

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA
and
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

W.A.No.907 of 2014

1. The Joint Registrar of Co-operative Societies,
Dharmapuri Region,
Dharmapuri.
2. The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri District. ..Appellants/Respondents 1&2

versus

1. N.G.Ponnaiyan ...1st respondent/Writ Petitioner
2. K.K.168, Naripalli Primary Agricultural Co-operative Credit Society Limited,
Rep. by its President,
Naripalli Post, Harur Taluk,
Dharmapuri District. ... 2nd respondent/3rd respondent

Appeal filed under Section 15 of Letters Patent Act, against the order dated 21.11.2013 passed in W.P.No.27077 of 2013. Prayer petition under Article 226 of the constitution of India praying for issue of a writ of Mandamus directing respondents 1&2 to direct the 3rd respondent to allow the petitioner to joint duty on clerk in the society.

For Appellants : Mr.L.P.Shanmuga Sundaram
Special Govt. Pleader
For R1 : Mr.M.S.Palanisamy
For R2 : Mr.S.Kamadevan

JUDGMENT

DR.S.VIMALA, J.

The first and second respondents in the writ petition have filed this appeal. The first respondent herein N.G.Ponnaiyan is the petitioner in the writ petition and the second respondent herein K.K.168, Naripalli Primary Agricultural Co-operative Credit Society Ltd., is the 3rd respondent in the writ petition.

2. The first respondent herein, N.G.Ponnaiyan, as the petitioner in the writ petition was appointed as a Salesman on daily wage basis in the Co-operative Society, viz., 2nd respondent herein on 04.11.1997. Thereafter, on 19.10.1989, he was absorbed as a regular employee of the Society. He was promoted as a Clerk on 24.06.1994. It is the case of the first respondent herein that he, being the only son, had to look after his father, who was suffering permanent illness and therefore, he applied for leave. By resolution No.138, dated 28.03.2008, the 2nd respondent Society passed a resolution, approving the leave and thereafter only, the petitioner went on leave. After the expiry of leave, the petitioner made a request to join the services of the Society to the respondents 2 and 3 in the writ petition and the same was not considered. Therefore, the petitioner approached the 1st respondent, by way of a representation dated 08.04.2013. However, the first respondent did not pass any orders that compelled the petitioner to move the writ petition, seeking a writ of mandamus directing the respondents 1 and 2 therein to allow him to join duty as Clerk in the Society.

3. It is represented that the 2nd respondent herein has allowed petitioner to join duty and accordingly he is in duty as on now.

4. The learned counsel appearing for the writ petitioner / 1st respondent herein submitted that the writ appeal is unwarranted and absolutely there is no dispute between the employee and employer and the employer is satisfied with the services rendered by the employee and therefore, the writ appeal is liable to be dismissed. The learned single Judge has detailed the nature of leave taken, nature of resolution passed by the Society and the petitioner had availed leave after obtaining permission from the employer. Therefore, any adverse order already passed should be set aside. Learned single Judge has rejected the contention of the 3rd respondent that the petitioner is deemed to have resigned with effect from 22.08.2010 for the reason that the deemed clause will be operative only as envisaged under bylaw 14(2) of the Special bylaws of the society which is reproduced hereunder:

"An employee absenting without any leave application or overstaying leave beyond a period of two months or absenting himself on extraordinary leave exceeding three years in the aggregate shall be deemed to have resigned from the service of the society and the deemed resignation shall take effect on and from the date of such absence and period of two months or three years as the case may be."

5. It is not the case of the employer that the employee had absented himself without any leave application and prior permission. Such being the case, the learned single Judge has rightly held that the deemed provision relating to resignation will not apply and the petitioner had been on leave and his case for re-instatement has already been considered. This Court has no reason to interfere with the order passed by the learned

single Judge and this appeal, being devoid of merits, deserves to be dismissed.

6. Accordingly Writ Appeal being devoid of merits is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

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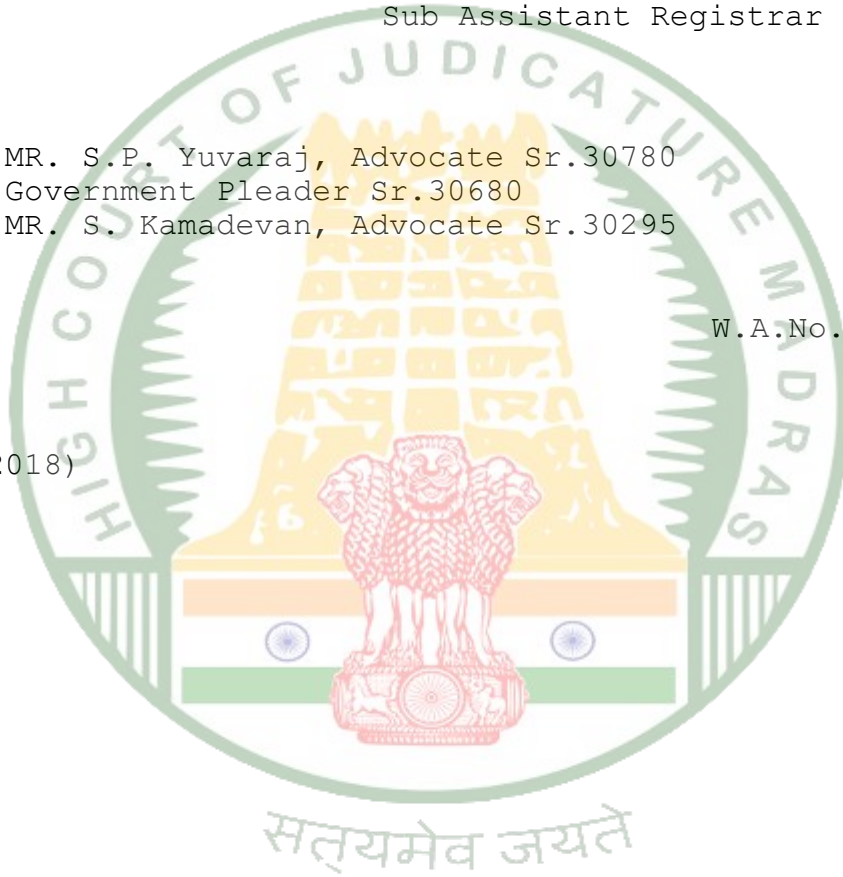
Sub Assistant Registrar

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+ 1 cc to MR. S.P. Yuvaraj, Advocate Sr.30780
+ 1 cc to Government Pleader Sr.30680
+ 1 cc to MR. S. Kamadevan, Advocate Sr.30295

W.A.No.907 of 2014

PP(CO)
EU(18/09/2018)



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