

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.14002 of 2014 and
W.M.P.No.1 of 2014

R.Seralathan

... Petitioner

Vs.

1. The Joint Registrar,
Co-operative Societies,
Vellore.

2. The President,
V.L.Spl.98, Ponnai Primary Agriculture
Co-operative Credit Society,
Ponnai,
Vellore District 632 514.

3. R.Kumaran

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, after calling for the records relating to the order No.Na.Ka.9635 of 2013 A2 dated 20.05.2014, of the first respondent passed in Rev.P.No.19 of 2013, quash the same.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Mr.L.P.Shanmuga Sundaram,
Special Government Pleader for RR1-2
: Mr.R.Rajaram for R3

O R D E R

Heard Mr.S.T.Varadarajulu, learned counsel for the petitioner and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader, appearing for the first and second respondents and Mr.R.Rajaram, learned counsel appearing for the third respondent.

2. The petitioner has approached this Court for seeking the following relief,

"to issue a Writ of Certiorari, after calling for the records relating to the order No.Na.Ka.9635 of 2013 A2 dated 20.05.2014, of the first respondent passed in Rev.P.No.19 of 2013, quash the same."

3. The case of the petitioner is as follows:

The petitioner joined service of the Co-Operative Society as Attender on 18.08.1987 and he completed Co-Operative training on 31.05.1990. He was promoted to the post of Clerk on 01.06.1990 and subsequently he was promoted to the post of Senior Clerk/Cashier on 01.04.1997.

4. The third respondent has joined the Co-Operative Society as Fertilizer Sales man on 15.01.1986 and completed the Co-Operative training only on 01.10.1994 and he was promoted as Clerk on 21.07.1993. Further, he was promoted to the post of Senior Clerk on 01.04.1997, on the day, the petitioner was also promoted as Senior Clerk.

5. Since the petitioner was senior when the third respondent was promoted to the post of clerk which was a regular appointment as his appointment was made on 01.06.1990, as against the appointment of the third respondent, which was on 21.07.1993. The next avenue of promotion to the post of Senior Clerk/Cashier is the post of Assistant Secretary. Since the petitioner was fully eligible for consideration of promotion, he was promoted to the post of Assistant Secretary on 02.08.2013.

6. The third respondent, being aggrieved against the promotion of the petitioner, preferred a revision petition before the first respondent authority under Section 153 of the Co-Operative Societies Act. The first respondent has passed an order in the revision petition dated 20.05.2014, holding that the third respondent was senior to the petitioner herein. The said order was on the basis of the fact that the third respondent was appointed as Fertilizer Sales man on 15.01.1986, whereas, the petitioner was appointed as Attender only on 18.08.1987. Thereafter, in pursuant to the order passed in the revision petition, the reversion order was passed against the petitioner on 20.05.2014, demoting the petitioner from the post of Assistant Secretary to the post of Senior Clerk/Cashier.

7. The learned counsel for the petitioner would strenuously contend that the order passed by the first respondent in the revision petition, cannot be countenanced both in law and on facts, for the simple reason that the authority himself has given a clear finding that both the initial appointment of the petitioner and the third respondent as Attender and Fertilizer Sales man respectively, as irregular appointments. However, when it comes to the assignment of seniority from the position of Senior Clerk, the irregular service has to be taken into consideration, notwithstanding by the fact that both the petitioner and the third respondent came to be appointed on irregular appointments.

8. The learned counsel would further contend that the reasoning of the first respondent is preposterous and completely misconceived. In case of promotion on the same day, the first respondent ought to have considered the fact that the petitioner was promoted as Clerk on 01.06.1990, whereas, the third respondent was promoted as Clerk only on 21.07.1993. It is fortified by the fact that earlier to the promotion to the post of Clerk admittedly the service rendered on irregular basis and therefore any service rendered earlier on irregular basis cannot be a foundation for arriving at the inter-se seniority between the petitioner and the third respondent.

9. In the counter affidavit filed on behalf of the second respondent in para 3, it is spelt out that the first respondent has already decided the case in favour of the third respondent in regard to the seniority between the petitioner and the third respondent and therefore, there cannot be any other interpretation.

10. The above arguments advanced by the learned counsel for the second respondent cannot be appreciated, in view of the fact that the first respondent has given improper reasoning for passing orders in the revision petition, on the basis of irregular service rendered by the third respondent as Fertilizer Sales man. When both the petitioner and the third respondent have been promoted on the same day in the Senior Cadre on 01.04.1997, the first respondent ought to have taken into consideration, the previous promotion of the petitioner for assigning the seniority for the purpose of promotion to the post of Assistant Secretary. The above stated reasoning by the first respondent is legally un-sustainable.

11. The learned counsel for the third respondent would submit that since the third respondent was appointed initially ahead of the petitioner, their services were taken into consideration for assignment of seniority, for the purpose of promotion to the post of Assistant Secretary. Moreover, he would submit that in the absence of any specific rule for assignment of seniority, in the present circumstance of the case, the age criteria ought to have been taken into consideration, since the third respondent is senior in age than the petitioner.

12. However, the above contention of the learned counsel for the third respondent cannot be accepted for the simple reason that the order impugned in the writ petition passed by the first respondent does not address the said issue. It was only on the ground that the third respondent was initially appointed as Fertilizer Sales man in the year 1986 and on that basis, he was senior to the petitioner.

13. The learned counsel for the petitioner would also submit that in the proceedings before the first respondent

under Section 153 of the Co-Operative Societies Act, the respondent officials had taken a decision that the seniority of the petitioner herein had been rightly fixed by taking into consideration the promotion to the feeder cadre. Now the second respondent is taking a different stand only in order to favour the third respondent.

14. The said contention put forth by the learned counsel appearing for the petitioner has considerable force and therefore this Court has no hesitation in accepting the said contention of the learned counsel for the petitioner. In view of the above discussion and narration, the writ petition is liable to be allowed. Accordingly, the impugned order in Na.Ka.9635 of 2013 A2 dated 20.05.2014, of the first respondent passed in Rev.P.No.19 of 2013, is set aside.

15. The second respondent is directed to restore the position of the petitioner as Assistant Secretary, as it prevailed before the reversion order, came to be issued, and grant consequential and other benefits. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

gsk

To

1. The Joint Registrar, सत्यमेव जयते
Co-operative Societies,
Vellore.

2. The President,
V.L.Spl.98, Ponnai Primary Agriculture
Co-operative Credit Society,
Ponnai,
Vellore District 632 514.

+1 CC to Mr.L.P. Shanmugasundaram, Advocate sr 56338

+1 CC to Mr.R. Rajaram, Advocate sr 55932

+1 CC to Mr.S.T. Varadharajulu, Advocate sr 55847.

W.P.No.14002 of 2014

SP(07/08/2017)