



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2016

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A. [MD].No.585 of 2016

A.Kingston David

.. Appellant/Petitioner

Vs.

1.The Secretary to Government,
Department of Co-operation, Food and
Consumer Protection,
Fort St. George,
Chennai - 600 009.

2.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
120, Periyar EVR Road,
Kilpauk, Chennai - 600 010.

3.The Joint Registrar of Co-operative Societies,
Sivagangai Division,
Sivagangai.

.. Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P.(MD).No.3679 of 2013, dated 17.09.2014, by a learned Single Judge of this Court.

Prayer in WP(MD). 3679/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to revise the petitioner s appointment as Junior Assistant with effect from his date of appointment (viz 19.01.2011) and further direct them to provide subsequent promotions from the cadre of Junior Assistant by considering his service rendered in the cadre of Record Clerk along with backwages and other monetary benefits within a time frame as may be stipulated by this court.

For Appellant

: Mr.P.Suresh Kumar

For Respondents

: Mr.V.R.Shanmuganathan,
Special Government Pleader

**JUDGMENT**

[Judgment of the Court was made by **R.SUBBIAH, J.**]

This Writ Appeal has been filed as against the order dated 17.09.2014 made in W.P.(MD).No.3679 of 2013, rejecting the claim of the appellant to direct the respondents to revise his appointment as Junior Assistant with effect from the date of his appointment and to further direct them to provide subsequent promotion from the cadre of Junior Assistant by considering his service rendered in the cadre of Record Clerk along with backwages and other monetary benefits.

2.0. The case of the appellant is that his father, who had been working as Senior Inspector in the Animal Husbandry Department, died in harness on 29.03.2002. The appellant herein made an application seeking employment on compassionate ground. By the proceedings of the 2nd respondent in Na.Ka.No.139490/09/Pa.Tho.4, dated 28.12.2010, he was appointed as Record Clerk in the respondents Department. He joined in service as Record Clerk with effect from 19.01.2011 in the third respondent's Office, consequent to the proceedings of the third respondent in Na.Ka.No.2657/2003.Pa.Tho., dated 12.01.2011. At the time of appointment, the appellant was not aware of the regulations of the Government. Since the appellant was in dire need of support, he accepted the post of Record Clerk. The qualification for the post of Record Clerk was only 8th standard pass or fail, whereas the qualification for the post of "Junior Assistant" was SSLC qualification. But, at the time of appointment, the appellant was possessing higher qualification i.e., Bachelor of Arts Degree studied in 10+2+3 pattern.

2.1. According to the appellant, as per G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989, the appointing authorities under no circumstances should appoint a dependent to a lower post, when the dependent possess the qualifications required for the post of Junior Assistant / Typist on the ground of non availability of vacancy in the office or department or the dependents not willing to work in other departments. Though the appellant was having sufficient educational qualification for the post of Junior Assistant, he was appointed only as a Record Clerk. Hence, he has filed the Writ Petition seeking a direction the respondents to revise his appointment as Junior Assistant with effect from the date of his appointment and to provide subsequent promotion from the cadre of Junior Assistant by considering his service rendered in the cadre of Record Clerk along with backwages and other monetary benefits.

<https://hcservices.courts.gov.in/hcservices/>
2.2. The Learned Single Judge of this Court, vide order dated 17.09.2014, dismissed the said writ petition by holding that the



appointment on compassionate ground is not a matter of right and the same is given only for the purpose of giving immediate relief to the family of the deceased and hence, the question of directing the respondents to revise the order of appointment does not arise. Aggrieved by the said order, the appellant is before this Court.

3. We have heard the learned counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents. We have also perused the records carefully.

4. The learned counsel appearing for the appellant reiterated the averments made in the affidavit filed in support of the Writ Petition.

5. The learned Special Government Pleader appearing for the respondents would vehemently contend that though the appellant was possessing qualification to the post of Junior Assistant, as there was no vacancy to the said post and he had given an option letter, dated 23.06.2010, to the third respondent accepting the post of Record Clerk, he has been appointed as Record Clerk. He has further stated that in the said letter, the appellant has also given an undertaking that he will not claim the post of Junior Assistant in future. Now, contrary to the same, the appellant has filed the writ petition and the same was rightly dismissed by the learned Single Judge of this Court. Thus, he prays for dismissal of the Writ Appeal.

6. Clause (iii) in para 2 of G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 reads as follows;

"(iii) The appointing authorities under no circumstances should appoint a dependent to a lower post when the dependent possess the qualifications required for the post of Junior Assistant / Typist on the ground of non availability of vacancy in the office or department or the dependents not willing to work in other departments. In such circumstances, they should follow the existing procedure of approaching the Collector of the District concerned for providing a suitable vacancy, as suggested in G.O.Ms.No.1179, P & AR, dated 17.10.1979."

7. Admittedly, the respondents had not followed the guidelines issued in G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 and also G.O.Ms.No.1179, P & AR Department, dated 17.10.1979, to get sanctioning of suitable vacancy. The appellant was qualified to be appointed as Junior Assistant as on 28.12.2010. When such is the position, the appointment given to the appellant as Record Clerk, instead of Junior Assistant, is on the fault of the respondents. However, considering the fact that the appellant has been appointed only based on the option letter



given by him for the post of Record Clerk with an undertaking that he will not claim for the post of Junior Assistant in future, this Court is not inclined to grant monetary benefits to the appellant.

8. When this Court asked the learned Special Government Pleader as to whether now there is any vacancy available for the post of Junior Assistant, on instructions, he fairly submitted that two vacancies are available for the post of Junior Assistant.

9. In view of the above, this Writ Appeal is disposed of by setting aside the order of the learned Single Judge of this Court in W.P.(MD).No.3679 of 2013 and by directing the respondents to revise the appellant's appointment as Junior Assistant with effect from the date of his appointment and provide subsequent promotion from the cadre of Junior Assistant by considering his service rendered in the cadre of Record Clerk as the service rendered in the cadre of Junior Assistant. However, it is made clear that the appellant is not entitled for the backwages. The above exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Department of Co-operation, Food and
Consumer Protection,
Fort St. George,
Chennai - 600 009.

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3.The Joint Registrar of Co-operative Societies,
Sivagangai Division,
Sivagangai.

+1 cc to M/s.R.Karunanidhi, Advocate in SR.No. 80029
+1 cc to The Special Government Pleader in SR.No. 80306

gcg

CSL/PV/SAR-II/22.12.2016: 4P/6C