

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.35576 of 2002

A.Panneerselvam

Petitioner

Vs

1.Arakandanallur Primary Agricultural
Co-operative Society,
rep. by its Special Officer,
Arakandanallur,
Thirukovilur, Villupuram District.

2.Deputy Registrar of Co-operative
Societies, Thirukovilur, Villupuram District.

3.Joint Registrar of Co-operative Societies,
Villupuram Region, Villupuram.

4.P.Murugan

Respondents

Prayer: Writ petition is filed under Article 226 of Constitution of India, seeking a writ of certiorari calling for the records relating to the proceedings of the third respondent made in Na.Ka.5117/2000, SaPa.dated 29.09.2001 and the consequential order of the first respondent dated 24.08.2002 and quash the same.

For Petitioner : Mr.M.Devaraj

For Respondents : Mrs.T.P.Savitha,
Government Advocate
for R2 and R3

O R D E R

This writ petition has been filed by the petitioner, challenging the proceedings of the third respondent made in Na.Ka.5117/2000, SaPa. dated 29.09.2001 and the consequential order of the first respondent dated 24.08.2002 and to quash the same.

2.The case of the petitioner is that he was appointed as a Salesman in the first respondent Society on 16.10.1974. Since the post of Clerk was vacant and he was fully qualified to hold the said post, the first respondent promoted him to the post of Clerk, by order dated 31.12.1993 and therefore he has continued to discharge his work on and from 31.12.1993 as Clerk. While so,

on 02.05.1994, the fourth respondent was appointed as Clerk in the temporary vacancy that had arisen, on account of the suspension of the then Clerk. In the meantime 12(3) Settlement was entered into between the employer and employee of the first respondent on 06.03.1995 for the period from 01.07.1992 to 30.06.1997. Therefore, the pay scale was revised for the petitioner from 01.07.1992 in the post of Clerk. In this regard, the fourth respondent has filed a petition before the Deputy Registrar of Co-operative Societies, Thirukovilur, Villupuram District/the second respondent herein alleging that his salary be fixed above the petitioner on the ground that there were certain entries in the register of the first respondent Society describing the petitioner as a Salesman. The second respondent took the case on file in Case No.481 of 96-97. In the said case, the fourth respondent had not impleaded him as a party and the second respondent had issued notice to him and as such the petitioner filed detailed counter meting out all the allegation made by the fourth respondent. Thereafter, the claim of the fourth respondent was dismissed stating that the corrections in the record are genuine and that they were clerical mistakes. Further, the petitioner had been working in the first respondent Society from 1974 onwards, whereas the fourth respondent joined the service of the second respondent Society on 02.05.1993. Against the order of the second respondent dated 25.02.2000 in Case No.481/96-97, the fourth respondent had filed a revision before the Joint Registrar of Co-operative Societies, Villupuram Region, Villupuram/the third respondent herein. Without even adding the petitioner as a party to the said proceedings and without issuing summons to him, by impugned proceedings dated 29.09.2001 made in Na.Ka.5117/2000 SaPa, the third respondent had set aside the order of promotion dated 31.12.1993 made by the first respondent, promoting the petitioner as a Clerk from Salesman on the ground that the cadre strength of the Society was not verified and the promotion of the petitioner was made without prior approval of the Registrar. Based on the above said impugned proceedings dated 29.09.2001, the first respondent had issued recovery order for Rs.1,14,850/- and directed the petitioner to deposit the same on or before 15.09.2002, failing which Section 90 of the Co-operative Societies Act would be invoked against him. Hence, the petitioner is before this Court.

3.The learned counsel for the petitioner fairly submitted that the petitioner has retired from service and till his retirement period, he has received salary, as per the regular postings and not as per the promotional postings and he was not paid the terminal benefits due and payable to him, in view of the pendency of this writ petition. Since the order has been passed by the third respondent in Na.Ka.5117/2000, SaPa.dated 29.09.2001, neither adding the petitioner as a party to the proceedings nor issuing any notice to him, the same is liable to be set aside on the ground of violation of principles of natural justice. He would further submit that the order of the first respondent dated 24.08.2002, ordering recovery of a sum of Rs.1,14,850/- from the petitioner, is also liable to be set aside, as the same has also been passed without giving any opportunity of hearing to the petitioner and which is the

consequential order of the third respondent. He would further submit that as per the ratio laid down by the Hon'ble Apex Court, the petitioner should be given opportunity before passing any order.

