

(2014) 07 MAD CK 0096

In the Madras High Court

Case No : Writ Appeal Nos. 268, 278, 344 and 353 of 2014, W.P. Nos. 31873, 32294, 32561, 32685, 32784 to 32786, 33582, 33583, 34548, 34585, 34601 of 2012, 3553, 6292, 8561 of 2013 and 15665 of 2014 and W.P.(MD) Nos. 16532, 16533 of 2012, 1954, 2185, 2288, 2525 and

K.B.N. Karthika

APPELLANT

Vs

A. Vincent

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 74

Citation : (2014) 5 LW 588 : (2014) 6 MLJ 14 : (2014) WritLR 1019

Hon'ble Judges : Satish K. Agnihotri, Acting C.J.; M.M. Sundresh, J

Bench : Division Bench

Judgement

Factual background:-

1. A Government Order was passed in G.O.(Ms.) No.25, Cooperation, Food and Consumer Protection (CJ-1) Department dated 17.02.2011, by which an amendment was made to rules 150 and 151 of Tamil Nadu Cooperative Societies Rules, 1988 dealing with the Constitution of the Recruitment Bureau and the procedure to be followed by it. Accordingly, a notification was issued by the Government of Tamil Nadu in exercise of the power conferred under Section 74 of the Tamil Nadu Cooperative Societies Act constituting the State Recruitment Board to recruit the staff to all the Cooperative Societies under the control of the Registrar of Cooperative Societies except staff and students Cooperative Stores in respect of all the posts of Junior Assistant and above in Notification No.3/2012/SRB. In pursuant to the said notification, an advertisement was made on 2.11.2012 calling for applications to be received on or before 23.11.2012. In the notification, it has been specified in clear terms that the persons, who do not have the requisite training in the Co-operative Societies, shall also apply for the post of Assistant. However, they have to be trained in the co-operative graduation within two years on their appointment from the Co-operative Training

Institutes at Tamil Nadu by way of distance education and pass in the same.

2. In pursuant to the said notification, applications have been received from about 2,80,662 candidates of which 2,71,212 were found to be in order and accordingly they were accepted. The written examination was attended by 2,23,963 candidates. The list of the Registered Numbers of the provisionally selected candidates was published on 20.12.2012. Accordingly, they were asked to attend the interview proposed to be conducted from 28.12.2012. While the process of interviewing was on, it came to a grinding halt in pursuant to the orders passed by the High Court.

3. Writ Petitions were filed earlier in W.P.Nos.30654 to 30656 of 2012 challenging the notification issued on 2.11.2012 on the ground that the persons, who were ineligible on account of non-completing the cooperative training, were made eligible to appear for the examination and the learned single judge by a Common Order dated 19.11.2012 dismissed them. A challenge made against the order of dismissal passed by the learned single judge dated 23.11.2012 in W.P.No.31195 of 2012 was rejected in W.A.No.2719 of 2012 by judgment dated 6.12.2012, which has become final. While so, writ petitions were once again filed challenging the notification before the learned single Judge. Apart from the challenge made to the notification on the ground of permitting the ineligible candidates to take part in the selection process, submissions were also made on the process of conducting the selection.

4. A counter affidavit has been filed by the official respondents stating that the non-mentioning of reservation is not fatal and after the completion of final selection the cut-off mark for each category will be published. A specific stand has been taken that as per the practice in vogue, the candidates are not allowed to retain the question papers with them after the completion of examinations and answer key is also not published. According to the respondents, a candidate, who was selected on merit, can very well acquire the cooperative training qualification. However, such candidates, shall complete the training within a period of two years from the date of their appointment. A reference was made about the circular of the Registry in Circular No.29/2013 Rc.51928/2013/SF2 dated 18.7.2013, which has been issued subsequent to the impugned notification, by which instructions have been issued that the Cooperative Training would be a necessary qualification for appointment to all the administrative posts.

