



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM:

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

W.A.[MD].No.1059 of 2015

and

M.P.(MD).No.1 of 2015

- 1.The Joint Registrar of Co-operative Societies,
Ramanathapuram District, Ramanathapuram.
- 2.The Sub-Registrar of Co-operative Societies/Field Officer,
Nainarkovil Post, Paramakudi Taluk,
Ramanathapuram District. : Appellants

Vs.

- 1.K.Kalaiselvam,
Clerk, Q-1218, Memangalam Primary Agricultural
Co-operative Credit Society,
Nainarkovil Post, Paramakudi Taluk,
Ramanathapuram District.
- 2.Q-1218, Memangalam Primary Agricultural
Co-operative Credit Society,Rep by its Board President
Nainarkovil Post, Paramakudi Taluk,
Ramanathapuram District. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 29.07.2015 made in W.P.(MD).No.5531 of 2015, on the file of this Court.

Prayer in WP(MD).5531/2015:

Writ Petition is filed under Article 226 of the Constitution of the India,praying this Court To issue a Writ of certiorarified Mandamus,to call for the records on the file of the 2nd Respondent in connectionwith the Impugned order of rejection for payment of salary vide his Impugned Proceedings No.Nil dated 09.02.2015 and consequently direct the 1st and 2nd respondents to disburse the arrears of salary pending sisnce 09.08.2014 as on date and to continue to pay the current salary.

For Appellant	: Mr.VR.Shanmuganathan Special Government Pleader
For Respondent No.1	: Mr.G.Thalaimutharasu
For Respondent No.2	: Mr.R.Velmurugan

**JUDGMENT**

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

Challenge in this Writ Appeal is to the order dated 29.07.2015 made in W.P.(MD).No.5531 of 2015, in and by which, the learned Single Judge directed the appellants herein to pay salary to the first respondent herein from September 2015 onwards.

2. The said Writ Petition was filed by the first respondent herein, challenging the order of the second appellant herein dated 09.02.2015 and for a consequential direction to the appellants to disburse the arrears of salary pending since 09.08.2014 as on date and to continue to pay the current salary to him.

3. The case of the first respondent before the learned Single Judge was that initially, he was appointed as a Salesman in S.V.Mangalam Primary Agriculture Co-operative Credit Society, on 26.08.1988, through the District Employment Exchange and thereafter, by way of transfer, he was accommodated in the second respondent society, on 01.09.1992. Subsequently, he was appointed as Clerk in the second respondent society, on 01.08.1995. It is the further case of the first respondent that the second respondent society became sick, due to financial crisis and therefore, in order to avoid the financial burden of the society as well as to protect the interest and livelihood of the employees, the then Special Officer of the society permitted the employees to go on leave on loss of pay. The first respondent submitted an application on 14.10.2004 seeking permission to go on leave. The first respondent, thereafter, was employed in a private concern. In the meantime, the second respondent society has overcome from its financial crisis and therefore, the first respondent made representations dated 13.05.2013 and 25.03.2014, seeking permission to allow him rejoin duty. Since no action was taken, the first respondent was constrained to file a Revision Petition in R.P.No.8 of 2013, before the first appellant herein with a request to consider his claim for re-appointment, without back wages. The said Revision Petition was dismissed on 19.02.2014, on the ground that the Revision Petition was not maintainable, as the same was not filed against any proceedings or decision or order. Thereafter, by proceedings dated 09.02.2015, the second appellant herein passed the impugned order, stating that the first respondent is not entitled for salary on the ground that his re-appointment is illegal.

4. Challenging the said order of the second appellant herein, the first respondent filed W.P.(MD).No.5531 of 2015. The learned Single Judge of this Court, by order dated 29.07.2015, while disposing of the Writ Petition, directed the appellants herein to pay salary to the first respondent from September 2015 onwards. It was further directed that the arrears of wages shall be paid to the first respondent, within a period of two months from the date



of receipt of a copy of the order.

5. We have heard the learned Special Government Pleader appearing for the appellants, the learned counsel appearing for the first respondent, the learned counsel appearing for the second respondent and we have also perused the records carefully.

6. It is the submission of the learned Special Government Pleader appearing for the appellants that validity of the order passed by the second appellant herein, dated 09.02.2015, has not been gone into by the learned Single Judge, while disposing of the Writ Petition. Without going into the validity of the said order, the learned Single Judge directed the appellants herein to pay salary to the first respondent from September 2015 onwards. Thus, the learned Special Government Pleader prayed for remanding of the matter back to the learned Single Judge for fresh consideration.

7. We have considered the above submissions.

8. Since the validity of the order passed by the second appellant herein, dated 09.02.2015, was not dealt with in the order passed by the learned Single Judge, we are of the opinion that by accepting the prayer made by the learned Special Government Pleader, the matter has to be remitted back to the learned Single Judge for fresh consideration.

9. In the result, the order dated 29.07.2015 made in W.P.(MD). No.5531 of 2015 is set aside and the matter is remitted back to the learned Single Judge for fresh consideration. The learned Single Judge is requested to dispose of the Writ Petition, at the earliest. At this juncture, the learned counsel for the first respondent/Writ Petitioner made a request that a direction may be granted to the appellants to pay salary to the first respondent/Writ Petitioner. It is for the first respondent/Writ Petitioner to make such a representation before the learned Single Judge. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar



To

1.The Joint Registrar of Co-operative Societies,
Ramanathapuram District, Ramanathapuram.

2.The Sub-Registrar of Co-operative Societies/Field Officer,
Nainarkovil Post, Paramakudi Taluk,
Ramanathapuram District.

+1cc to M/s.R.Velmurugan, Advocate, in SR No.1242

+1cc to M/s.G.Thalaimutharasu, Advocate, in SR No.1009

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JUDGMENT MADE IN
W.A.[MD].No.1059 of 2015
04.01.2017