

**(2011) 06 MAD CK 0475**

**Madras High Court (Madurai Bench)**

**Case No:** Writ Petition (MD) . No. 9355 of 2008 and M.P. (MD) . No. 2 of 2008

P. Soosai Manikam  
Secretary,  
Savariyarpattinam  
Primary Agricultural  
Co-operative Bank  
Limited

APPELLANT

Vs

The Joint Registrar of  
Co-operative Societies,  
Ramnad Region, The  
Deputy Registrar of  
Co-operative Societies  
and The Special  
Officer,  
Savariyarpattinam  
Primary Agricultural  
Co-operative Bank  
Limited

RESPONDENT

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**Date of Decision:** June 30, 2011

**Acts Referred:**

- Payment of Gratuity Act, 1972 - Section 13

**Hon'ble Judges:** D. Hariparanthaman, J

**Bench:** Single Bench

**Advocate:** M. Ajmal Khan, for the Appellant; S. Bharathi, Government Advocate for R-1 and R-2, M. Saravanakumar, for K. Periyakaruppan for R-3, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner was appointed as the Secretary on 01.07.1991 in the third Respondent society. The Petitioner was terminated from service by an order dated 18.11.2005 of the second Respondent. The termination was on the ground that while he was appointed in the year 1991, he was over aged. It is stated in the said order that Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 stipulates that the employees should be less than 40 years at the time of appointment. The date of birth of the Petitioner is 04.05.1951. When he was appointed, he was 40 years and two months old. It is also stated in the termination order that this Court while disposing W.A. Nos. 2501 and 2502 of 2001 on 24.10.2002 issued direction to amend the Special Bye laws in terms of Rule 149 of the Rules. After the Special Bye laws were registered in accordance with law, the Deputy Registrars were directed to undertake the exercise within 60 days thereafter to find out whether any person was appointed irregularly. It is stated that pursuant to the aforesaid order, the Petitioner was terminated from service.

2. The Petitioner filed W.P. No. 11277 of 2005 against the termination order and interim stay was obtained on 14.02.2006. He was reinstated in service. However, the writ petition was dismissed on 06.07.2007 on the ground that there is an alternate remedy available to the Petitioner to question the termination order. The Petitioner preferred a revision petition before the first Respondent. The first Respondent rejected the revision petition on 31.07.2008. The Petitioner has filed the present writ petition to quash the order dated 31.07.2008 of the first Respondent and the order of the second Respondent dated 18.11.2005 referred to above.

3. On the other hand, the third Respondent filed counter affidavit refuting the allegations. No. counter affidavit is filed by the other Respondents.

4. Heard both sides. The learned Counsel for the Petitioner submits that the third Respondent did not pass any order. On the other hand, the second Respondent passed the order terminating the service of the Petitioner. According to him, the impugned termination order is contrary to the directions issued by this Court in W.A. Nos. 2501 and 2502 of 2001 dated 24.10.2002 popularly known as Justin case reported in 2002 (4) CTC 385 (JUSTINE, L. v. THE REGISTRAR of COOPERATIVE SOCIETIES) to register the Special Bye laws under Rules 149(1) of the Rules and get approval of the Special bye-laws in conformity with Sub-rule (1) of Rule 149 of the Rules relating to cadre strength. After approval of the Special bye-laws, the Deputy Registrar having jurisdiction over the Cooperative Societies in their Division shall enquire into the recruitment made during 09.07.1980 to 11.03.2001 to decide as to whether the said recruitment is in conformity with the special bye-laws approved by the Registrar of the Cooperative Societies and terminate the services of such staff members, whose appointments are in contravention of the special bye laws so approved by the Registrar of Cooperative Societies and that the approval of special bye laws did not take place when the impugned order was passed.

5. It is further submitted by the learned Counsel for the Petitioner that the Petitioner was appointed in the year 1991. At the time of his appointment, he did not suppress about his age. When there was No. suppression about his age, the second Respondent could not wake up after 14 years and terminate the Petitioner on the ground that the Petitioner was over aged by two months at the time of appointment. The second Respondent is estopped from terminating the service of the Petitioner, particularly when there was No. suppression on the side of the Petitioner. The learned Counsel for the Petitioner submits that the Petitioner has not even paid gratuity after termination.

6. On the other hand, the learned Counsel for the Respondents 1 and 2 submits that there is No. infirmity in the impugned orders.