5. In the circular dated 18.7.2013, it has been clearly stated that some of the Societies have not amended the by-laws to make a cooperative training as mandatory. Accordingly, the Cooperative Societies were directed to amend the by-laws as in the special by-law No.4(1) of the model Special by-laws relating to Service Conditions of Employees of Primary Agricultural Cooperative Credit Societies. In this connection, the following passages of the Circular are apposite:

6. It is reiterated that Co-operative Training shall continue to be a necessary other qualifications for appointment to any category of administrative post from

the lower level of salesman/Attender to the top level of Secretary/General Manager/Executive Officer in the special by-laws relating to the service conditions of employees of every cooperative society for the following reasons.

Basically, cooperative institutions are different from banking sector and other public sector institutions. Cooperative Societies are voluntary organizations formed by a group of persons of common economic needs and residing within a specified area, for specific objects. Most of the Cooperative Societies are village level specialized institutions and have a tiny sized paid establishment having a few post of Assistant/Clerk/Junior Assistant. The personnel to be appointed to the said post should have basic knowledge of Cooperative Principles, Book Keeping, Accounting, Auditing and the procedures to be followed by cooperative institutions. They should have fair knowledge about the Tamil Nadu Co-operative Societies Act, Rules and other related labour laws. All these would have been possessed by a person only when he is trained in cooperation. For this purpose only, cooperative training institutes have been started and these training institutes impart training by way of Diploma Course to those who aspire to seek employment in cooperative societies. Recruiting a person without cooperative training and requiring him to be trained within a specified period is not necessary because of the availability of large number of cooperative trained persons in the market. First recruitment, then training may perhaps be applicable for recruitment to higher cadre of posts which is general in nature. But in the interest of cooperative societies only persons professionally qualified and have basic knowledge in cooperation, book keeping, auditing and cooperative law are necessary and thus it is prerequisite to possess proficiency in these subject matters.

7. In the circumstances stated above, it is hereby instructed that Cooperative Training shall continue to be necessary other qualification for appointment to all the Administrative posts from the lower level post of Junior Assistants/Salesman/Attender to the top level post of Secretary/General Manager/Executive Officer. The Additional Registrar, Chennai Region, all the Regional joint Registrars and all the Circle Deputy Registrars are requested to ensure that the special by-laws relating to the service conditions of employees of any Primary or Central or Apex Cooperative Society or cooperative bank, which do not specify Co-operative Training as a necessary other qualification is amended suitably as in special by-law No.4(1) of the model special by-laws relating to service conditions of employees of Primary Agricultural Cooperative Credit Societies communicated in Registrar's letter RC.74487/2012/PACS-1, dated 27.08.2012, an extract of which is sent herewith.

Receipt of this circular shall be acknowledged at once.

6. In the counter affidavit, a stand has been taken by the official respondents stating that the notification as issued is valid in law and the candidates after joining the service will have to complete the training within two years. Therefore it is clear that the counter affidavit proceeded on the footing that

notwithstanding the subsequent circular the notification issued earlier is valid in law.

7. It appears from the order of the learned single Judge that the learned Additional Advocate General who appeared on behalf of the official respondents admitted that they have failed to publish the cut-off mark for each and every community apart from publishing the particulars of marks obtained by the candidates who wrote the examination. It was also admitted that the official respondents have failed to permit the candidates to take away the question papers apart from not publishing the key answers. Hence, it appears that a submission was said to have been made before the learned single judge on behalf of the official respondents that if the Court directs the said mistakes would be rectified. The learned single Judge was pleased to set aside the notification dated 2.11.2012 with a direction to the official respondents to notify the vacancies as on date and called for applications for vacant posts. The reasoning of the learned single Judge is re-produced hereunder:

21. Though an elaborate argument was made by the learned counsel for the petitioners as well as by the Additional Advocate General and the counsel for the impleaded respondents, as contended by the learned Additional Advocate General, since the selection process is not over, I am of the opinion that the impleaded respondents 4 & 5 have no right to ask for mandamus to publish the results I find from the materials available on record as well as from the submissions made on either side that the impugned notification was issued on 02.11.2012 inviting the applications for the post of Assistant in various Co-operative Institutions to fill up 3589 vacancies. In the Notification it has been stated that the candidates, who are not co-operative trained, also can apply for the post with a condition that if they are selected, they have to complete the co-operative training course within two years from the date of their appointment. Hence, the persons, who are not having co-operative training, also applied for the post and they also attended the examination on 09.12.2012.

