstatement is considered as regularization, the first respondent is expected to pass some orders in that regard at least by giving effect from the date on which the vacancy arose. The petitioners continued to be in service with an idea that they would be regularized as and when the vacancy arises. So far, no such order has been passed. However, promotions have been given unmindful of the regularization which should have taken place earlier.

14.The impugned orders, dated 21.11.2023 have been passed taken into consideration of the fact that the petitioners' services have not been regularized. Though the fourth respondent was in a demanding situation to re-check the regularization process, the resultant seniority and the consequential promotion and passed the impugned orders and no solution has been given to the petitioners, who were allowed to be in service considering the existed vacancies. It is the grievance of the petitioners that orders have been passed even without giving notice to them. No doubt, the impugned order goes to the



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detriment to the interest of petitioners and it affects their interest. In such case, the first respondent ought to have issued prior notice to the petitioners before passing the impugned order of demoting the position of the petitioners to the post of Assistant from Manager.

15.In the result, all the writ petitions are ***allowed*** and the impugned orders of the 4th respondent in Na.Ka.No.11/2023/se.(1), Na.Ka.No.11/2023/se.(3), Na.Ka.No.11/2023/se.(4), Na.Ka.No.11/2023/se.(2) and Na.Ka.No.11/2023/se.(5), dated 21.11.2023 are hereby set aside and the first respondent is directed to issue notice to the petitioners for giving them an opportunity to make their submissions and then pass orders afresh within a period of four (4) weeks from the date of receipt of copy of this order.

16.It is do open to the respondents 1 to 4 to consider the regularization process of the petitioners, by taking into consideration of the earlier proceedings, especially, the revisional petition filed by the petitioners, through which, their reinstatement has been ordered in view of the existed vacancies. While doing the above exercise, it is clarified that the persons, who have been regularly appointed and promoted shall not be disturbed, unless and



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until orders are passed as directed above. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

04.04.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

PNM

To

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170, E.V.R.Street, Keelpakkam, Chennai.
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R.N.MANJULA, J.

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