

(2011) 06 MAD CK 0151
In the Madras High Court
Case No : W.A. No. 792 of 2010

The Special Officer Nadumaruthi Primary Agricultural Co-operative Credit Society

APPELLANT

Vs

T. Sankar, The Registrar of Co-operative Societies and The Joint Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Constitution of India, 1950 — Article 162, 226

Citation : (2011) 06 MAD CK 0151

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : M.S. Palaniswamy, for the Appellant; C. Prakasam, for R1 and R. Lakshminarayanan, Government Advocate for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—This writ appeal is directed against the order allowing the writ petition filed by the first Respondent. The first Respondent

was appointed as a Salesman in the Appellant-society on consolidated pay on 3.5.99 and subsequently absorbed in the regular time scale of pay

on 11.1.2001. He was terminated from service by order dated 27.11.2001 stating that his initial appointment was not through the District

Employment Exchange and was not as per rules. Hence, he questioned that order by filing a revision petition before the Joint Registrar of Co-

operative Societies, Dharmapuri District, which was rejected on the grounds that the first Respondent's appointment was not made through

employment exchange, there was no prior permission, the instructions of the Registrar were not followed and that at the time when the first

Respondent was appointed, the society was at a loss. This order was questioned

by way of filing the writ petition. The learned Judge, by placing reliance on the circular of the Registrar of Co-operative Societies, Chennai dated 30.8.2007, allowed the writ petition. This order is put in issue by the society in this appeal.

2. We have heard Mr. M.S. Palaniswamy, learned Counsel for the Appellant, Mr. C. Prakasam, learned Counsel for the first Respondent and Mr.

R. Lakshminarayanan, learned Government Advocate for the second and third Respondents.

3. The circular of the Registrar of Co-operative Societies, Chennai dated 30.8.2007 relied upon by the first Respondent reads as follows:

In G.O. Ms. No. 86, Co-operation, Food and Consumer Protection Department dated 12.3.2001, Government have delegated powers to the

Registrar to regularize the services of the irregular appointment who have been appointed after 8.7.1980 on fulfillment of certain conditions.

Subsequently in Government Letter No. 22322/CG1/2005-7, Co-operation, Food and Consumer Protection Department dated 2.11.2006,

Government have issued partial modifications and delegated the powers of the Registrar to the Regional Joint Registrars of Co-operative Societies

for the regularisation of the services of the irregular appointments. Accordingly, out of 36872 irregular appointments the services of 26768

employees services were regularised by the Regional Joint Registrars of Co-operative Societies concerned upto 31.7.2007. When the services of

the irregular appointments were regularised, their pay scales may also be fixed on par with the regular employees.

4. Apparently, the above circular was issued pursuant to the G.O. Ms. No. 86, Co-operation, Food and Consumer Protection Department dated

12.3.2001. The validity of the said Government Order came up for consideration and ultimately the Apex Court, in the judgment in A. Umarani

Vs. Registrar, Cooperative Societies and Others, , held that the State Government has no power to issue such order and accordingly declared the

order as nullity. Subsequently, when the issue relating to the regularisation of the staff already appointed in violation of the rules and regulations

came up for consideration before the Full Bench of this Court in the judgment in R. Rathakrishnan Vs. The Deputy Registrar of Co-operative

Societies, , the Full Bench, after referring to the earlier Division Bench judgment

of this Court in L. Justine v. The Registrar of Co-operative

Societies, Chennai 2002 (4) CTC 385 as well as the judgment of the Apex Court in A. Umarani Vs. Registrar, Cooperative Societies and Others,

, ultimately held in paragraph-19 as follows:

19. In view of the authoritative pronouncement of the Supreme Court, we hold as follows:

(i) The State Government cannot exercise its jurisdiction under Article 162 of the Constitution of India or under any Act to direct regularisation of

service of any employee, including employees of a Co-operative Society, if the appointments have been made in contravention of the statutory rule

or constitutional mandate.

(ii) Article 226 of the Constitution of India cannot be used for the purpose of giving interim relief as the only and final relief, without determination

of the main issue.

5. In view of the above, the Government Order on which basis the circular dated 30.8.2007 was issued by the Registrar of Co-operative Societies

itself was declared as nullity, no reliance can be placed on the circular. The writ petition has been allowed only on the basis of the circular. In our

opinion, the first Respondent is not entitled to claim the benefit of the circular when once the Government Order in G.O. Ms. No. 86 dated

12.3.2001 itself was declared as nullity by the Apex Court and that the circular was issued only on the basis of that Government Order.

6. In view of the above, the writ appeal is allowed and the order in the writ petition is set aside. However, as the writ petition is not disposed of on

its own merit as to whether the appointment is irregular or illegal and whether the first Respondent would be entitled to the benefit of regularisation

on par with similarly placed 26768 persons, we remit the matter to the learned Judge for fresh consideration. Consequently, M.P. No. 1 of 2010 is

closed. No costs.