

(1999) 07 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 9352, 9613 and 11501 of 1997 and W.M.P. No. 14950 of 1997

Coimbatore District Central Co-operative Bank Employees Association and two others

APPELLANT

Vs

Government of Tamil Nadu and four others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Citation : (1999) 3 CTC 1 : (1999) WritLR 789

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : Mr. R. Gandhi, for Mr. R.C. Narendhiran, Mr. V. Prakash, for the Appellant; Mr. K.V. Venkatapathi, General for K.V. Sundararajan, Counsel for Mr. T.R. Rajagopalan, A.A.G. assisted by Mr. M.K. Hidayathullah, for the Respondent

Judgement

1. This order shall cover three writ petitions, they being Writ Petition No. 9352 of 1997, Writ Petition No. 9613 of 1997 and Writ Petition No.

11501 of 1997 since the subject is common. In all the three writ petitions challenge is to the G.O.Ms.No. 130 (Co-operation, Food and

Consumer Protection Department) dated 8.5.1997 by which the Government has created a common cadre in the respect of two posts in Central

Co-operative Banks. A short back ground of facts would not be out of place.

2. On 23.12.1992 the Government constituted a committee to go into the question of creating a common cadre of some of the posts in the Co-

operative Bank sector. That committee after extensive research came out with its report and on that basis the Government has now passed the

impugned G.O.Ms.No. 130 on 8.5.1997 thereby creating a common cadre for two posts in the Central Co-operative Banks. Earlier there used to

be two posts, they being, posts of Secretary and Assistant Secretary in these banks. Now the Secretary is nomenclatured as General Manager

whereas the Assistant Secretary is nomenclatured as Assistant General Manager. It is an admitted position that the common cadre is in respect of

only these two posts. By the common cadre the Government has regularised the service conditions and has probably drawn to itself the matters

regarding the service as also a control of these two important posts in the bank. It is also an admitted position that these two posts would be on the

top most on the ladder of the employees of the Central Co-operative Banks.

3. In all the three writ petitions the said G.O.Ms has been challenged.

4. The power to create a common cadre flows from Section 75 of the Tamil Nadu Co-operative Societies Act, 1983, wherein the State has the

power to constitute one or more common cadres of service in respect of the various posts which have been mentioned in the section and in respect

of the scheduled Co-operative societies or primary societies affiliated to the scheduled co-operative societies or the Co-operative Sugar Mills,

Co-operative Spinning Mills, Co-operative Tea Factories etc. or any such other class or category of registered societies, in which the Government

has financial interest. It is an admitted position that the Central Co-operative Bank comes and is covered within the entry of the scheduled co-

operative societies. There can be, therefore, no dispute that the Government had enough power to create a common cadre as it has done via the

impugned G.O.Ms.No. 130. The learned counsel Mr.V. Prakash, appearing on behalf of the petitioners in Writ Petitions No. 9613 and 11501 of

1997 and learned Senior Advocate Mr.R. Gandhi in Writ Petition No. 9352 of 1997, separately addressed the Court as regards the illegality and

vice attached to this G.O.MS. Their arguments will be considered separately. The learned counsel Mr.V. Prakash concentrated himself on the

faulty implementation and on the adverse effect that the creation of common cadre would result in, as regards the salaries of the concerned

employees while the Senior teamed counsel Mr.R. Gandhi concentrated on the discriminatory treatment given to the two categories of the service,

as also the unfairness in the said provisions which would, for the first time introduce a transfer outside the district. The learned Advocate General as

well as the Additional Advocate General as also Mr.M.K. Hidayathullah supported

the Government order and pointed out that initially the constitutionality of sections 73 to 79 was challenged in the Writ Petition No. 1025 of 1989 on the ground that the said provisions were outside the legislative competence of the State Government. It is pointed out by the learned counsel that the said challenge has been negated by this Court by Jagadeesan, J. in the said Writ Petition No. 1025 of 1989 by the order dated 30.7.1998.

5. The learned counsel appearing on behalf of the petitioners, at the outset, very fairly stated that they were not on the constitutionality of the section. However, according to the learned counsel, the implementation and the effects of the said G.O.Ms. were not only faulty, but resulted in hostile discrimination against the two categories of the servants which are covered by the said Government Order.

