

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.3243 of 2015

D.Bhoominathan

... Petitioner

Vs.

1. The Registrar of Cooperative Societies,
No.170, N.V.N.Maligai,
Kilpauk, Chennai-10.

2. Thiruvannamalai District Central Cooperative Bank,
Rep. by its Managing Director,
Thiruvannamalai District.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus, calling for the records of the second respondent in Na.Ka.No.637/2014/E1 dated 07.01.2015 and quash the same and consequently direct the second respondent to include the petitioner foreign service for the purpose of preparation of seniority list.

For Petitioner : Mr.S.P.Yuaraj

For Respondents : Mrs.T.Girija for R1,
Mr.L.P.Shanmugasundaram
Special Government Pleader for R2

ORDER

The petitioner has come up with the present writ petition for a certiorarified mandamus, calling for the records of the second respondent in Na.Ka.No.637/2014/E1 dated 07.01.2015, quash the same and consequently direct the second respondent to include the petitioner foreign service for the purpose of preparation of seniority list.

2. It is the case of the petitioner that the petitioner was working as Assistant in H.H.535, Melmudiyunur Primary Agricultural Co-operative Credit Society, Thiruvannamalai

District. The Joint Registrar of Cooperative Societies, Thiruvannamalai Region in his proceedings in Na.Ka.No.5145/2008/PACB dated 08.08.2009 transferred the petitioner to the second respondent Bank at Thiruvannamalai in foreign service. The petitioner was working from 01.09.2009 in the second respondent Bank as Assistant as per the said proceedings of the Joint Registrar of Co-operative Societies, Thiruvannamalai Region. Now, the petitioner was a permanent employee of the second respondent Bank. He was working for more than 11 years in affiliated society from 21.04.1998 to 31.08.2009. The petitioner had a long tenure of unblemished service in the Co-operative Society. Thereafter, he was transferred on 01.09.2009 to the second respondent Bank and continued his service in the Bank. His previous experience in the Co-operative Department should be tagged on with his present appointment. The very advertisement by the second respondent clearly indicates that eligible employees in the affiliated society can apply for and write the examination by the second respondent society. Rule 149 of the TamilNadu Co-operative Societies Rules, 1988 also encourages invitation applications from eligible employees of affiliated societies. Rule 149 in short promotes an employee of affiliated societies to exhibit his talents and superior knowledge in the written examination and get appointed in the advertisement post. Such Rule 149 is enacted to give an opportunity to persons with aspirations to promote in their carrier. Such progress does not cut the link and start a new. The previous foreign service and duration of service will tag with the aspirant. Hence, the seniority of the employees of the second respondent can be fixed only according to G.O.Ms.No.429, Personal and Administrative Reforms(Personal-P) Department dated 17.04.1986. As per the Government order, the second respondent should taken note of his foreign service in the second respondent Bank and also the previous experience in the Co-operative Department. Now the second respondent Bank without taking note of the above fact is taking steps to prepare the new seniority list. Hence, the petitioner and similarly placed persons approached the second respondent requesting him to consider his preferential right before preparing the seniority list. But, the second respondent did not consider their genuine request. Hence, the petitioner submitted a representation dated 20.10.2014 to the first respondent requesting him to give a suitable direction to the second respondent to consider his claim. The first respondent received the representation on 21.10.2014, but he has not considered his representation. Hence, he approached this Court by way of W.P.No.30445 of 2014 sought for a writ of mandamus directing the first respondent to dispose of his representation dated 20.10.2014. This Court, by order dated 05.12.2014, directing the second respondent to consider the petitioner's representation

and pass orders within the a period of eight weeks from the date of receipt of a copy of that order. But, without giving any opportunity to the petitioner, now the impugned order has been passed. Hence, the petitioner has come forward with the present petition.

3. When the matter was taken up for consideration the one and only submission made by the learned counsel for the petitioner is that as per the order passed by this Court in W.P.No.30445 of 2014, only after giving opportunity to the petitioner, the second respondent can pass an order, but without giving any opportunity, the second respondent passed the impugned order. Hence, the present writ petition.

