

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.2419 of 2014

S.Sundarraji

... Petitioner

vs.

1. The Joint Registrar of Co-operative Societies,
Cuddalore Region,
Cuddalore,
Cuddalore District.

2. The President,
E.2619, Seithiyathope Primary
Agricultural Co-op. Credit Society,
Seithiyathope Village & Post,
Chidambaram Taluk,
Cuddalore District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the respondents to permit the petitioner to join duty as Salesman in Fair Price Shop run by the 2nd respondent Society.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondents to permit him to join duty as Salesman in the Fair Price Shop run by the 2nd respondent Society.

2. According to the petitioner, he was appointed as Salesman in the 2nd respondent Society on 11.08.2000 and subsequently, due to his ill-health on and from 20.10.2003, he was not able to join duty. After recovering from his ill-health, the petitioner approached the 2nd respondent along with the Medical Certificate on 03.12.2012 with a request to allow him to join duty. Since the petitioner was not allowed to join duty, he made frequent representations along with Fitness Certificate to the respondents.

3. Pursuant thereto, the 2nd respondent entered into a 12 (3) Settlement under the Industrial Disputes Act with the petitioner in the presence of the Labour Officer and informed that he is going to reinstate the petitioner into service as a Salesman in the Fair Price Shop from 26.07.2013 on condition that the petitioner cannot claim wages for the period he went on leave on the basis of 'No work, No pay'. He also informed that his service will be taken into account as continuous service.

4. The grievance of the petitioner is that though Section 12(3) settlement was entered into between the 2nd respondent/Management and him on 26.07.2013 itself, the Management has not allowed him to join duty till date. It is his further submission that no disciplinary proceedings were initiated against him. Hence, left with no other alternative, the petitioner is before this Court.

5. When the matter is taken up for consideration, learned counsel for the petitioner submitted that as per Section 12(3) settlement, the petitioner ought to have been reinstated into service. Hence, he sought for a direction to the respondents to allow the petitioner join duty as Salesman in the Fair Price run by the 2nd respondent Society.

6. Learned Special Government Pleader, by filing a detailed counter affidavit submitted that the petitioner absconded from duty without assigning any reason to the Management and he failed to submit any Medical Certificate with leave application so far and after ten years, he has approached the Board of Management of the Society through Labour Office, Cuddalore for reappointment.

7. Learned Special Government Pleader further submitted that the Special By-law No.14 governing the service conditions of the employees of the respondent Society has clearly stated that "'Staying away from duty without permission is liable to be punished with any one of the penalties specified in the By-law No.28, besides being treated as extraordinary leave without pay'". It is further stated therein that "'Any employee absenting without any leave application or overstaying leave beyond a period of two months or absenting himself on extraordinary leave exceeding three years in the aggregate shall be deemed to have resigned from the service of the Society and the deemed resignation shall take effect on and from the date of such absence.'"

8. It is his contention that the petitioner without approaching the appropriate forum, has directly approached the Labour Officer and that he ought to have exercised his right of lien to his service with the Society by seeking remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the Joint Registrar of Co-operative Societies, Cuddalore. He also stated that the terms of settlement under Section 12(3) of the Industrial Disputes Act, 1947 could not abide the Board of Management of the Society.

9. However, learned counsel for the petitioner submitted that based on Section 12(3) settlement arrived at between the 2nd respondent/Management and the petitioner in the presence of the Labour Officer, a direction may be given to the 2nd respondent/Management to permit the petitioner to join duty in the Society.

10. Admittedly, the petitioner has unauthorisedly absented himself from duty from 21.10.2003, for more than 10 years. A reading of the By-laws of the Society makes it very clear that any employee who absents himself on extraordinary leave exceeding three years in the aggregate shall be deemed to have resigned from the service of the Society. Hence, keeping the same in mind, this Court does not find any merits to give a positive direction in this matter, as the petitioner has not availed his remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. However, the petitioner is at liberty to exercise his remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983.

With the above observation, this Writ Petition stands dismissed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:

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Cuddalore,
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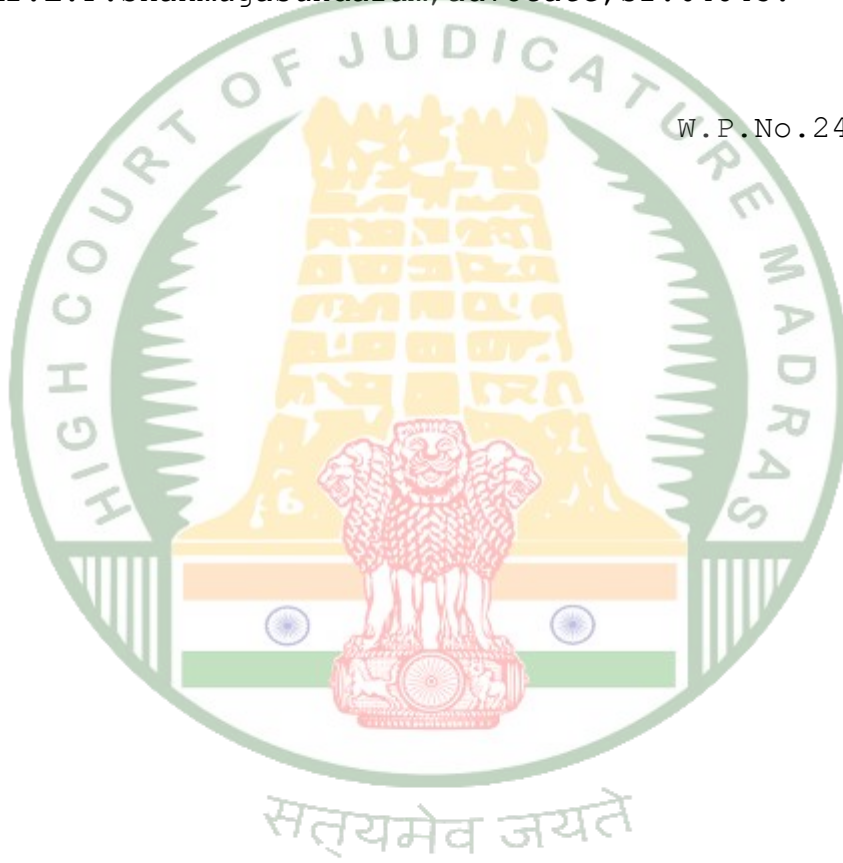
+1 cc to Govt Pleader, sr 64948

+1 cc to Mr.C.Prakasam, advocate, sr.64907

+1 cc to Mr.L.P.Shanmugasundaram, advocate, sr.64843.

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