22. But, subsequent to the impugned Notification, by considering the fact that the co-operative training is necessary for employment in Co-operative Societies, vide Registrar's Circular No.29/2013 , dated 18.07.2013, instructions were issued to the effect that co-operative training shall continue to be necessary qualification for appointment to all administrative posts from the level of junior Assistants and above. This Circular has been issued only subsequent to the written examination conducted on 09.12.2012, in which the persons, who are not co-operative trained, have also participated in large number. However, it is admitted that the Official Respondents have failed to publish the cut-off marks for each and every community and failed to publish the particulars of the marks obtained by the selected and unselected candidates. Similarly, the candidates were not permitted to take away the question paper and the official respondents have also failed to publish the key answers.

23. Under such circumstances, I find that lot of serious irregularities were

committed by the Official respondents during the course of selection process. It is pertinent to note that the Notification was issued on 02.11.2012 and written examination was held in 674 centres all over Tamil Nadu on 09.12.2012 and 2,23,963 candidates wrote the examination. List of 7214 candidates, who have been provisionally selected for interview based on merit, was published on 20.12.2012. Now, nearly 1500 candidates have been interviewed. Though the selection process was conducted by the Official Respondents by giving go-by to all the cardinal procedures of selection, if the Official Respondents are directed to re-do the entire exercise, it would cause further problem and confusion. Though on 04.01.2013 the learned Single Judge of this Court has dismissed the earlier writ petitions in W.P.Nos.35184 & 35185 of 2012, which were filed challenging the impugned Notification dated 02.11.2012, I find from the materials placed on record that all the serious irregularities were committed by the Official respondents in selection process only subsequent to the order dated 04.01.2013 passed in W.P.Nos.35184 & 35185 of 2012. Under such circumstances, I am of the opinion, it would be appropriate to direct the Official Respondents to issue fresh Notification by notifying the vacancies as on date and call for the applications for the vacant posts. In order to issue fresh Notification, it is necessary to quash the impugned Notification dated 02.11.2012.

24. Accordingly, the impugned notification dated 02.11.2012 is quashed and the Official Respondents are directed to issue fresh Notification by notifying the vacancies as on date and call for the applications for the vacant posts.

With the above terms, these writ petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

8. Challenging the orders passed by the learned single Judge, these appeals have been before us by those candidates, who got selected in the written examination. These selected candidates consist of those who have completed the cooperative training and those who have not. Except about 3 writ petitions, challenge has been made to the notification by the candidates who took part in the examination, but failed to clear the written test. The Writ Petitions are also heard along with Writ Appeals. These are the background facts governing the case.

Before the Court:-

9. At the time of hearing, an affidavit was filed by the Registrar of Cooperative Societies - 3rd respondent in the Writ Appeals, a fruitful extraction of paragraph Nos.3 and 4 of the said affidavit is as follows:

3) I submit that the State Recruitment Bureau will invite applications for the recruitment of Assistants in Cooperative Societies in the State of Tamil Nadu by issuing fresh Notification by notifying the vacancies as on date and call for applications for the vacant posts from the candidates. All the candidates who have applied for the said post pursuant to the earlier notification impugned in this writ appeals and writ petitions viz., Notification No.3/2012/SRB dated 02.11.2012 will be given necessary relaxation from the age to be prescribed in

the fresh notification.