4. The learned counsel for the respondents vehemently opposed the prayer of the petitioner by filing detailed counter and stating that the petitioner is having alternative remedies before the Joint Registrar of Co-operative Societies, Thiruvannamalai under Section 153 of the Tamil Nadu Co-operative Societies Act,1983. Hence, he sought for dismissal of this writ petition.

5. The only ground raised by the petitioner is that the second respondent, without giving any opportunity as directed by this Court in W.P.No.30445 of 2014, has passed the impugned order. Therefore, considering the submission of the learned counsel for the petitioner, I am of the opinion that it would be appropriate to set aside the impugned order passed by the second respondent in Na.Ka.No.637/2014/E1 dated 07.01.2015 and remit back the matter to the second respondent to pass an appropriate order by affording an opportunity of personal hearing to the petitioner and pass an order in the light of the G.O.Ms.429, Personal and Administrative Reforms(Personal-I), Department, Dated 17.04.1986 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rrg

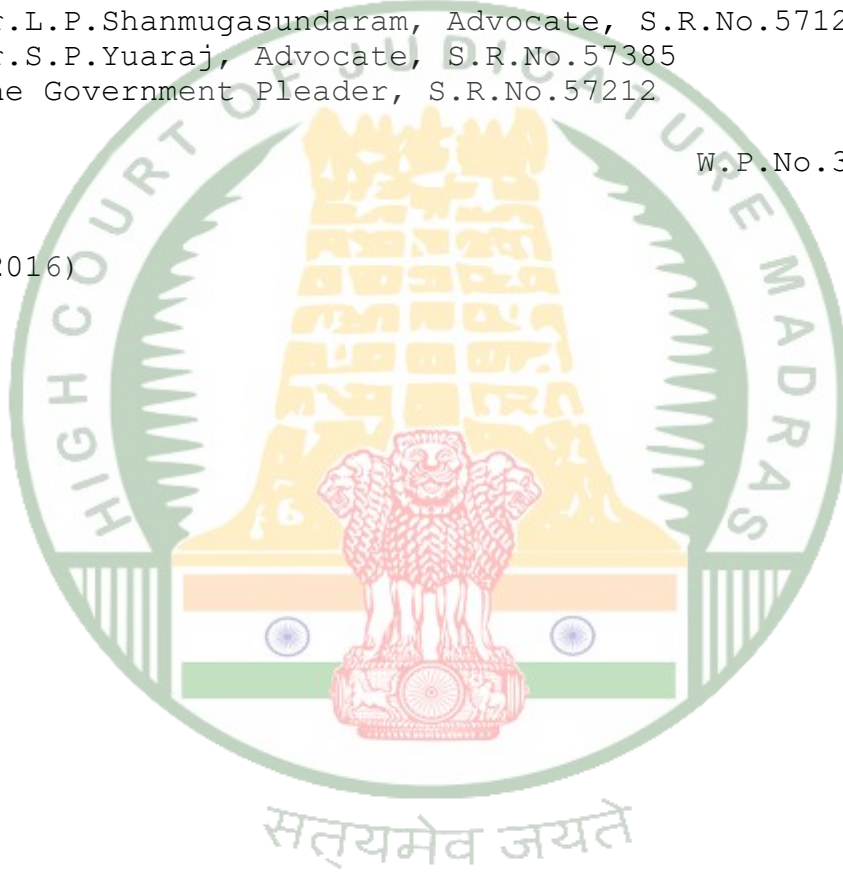
To

1. The Registrar of Cooperative Societies,
No.170, N.V.N.Maligai,
Kilpauk, Chennai-10.
2. The Managing Director,
Thiruvannamalai District Central Cooperative Bank,
Thiruvannamalai District.

+lcc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.57126
+lcc to Mr.S.P.Yuaraj, Advocate, S.R.No.57385
+lcc to the Government Pleader, S.R.No.57212

W.P.No.3243 of 2015

SV(CO)
CA(16/11/2016)



WEB COPY