7. The learned Counsel for the third Respondent submits that the Petitioner's antecedent was bad and he involved in various misconduct during his tenure and huge amount has to be recovered from his salary. The learned Counsel for the third Respondent submits that since the Petitioner was over aged when he was appointed in the year 1991, he was correctly terminated by the second Respondent by the impugned order dated 18.11.2005. The learned Counsel for the third Respondent further submits that since huge amount was due from the Petitioner, the gratuity was not paid to him.

8. This Court directed the third Respondent to find out as to whether the Government/Registrar of Cooperative Society granted approval for the Special Bye laws, since it is stated in the impugned order dated 18.11.2005 that the third Respondent society sought approval from the Government for approval of Special Bye laws. The learned Counsel for the third Respondent has submitted that so far approval is not obtained. In this regard, the direction issued Justine case in paragraph 19 and more particularly direction numbers (iii), (iv) and (v) are relevant for the purpose of this case and they are extracted hereunder:

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(iii) in societies, where the cadre strength has not been fixed, direct them to adopt the special bye-law in conformity with Sub-rule (1) of Rules 149 of the Tamil Nadu Co-operative Societies Rules, as amended by G.O.Ms. No. 212, Cooperation, Food and Consumer Protection Department, dated 04.07.1995.

(iv) direct the Registrar of Cooperative Societies to issue a circular within a week from today calling upon the cooperative societies in the State of Tamil Nadu to comply with the directions in Clause (iii) supra.

(v) direct that within two months of the approval of the special bye-laws under Sub-rule (1) of the Rule 149 of the Rules, the respective Deputy Registrars of Cooperative Societies having jurisdiction over the cooperative societies in their Divisions, shall enquire, by issuing notice to the entire staff recruited from 09.07.1980 to 11.03.2001, and decide as to whether the said recruitment is in conformity with the special bye-laws approved by the

Registrar of the Cooperative Societies and terminate the services of such staff members, whose appointments are in contravention of the special bye laws so approved by the Registrar of Cooperative Societies; it is made clear that while considering the validity or otherwise of the appointment of the staff cooperative societies, the requirement of notifying the vacancies to employment exchange shall not be taken cognisance of.

In direction number (v) it is clearly stated by the Division Bench of this Court that the Deputy Registrar should decide as to whether the recruitment made between 09.07.1980 to 11.03.2001 was valid and in terms of the Rules after the Special Bye laws were approved. In this case, the special bye laws are yet to be approved. Therefore, the order of the Deputy Registrar dated 18.11.2005 is without jurisdiction.

9. Furthermore, as rightly contended by the learned Counsel for the Petitioner, it is not the case of the Respondents that the Petitioner suppressed his age when he joined the service. It is not in dispute that he disclosed his correct age. After 14 years of his service, it is not fair on the part of the second Respondent in terminating the service of the Petitioner on the ground that he was over aged by two months at the time of his appointment and it was not the fault of the Petitioner. He should not be made to suffer for the mistake committed by somebody else. Furthermore, it is not the case of the Petitioner that Petitioner does not possess qualification or the Petitioner appointed in a post beyond the cadre strength. He was appointed to the post of Secretary and the said post was available. He also possessed the required qualification when he was appointed. Taking into consideration the aforesaid facts, I am of the view that the impugned order of the second Respondent dated 18.11.2005 and the first Respondent dated 31.07.2008 are bad and illegal.

10. When the Petitioner was appointed, he was 40 years and 2 months old and if he had been in service, he could have been retired on attaining the age of superannuation on 31.05.2009. On the other hand, the Petitioner was removed from service by the order dated 18.11.2005 and pursuant to the stay order, the Petitioner was reinstated and worked till 16.11.2007, i.e. the date on which W.P. No. 11277 of 2005 was dismissed. In these circumstances, I am of the view that while setting aside the impugned orders, I am not inclined to grant any backwages and the third Respondent is directed to settle the gratuity treating as if the Petitioner retired on 31.05.2009. I make it clear that the period from the date of termination to 31.05.2009 i.e. the date of actual retirement, is treated as duty for the purpose of computing gratuity alone. The third Respondent could not adjust gratuity towards any due payable by the Petitioner in view of Section 13 of the payment of the Gratuity Act, 1972.

11. In the result, the impugned orders are set aside. However, it is made clear that the Petitioner is not granted to any backwages, but period of non employment could be treated as duty only for payment of gratuity alone. The third Respondent is directed to pay gratuity for the service rendered by the Petitioner, within a period of three months from the date of receipt of copy of this order.

12. The writ petition is disposed of in the above terms. No. costs.

Consequently, connected miscellaneous petition is closed.