



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) No.17834 of 2015
and
M.P.(MD) No.1 of 2015

S.Selvakumar

... Petitioner

-vs-

1.The Registrar of Co-operative Societies
(Housing)
4th Main Road, Gandhi Nagar
Adyar, Chennai-600 020

2.The Deputy Registrar of Co-operative
Societies (Housing)
Tirunelveli Region, Tirunelveli-2

3.The Management / President
Sattankulam Taluk
Co-operative Housing Society Ltd.,
TNV-HSG 26, Sattankulam
Thoothukudi District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records relating to the proceedings of the impugned order in Na.Ka.No.2524/2013/sapa1, dated 11.12.2014, on the file of the first respondent and quash the same.

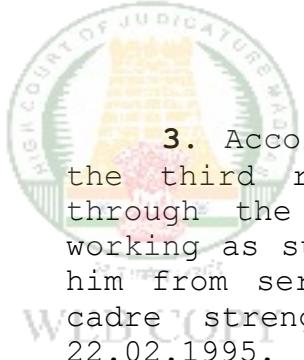
For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.T.R.Janarthanam
Addl. Govt. Pleader for R1 & R2
Mr.R.Velmurugan for R3

O R D E R

This writ petition has been filed by one Mr.S.Selvakumar challenging the impugned order, in Na.Ka.No.2524/2013/sapa 1, dated 11.12.2014, passed by the first respondent.

2. Mr.T.R.Janarthanam, learned Additional Government Pleader, takes notice for the respondents 1 and 2 and Mr.R.Velmurugan, learned counsel takes notice for the third respondent. With the consent of both parties, this writ petition is taken up for final hearing at the admission stage itself.



3. According to the petitioner, he was appointed as Junior Clerk in the third respondent Society, on 13.01.2000, under 18(1) settlement, through the District Employment Exchange, Thoothukudi. While he was working as such, the third respondent, by order, dated 20.07.2006, removed him from service stating that his appointment was made contrary to the cadre strength fixed by the first respondent vide Circular, dated 22.02.1995. Aggrieved by the order of removal, he filed a writ petition in W.P.No.23903 of 2006, before this Court. This Court, by Order dated 22.03.2011, disposed of the said writ petition permitting him to challenge the order of termination before the appropriate forum and also stayed the operation of the termination order until he approaches the appropriate forum. Thereafter, he filed a revision before the first respondent, under Section 153 of the Co-operative Societies Act, challenging the order of termination. The first respondent, after hearing both sides, by order, dated 17.04.2013, dismissed the revision. Subsequently, he filed a review application before the first respondent to review the order, dated 17.04.2013. However, the first respondent, by order, dated 11.12.2014, dismissed the review and confirmed the earlier order, dated 17.04.2013. Challenging the correctness of the order, dated 11.12.2014, passed by the first respondent, he has filed this writ petition.

4. The learned counsel for the petitioner assailing the impugned order would submit that the petitioner was dismissed from service on the ground that his appointment was made contrary to the cadre strength fixed by the first respondent by Circular, dated 22.02.1995. At the outset, it is pertinent to note that the first respondent ought to have seen that the Circular, dated 22.02.1995, has already been set aside by this Court in W.P.No.6228 of 1995 and therefore the impugned order passed by the first respondent overlooking the Circular, dated 22.02.1995, is absolutely unjustified. Hence, the impugned order is liable to be set aside, he pleaded.

5. Adding further, he would submit that the third respondent has committed a serious mistake in relying upon the Circular, dated 22.02.1995, issued by the first respondent fixing cadre strength, since 18 (1) settlement between the third respondent and his employees is in existence. Therefore, on that ground also, the appointment of the petitioner should not be disturbed.

6. Further, he would submit that when the first respondent has already kept the Circular, dated 22.02.1995, in abeyance, neither the third respondent nor the first respondent can pass the impugned order of termination by wrongly overlooking the reasons given in the Circular, dated 22.02.1995.

7. At the outset, it is pertinent to note that the arguments advanced by the learned counsel for the petitioner has already been considered by the first respondent not only in the impugned order and also in the order, dated 17.04.2013, passed in the revision petition filed by the petitioner under Section 153 of the Co-operative Societies Act.

8. On perusal of the materials on record, it is seen that on 06.12.1999, the Elected Board President called for a list of eligible candidates from the District Employment Exchange, Thoothukudi. It appears



that during that time the Government of Tamil Nadu banned the appointments and hence, the District Employment Officer sought for clarification, vide letter, dated 14.12.1999, about the ban on appointments. Ignoring the ban on appointments and also the clarification sought for by the District Employment Officer as to how the appointment can be made, the petitioner came to be appointed on 13.01.2000.

9. Secondly, as per the provisions of Tamil Nadu Co-operative Societies Act and as per Clause 7(1) of the Special Bye-Law, no person shall be appointed when he had completed 30 years of age. Admittedly, in the present case, the date of birth of the petitioner is 02.01.1970 and his appointment was made on 13.01.2000, which would go to show that at the time of appointment, the petitioner had completed 30 years of age, hence, he was ineligible. This aspect has also been rightly considered by the first respondent in the impugned order.

10. Thirdly, when the petitioner's name was sponsored by the District Employment Exchange, he was employed in TC3, Arasoor Primary Agricultural Co-operative Bank from 11.06.1993 to 12.01.2000. Whiles, it is not known, how the Employment Exchange again sponsored the name of a person on second time, who is already working in a Co-operative Society. Hence, it appears that the petitioner has played a manipulation in securing his appointment. This aspect has also been properly considered by the first respondent in the impugned order. Therefore, considering all these aspects, this Court does not find any illegality or perversity in the impugned order passed by the first respondent and hence the writ petition is liable to be dismissed.

11. In the result, this writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

- 1.The Registrar of Co-operative Societies (Housing),
4th Main Road, Gandhi Nagar, Adyar, Chennai-600 020.
- 2.The Deputy Registrar of Co-operative Societies (Housing),
Tirunelveli Region, Tirunelveli-2.
- 3.The Management / President, Sattankulam Taluk, Co-operative Housing
Society Ltd., TNV-HSG 26, Sattankulam, Thoothukudi District.

+1cc to M/S.G.Prabhu Rajadurai, Advocate in SR.No. 58183

+1cc to Special Government Pleader in SR.No.58233.

TS/04.11.2015/3P-6C/KBM

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