Submissions of the appellants:-

10. Learned counsel appearing for the appellants submitted that if there are curable defects, then there is no necessity to re-do the exercise in its entirety. The Government, being a party to the earlier round of litigation, and having taken a stand to sustain the notification before the learned single Judge, cannot change its stand. There is no element of fairness involved. The appellants have acquired certain right in pursuant to the selection made in the written examination. The decision rendered by this Court on the earlier occasion is binding upon the parties, more so, the official respondents. The Writ Petitions filed by the other Scheduled Caste candidates cannot be entertained as they are estopped from doing so. The subsequent circular has no binding effect. It is nobody's case that reservation should not be followed. There is no law, which prescribes the question paper to be taken with a candidate and key answers will have to be published. There is no allegation of malafides in the conduct of examination. In support of the submissions, learned counsels have made reliance upon the following citations:

1. Bidi, Bidi Leaves" and Tobacco Merchants Association Vs. The State of Bombay, ;
2. Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, ; And
3. State of A.P. and Others Vs. D. Dastagiri and Others, "

Submissions of The Private Respondents/Writ Petitioners:-

11. Per contra, learned counsel appearing for the private respondents in the present Writ Appeals and the petitioners in the writ petitions submitted that there is no vested right that lies with the appellants. A mere selection in the written examination will not give any right. The Government can change the prescribed qualification even subsequently. The qualification regarding the completion of Cooperative Training is mandatory as required under Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988. Therefore, no interference is required. In support of the submissions, he placed reliance upon the following decision:-

State of M.P. and Others Vs. Raghuveer Singh Yadav and Others,

Submissions of Official Respondents:-

12. Learned Advocate General appearing on Behalf of The Official Respondents Submitted That The Power Is available to the official respondents to cancel the notification and the subsequent examination. The official respondents have accepted the order of the learned single Judge. In view of the Circular issued on 18.7.2013, the proposed notification would contain a specific clause incorporating the qualification, which requires a completion in cooperative training. The other anomalies pointed out by the learned single Judge also would be rectified. In

support of his submissions, the following decisions have been relied upon:

1. Union Territory of Chandigarh Vs. Dilbagh Singh and others, ;
2. Secretary, State of Karnataka and Others Vs. Umadevi and Others, ;
3. M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others, ;
4. Punjab State Warehousing Corp., Chandigarh Vs. Manmohan Singh and Another, ,
5. Shankarsan Dash Vs. Union of India, ;
6. State of A.P. and Others Vs. D. Dastagiri and Others, ;
7. Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others, ;
8. Unreported Judgment of Division Bench of This Court Dated 6.12.2012 In W.A.No.2719 of 2012 (M.Ravi Vs. The Secretary To The Government, Department of Co.Operation And Others).

Ratio Decidendi:-

13. A Challenge Was Made To The notification earlier. The challenge made was repelled by the learned single Judge. At that point of time the official respondents defended the notification. The Division Bench of this Court has also confirmed the stand of the official respondents. The learned single judge did not consider the binding nature of the said decision. On the contrary, he proceeded to quash the notification based upon the subsequent events. When an earlier decision on the very same issue has been upheld by a higher forum, then the Court of first instance will have to follow the same when the same issue is put into challenge before it. We do not propose to multiply the said settled principle of law with any authorities. This is the fundamental principle governing the law of precedent and judicial discipline. There is no discussion as to how the earlier decisions are not binding. Therefore, we are of the view that the decisions rendered by the single Judge of this Court earlier in W.P.Nos.30654 to 30656 of 2012 dated 19.11.2012, W.P.No.31230 of 2012 dated 22.11.2012 and W.P.No.31195 of 2012 dated 23.11.2012, as confirmed in W.A.No.2719 of 2012 dated 6.12.2012 would govern the cases before us.