4. Learned Government Advocate appearing for respondent-Co-operative Society, by relying upon the counter affidavit filed, would submit that the petitioner has been initially appointed as a Salesman in the first respondent Society. Learned counsel would further submit that the petitioner has been given promotion to the post of Clerk, by order dated 31.12.1993, which is not legally permissible and the same is not within the ambit of provisions and that the previous Management has passed the said order in total violation of Establishment norms and rules, as envisaged in Co-operative Societies Act. Since the promotion given to the petitioner herein as a Clerk from Salesman was against the norms, vide Resolution dated 30.12.1993 of the previous management, the same was set aside by the third respondent vide order made in Na.Ka.5117/2000, SaPa. dated 29.09.2001 and hence the consequential order dated 24.08.2002 was also passed by the first respondent, ordering recovery of the excess amount paid to the petitioner in the promotional post. She would further submit that as the petitioner is aware of the earlier order passed in Case No.481/96-97 dated 25.02.2000 by the Deputy Registrar of Co-operative Societies/the second respondent herein, the contention now raised by the learned counsel for the petitioner that the petitioner is not aware of the proceedings, is incorrect and that therefore the order passed by the third respondent in setting aside the promotion of the petitioner is sustainable in law.

5. Heard both sides and perused the materials available on record.

6. It is an admitted fact that the petitioner has retired from service and till his date of retirement, he has received the salary, only as per the regular postings and not as per the promotional postings and he was not paid the terminal benefits due and payable to him. The order passed by the third respondent dated 29.09.2001, setting aside the promotional post is not in accordance with law, as the same has been passed without issuing any notice to the petitioner.

7. At this juncture, I would like to re-collect and call-up the following decision of the Hon'ble Apex Court:

(2010) 4 SCC 785 [Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers], certain excerpts from it would run thus:

"10.The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its

mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

14. The principle of natural justice has twin ingredients: firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

8.A mere poring over of this judgment would clearly highlight and spotlight the fact that if any order is passed without hearing the learned counsel for the petitioner, the same could be recalled and an opportunity could be given.

9.Though the learned counsel for the petitioner, at the time of arguments, would submit that as per the order passed by the third respondent and the consequential order of recovery passed by the first respondent, the said amount Rs.1,14,850/- has been paid by the petitioner, there is no specific record or details to show as to whether the amount has been paid by the petitioner or recovered from the petitioner.

10.Having regard to the submissions made on either side and considering the fact that the impugned order has been passed by the third respondent, without giving any notice to the petitioner and also in view of the fact that till date the terminal benefits have not been given to the petitioner, it would be suffice to direct the concerned authority to pay the amount, if it has been recovered as per the order passed by the first respondent, for the period from 01.07.1992 to 30.06.1997 during which the petitioner served as a Clerk in the promotional post, in the first respondent Society. The said exercise shall be done within a period of three months from the date of receipt of a copy of this order.

11.Inasmuch as it is stated by the learned counsel for the petitioner, that the terminal benefits have not been paid to the petitioner, the respondents are directed to disburse the same. It is needless to state that it is open to the respondent-

Society to recover, if any, excess amount paid to the petitioner in the promotional post of Clerk after 30.06.1997. However, it is made clear that the petitioner is entitled to the salary along with other benefits in the promotional post during the period he served in the said post.

12. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vga

To

1.Arakandanallur Primary Agricultural
Co-operative Society,
rep. by its Special Officer,
Arakandanallur,
Thirukovilur, Villupuram District.

2.Deputy Registrar of Co-operative Societies,
Thirukovilur, Villupuram District.

3.Joint Registrar of Co-operative Societies,
Villupuram Region, Villupuram.

+1cc to M/s. M. Devaraj, Advocate, S.R.No.32699

NR(CO)
EU(1/07/2016)

सत्यमेव जयते

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