

**(2010) 11 MAD CK 0305**

**Madras High Court (Madurai Bench)**

**Case No:** Writ Petition (MD) No. 8303 of 2008 and M.P (MD) No"s. 1 of 2008 and 1 and 2 of 2010

K. Kandasamy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

**Date of Decision:** Nov. 10, 2010

**Hon'ble Judges:** K. Chandru, J

**Bench:** Single Bench

**Advocate:** S. Natarajan, for the Appellant; S.C. Herold Singh, Government Advocate for Respondents 1 and 4 and D. Shanmugaraja Sethupathy, for Respondent 5, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner has come forward to file the present writ petition seeking for a direction to the fifth Respondent to consider and appoint the Petitioner in the post of Assistant in the fifth Respondent Bank without reference to the age bar that has been prescribed by them.

2. Notice of motion was ordered on 24.09.2008. On notice from this Court, the second Respondent/Registrar of Co-operative Societies, has filed a counter affidavit dated 06.10.2009 and on behalf of the fifth Respondent/Co-operative Bank, a counter affidavit dated Nil (October 2008) has also been filed. In both the counter affidavits, the maintainability of the writ petition was also questioned on the ground that no direction will issue to the co-operative societies in the light of the Larger Bench judgment of this Court in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, .

3. The Petitioner has filed a reply affidavit, dated 10.09.2009 stating that since the statutory rule prescribed under the Tamil Nadu Co-operative Societies Act namely

149 (3) applies, Rule 12(d) of the Tamil Nadu State and Sub-ordinate Service Rules and there has been disregarding of statutory Rule, the writ petition is maintainable.

4. The first question is whether the canvassing done by the Petitioner in terms of Rule 149(3) is still available to him or not. The Rule 149(3) provided that in the matter of reservation for appointments and age for appointment and retirement. The Rule is applicable to Government servant shall be followed, therefore, in the light of Rule 149(3), the Petitioner relies upon 12(d) of the Tamil Nadu State and Sub-ordinate Service Rules. However, it is now brought to the notice of this Court that the said Rule has been amended by the Government vide G.O. Ms. No. 133 Co-operation, Food and Consumer Protection Department, dated 14.07.2005 and in that amended Rule, it has been prescribed that the age prescribed for the recruitment of Government servant need not be followed and it is left open to the societies to prescribe appropriate rules in this regard. Therefore, once the basic foundation on which the writ petition came to be filed stands removed naturally, the second contention that the objection about the maintainability looms large since in the absence of any statutory rule, the fifth Respondent is entitled to prescribe on its own bye laws and once the recruitment are done in terms of bye laws, the Petitioner cannot maintain the writ petition.

5. In the light of the Larger Bench judgment of this Court cited supra, the writ petition stands dismissed. No costs. Consequently, closed.