

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.21087 of 2013

A.Murugesan

... Petitioner

Vs.

- 1.The Joint Registrar of Co-operative Societies/Revisional Authority,
Chinthamani Buildings, North Coimbatore,
Coimbatore-641 002.
- 2.The Special Officer,
No.K 2069, Veerakeralam Primary Agricultural
Co-Operative Credit Society,
Veerakeralam, Coimbatore - 641 007.
- 3.The President,
K.2069, Veerakeralam Primary Agricultural
Co-Operative Credit Society,
Veerakeralam, Coimbatore - 641 007. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Revision Petition No.425/2013 Vae.2, dated 21.06.2013 whereby confirming the order passed by the second respondent in his proceedings No. Nil, dated 18.09.2006 and quash the same and consequently directing the 3rd respondent to fix revision of pay scales of the petitioner by fixing the seniority from the date of appointment i.e., on 01.06.1994.

For Petitioner .. Mr.C.Prakasam

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

ORDER

The Writ Petition has filed challenging the impugned order passed by the first respondent in his proceedings in Revision Petition No.425/2013 Vae.2, dated 21.06.2013 whereby confirming the order passed by the second respondent in his proceedings No. Nil, dated 18.09.2006 and praying to quash the same and consequently to direct the 3rd respondent to fix revision of pay scales of the petitioner by fixing the seniority from the date of appointment i.e., on 01.06.1994.

2. The case of the petitioner is that at the relevant point of time, the petitioner was working as Assistant in the 3rd respondent Society. His service has been terminated on 09.01.2001 on the basis of disciplinary action initiated against him. Against the order passed by the second respondent, terminating the services, the petitioner has preferred a statutory revision under Section 153 of Tamil Nadu Co-Operative Societies Act before the first respondent. However, the said revision petition was rejected by the first respondent confirming the order passed by the second respondent. Against the order, the petitioner has preferred a Writ Petition in W.P.No.8296 of 2003. When the said writ petition was taken up for hearing, the learned counsel appearing for the parties submitted that the matter was amicably settled and sought a direction to be issued on the basis of mutual agreement of the parties. This Court, recording the submissions, disposed of the writ petition on 11.09.2006, incorporating the submissions and directions, which are extracted below:-

"When the matter came up for hearing today, the learned counsel on either side submit that the both the parties agreed to settle the matter amicably. The petitioner has filed an affidavit that in case he is reinstated into service, he cannot claim any back wages. The second respondent, who is the contesting respondent, agrees for the same. Hence, the below mentioned order is passed:

"The second respondent is directed to reinstate the petitioner on 18.09.2006. The petitioner is directed to join duty on 18.09.2006 at 10.00 a.m. Petitioner is not entitled to any back wages.

3. Under the guise of implementing the order passed by this Court, an order was issued by the 3rd respondent on 18.09.2006, appointing the petitioner as Assistant by means of fresh appointment, instead of re-instatement as agreed before this Court. In fact, in the said order dated 18.09.2006 passed by the 3rd respondent, there is no reference as regards the

direction passed by this Court as extracted above.

4. Mr.C.Prakasam, the learned counsel appearing for the petitioner would submit that since the order dated 18.09.2006 passed by the 3rd respondent is per se, contrary to the directions issued by this Court on 11.09.2006, and that in order to seek clarification, he approached this Court in R.A.No.1 of 2012 in W.P.No.8296 of 2003. However, this Court disposed of the revision application vide order dated 21.12.2012, directing the petitioner to file a revision under Section 153 of the Tamil Nadu Co-Operative Societies Act. In pursuance of the direction, the petitioner preferred a revision petition on 19.01.2013 and the same came to be rejected on 21.06.2013, which is impugned in the present writ petition.

5. According to the impugned rejection order, the first respondent has stated that since the petitioner himself had given up back wages, he cannot claim reinstatement or seniority or continuity of services for the period imposed on him. In such circumstances, the order of fresh appointment given on 18.09.2006 was valid and the petitioner was not entitled to the benefits as claimed by him.

6. Upon notice, Mr.L.P.Shanmugasundaram, learned counsel entered appearance on behalf of the respondents and he would submit that there is no intention to violate the order passed by this Court and the authority has taken into consideration that the conduct of the petitioner in giving up his claim for back wages which would amount to give up other service claims and therefore only in that context an order was passed.

7. This Court has considered the rival submissions of the learned counsels and materials and pleadings placed on record. Firstly, the contention of the respondent is per se, preposterous and contrary to every form of logic in the sense that the direction passed by this Court in W.P.No.8296 of 2003 dated 11.09.2006 is very explicit and clear which was factually on the basis of mutual agreement as between the petitioner and the respondents. That being so, the respondent cannot go back on the promise and grant appointment of the petitioner as a fresh entry in total violation of the order passed by this Court on 18.09.2006. Moreover, the reasoning as conveyed in the impugned order dated 21.06.2013 that giving up wages would amount to give up other benefits like seniority and continuity of service, is blatantly misconceived and cannot be countenanced both in law and on facts.

8. In the light of the above discussion narrated, this Court has no hesitation in setting aside the impugned order dated 21.06.2013 passed by the first respondent. While setting aside the impugned order, this Court directs the respondents to

reinstate the petitioner with effect from 18.09.2006 with all service benefits like continuity of service, seniority, promotion etc. except the back wages for the period between the date of termination and the date of reinstatement as agreed by the petitioner. The said direction shall be implemented by the respondents within a period of two months from the date of receipt of a copy of this order.

9. This Court thinks it fit to impose appropriate costs on the second respondent for completely disobeying the order passed by this Court dated 18.09.2006, ordering appointment of petitioner as a fresh entry, which is in violation of the specific direction passed by this Court on 11.09.2006 in W.P.No.8296 of 2003. Accordingly, the second respondent is directed to pay the cost of Rs.5,000/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition stands disposed of.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- सत्यमेव जयते
- 1.The Joint Registrar of Co-operative Societies/Revisional Authority, Chinthamani Buildings, North Coimbatore, Coimbatore-641 002.
 - 2.The Special Officer, No.K 2069, Veerakeralam Primary Agricultural Co-Operative Credit Society, Veerakeralam, Coimbatore - 641 007.
- WEB COPY

3.The President,
K.2069, Veerakeralam Primary Agricultural
Co-Operative Credit Society,
Veerakeralam, Coimbatore - 641 007.

+1 cc to Mr.C.Prakasam Advocate sr 54833
+1 cc to Mr.L.P.Shanmuga Sundaram Advocate sr 54545
+1 cc to the Government Pleader sr55729

W.P.No.21087 of 2013

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