6. It will be seen that the first contention on the part of the petitioners is that this G.O.Ms. and the creation of the common cadre would affect adversely the persons holding the aforementioned two posts. In that behalf the learned Advocate General and the learned Additional Advocate General brought to my notice a specific contention raised by way of a counter, more particularly, in paragraph 12. The State Government assures therein that the implementation of the scheme would not in any manner adversely affect the salaries of the persons holding these two posts. In view of this specific undertaking given, there would be no question of enquiring as to whether the creation of common cadre really affects the salaries of those persons holding those two posts. Even otherwise, there is a specific bar created by the proviso to Sub-section 2 of Section 75 which is as under:

Provided that the salary (including allowances) of any such employee shall not be varied to his disadvantage.

There is therefore, no question of going further into the matter and it is clear that the said creation of the common cadre would not adversely affect the salary of the employees.

7. The other challenges of the learned counsel on behalf of the petitioners is almost common and that pertains to the question of transfer of the employees throughout the state. It is an admitted position that prior to the introduction of this Government order the concerned employees could

be transferred only in their own district. They did not have a state cadre and as such they were not liable to be transferred outside the district that

they were serving in. However, now the cadre is operating state wide and therefore any General Manager or an Assistant General Manager can

now be transferred outside his District. This seems to be the main point of attack on the part of the learned counsel. It was argued very fervently by

the learned senior counsel Mr.R. Gandhi that for 20 to 22 years that when these persons serving in such posts were not exposed to the transfers, it

would be unfair to now expose them to the element of transfer. As regards the transfer, it cannot be disputed that it is an incident of service. The

aspect of transfer was considered by the Apex Court when the Apex Court was deciding similar such question in Virendra Pal Singh and Others

Vs. District Assistant Registrar, Cooperative Societies, Etah and Another, . There also the situation was more or the less identical where the

introduction of a scheme resulted in exposing the employees to the transfers outside their districts. The Supreme Court has refused to accept such

a challenge. It has held:

..Once an employee has opted to be a member of the centralised service - if he does not, he has to take his compensation and walk out - he is

subject to the Centralised Service Rules and liable to be transferred from one bank to another

8. According to the learned senior counsel this exposure to the transfer is unfair as it is sudden and expected. However, one aspect cannot be

forgotten while considering this aspect and that is the existence of section 75 on the statute book. Section 75 gives a wide power to change even

the bye-laws which would govern the service conditions of the employees of the Co-operative societies. It cannot be disputed that these

employees who have joined the service, had before them Section 75 of the Tamil Nadu Co-operative Societies Act. In the wake of section 75,

now a complaint cannot be made that they are for the first time exposed to the transfers. Once there is a power in the State Government to create

a common cadre and once the creation of common cadre is by way of a policy and once the policy is not found to be mala fide or arbitrary there

can hardly be any challenge merely because the employees are exposed to the transfers by creation of common cadre. This argument therefore,

must be rejected.

9. The second argument by the learned counsel is that a hostile discrimination has been displayed in a pick and choose manner in the two cadres of

these posts, they being General Manager and Assistant General Manager. It is the contention of the learned counsel that if a common cadre had to

be formed then it may be formed in respect of all the employees of the bank sector, more particularly, the Central Co-operative Banks. By way of

reply, the learned Advocate General pointed out that these two posts are the responsible posts and are on the top most ladder in the hierarchy.

These two persons would be in a position to affect the work and administration of the bank where they are working. It was therefore, only these

two categories of posts have been selected for being included under the common cadre. The argument cannot be said to be without any substance.

A General Manager of a bank or an Assistant General Manager of a bank would certainly be in a position to affect the decision and the policy of

the bank. In that view their being selected or they being treated as a separate category would be perfectly justifiable at the instance of the State

Government. This again, apart from the fact that if there is a common cadre of all the employees, it would be an exercise without any purpose and

of an extremely complicated nature. The explanation offered on behalf of the Government as to why only these two categories have been chosen

appears to be perfectly justified. In that view even this challenge has to fail. No other questions have been argued. In view of the findings above, it

must be held that all the writ petitions are without any merit and they are liable to be dismissed and they are accordingly ordered to be dismissed,

without any order as to costs. Consequently, the connected W.M.P. is also dismissed.