Stand of the Government:-

14. Right from the date of the issuance of notification till the disposal of the writ petition by the learned single judge, the official respondents have taken a stand in support of it. There is no law, which prescribes question paper to be taken by the candidate followed by the publication of key answers. There are no malafides established in the conduct of the written examination. Even otherwise, the above said facts cannot be a ground to set aside the notification, which is sought to be impugned. Till now, the earlier notification has not been cancelled. A specific stand has been taken in the counter affidavit filed in these cases before the

learned single judge that notwithstanding the subsequent circular, the notification is valid in law. Insofar as the reservations are concerned, it is nobody's case that it should not be followed. In other words, it is accepted that the rule of reservation apart from other categories of reservation would be followed. Hence, we are of the view that Government cannot be permitted to approbate and reprobate.

15. When the Government changes its stand, that too, after the notification has been upheld, it should be based upon certain accepted rationale. We are not able to find any justification on the part of the Government in changing its stand. A decision taken by a public authority will have to be reasonable, fair, well balanced and harmonious. In these cases, a laborious exercise has also been done. The candidates were permitted to write the examinations and the evaluation has been done in accordance with law. The change made to the notification was repelled. The Government cannot change the rules when the game started and it is impermissible in law. A useful reference can be made to the recent decision of the Supreme Court in *Bishnu Biswas and Others Vs. Union of India (UOI) and Others*, wherein The Supreme Court Has Held As Follows:-

In The Instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e., 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while a large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so-called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.

Therefore, under those circumstances, we do not find any justification on the part of the Government in changing its stand.

Cooperative training:-

16. Coming to the Cooperative Training, the circular issued by the Government on 18.7.2013 throws a light on the fact situation. The said Circular makes it very clear that certain societies have not incorporated the condition regarding cooperative training. It is not as if the Government was not aware of the situation. The counter affidavit filed before the learned single judge makes the said position very clear. It is not as if the condition has been given a go by. In other words a selected candidate is duty bound to complete the training within the prescribed time. It is also interesting to note that not all the selected

candidates are said to be without the qualification of a cooperative training. The selected candidates consists of those having the qualification of cooperative training and otherwise. The decisions relied on by the learned counsel appearing for the respondents have no bearing to the cases before us. In the present case, the stand of the Government has already been upheld. The Government itself has taken a stand that the subsequent circular would not nullify the earlier notification. In any case, the qualification prescribed has not been given a go by in toto. Further, by the circular, only instructions have been issued to the Cooperative Societies to make necessary amendments.

17. It is also to be seen that they have been selected on merit as against the writ petitioners, who failed to obtain the required cut-off mark. In the selection process, 85 marks have been earmarked for written examination and 15 marks for the oral interview and now about two years have elapsed. The non-publication of key answers and failure to permit the candidates to take away the question papers cannot be a ground to challenge the impugned notification. It is settled law that eligibility is different from suitability. The irregularities alleged in the conduct of examination, even if they are correct, are not fundamental but only procedural and curable.

18. It is one thing to state that merely because one got selected in the written examination, no right is vested in him to a post. It is another thing to state that under all circumstances he cannot question a decision made to nullify the said selection. Therefore, the candidates, who have been selected in the written test, cannot be said to have any semblance of right in their favour. On the contrary, candidates, who lost in the race, cannot seek a re-run against those who have qualified in the preliminary round to go to the next one. Hence, under those circumstances, we are of the view that the appellants are entitled to succeed.

Conclusion:-

19. Accordingly, all the writ appeals are allowed and writ petitions are dismissed. Taking note of the facts and circumstances of the case, we make the following observations.

1. The official respondents are directed to publish the key answers for the written examination already held;
2. The official respondents are directed to put the marks of all the candidates who took part in the written examination along with the cut-off mark.
3. There is no bar for the official respondents to follow the rule of reservation at the time of publishing the final result in accordance with law;
4. The order passed by us will not stand in the way of the official respondents in fixing the qualifications for future vacancies;
5. While filling the future vacancies, it is well open to the official respondents to prescribe appropriate procedure with respect to the conduct of examinations.

However, there is no order as to costs. Consequently, the connected miscellaneous petitions are all closed.