



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.09.2018
CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

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W.P(MD) .Nos.5444 & 5446 of 2018
and
W.M.P.(MD) Nos.7556, 5375 & 5376 and
5379, 5380 & 7557 of 2018

M.Godwyn James

... Petitioner in
W.P.(MD) No.5444 of 2018

H.Jahubar Sathik

... Petitioner in
W.P.(MD) No.5446 of 2018

Vs.

- 1) The Joint Registrar of Co-operative Societies,
Thoothukudi Region,
Thoothukudi.
- 2) The President,
E.E.423, Udangudi Primary Agricultural
Co-operative Credit Society Ltd.,
29-A, Sathiyamoorthy Bazar,
Udangudi, Thoothukudi District.
- 3) The President,
Nazareth Co-operative Urban Bank,
Nazareth,
Thoothukudi District.
- 4) The Election Commissioner,
Tamil Nadu State Co-operative Societies Election Commission,
1st Floor, Kamadheni Super Market,
Anna Salai, Chennai 600 018 ... Respondents in both W.P's

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.1746/2016 PACS dated 08.03.2018 and that of the 2nd respondent dated 08.03.2018 and quash both the orders and consequently permit the petitioners herein, to discharge their duties as Clerk and Attendar, respectively, continuously without any interruption in the 2nd respondent Cooperative Society.

In both W.P.'s

For petitioners : Mr.D.Srinivasaragavan
For R1 : Mr.S.Dayalan,
Government Advocate
For R2 : Mr.N.Dilip Kumar
For R3 : No Appearance
For R4 : Mr.U.Karunakaran

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COMMON ORDER

As the issue involved in both the Writ Petitions are one and the same, the cases are taken up for disposal and disposed of by a Common Order.

2. These Writ Petitions have been filed seeking to quash the impugned order passed by the 1st respondent in Na.Ka.1746/2016 PACS dated 08.03.2018 and that of the 2nd respondent dated 08.03.2018 and consequently permit the petitioners herein, to discharge their duties as Clerk and Attendar, respectively, continuously without any interruption in the 2nd respondent Cooperative Society.

3. The sum and substance of the case is that the petitioners/employees of the second respondent Society have been deputed to the third respondent Society. According to the petitioners, the Cooperative Society Elections have been declared and it has been conducted in a phased manner. For that purpose, Code of Conduct was issued on 05.03.2018. Further, the learned counsel stated that there is a circular dated 01.04.2008 issued by the Registrar of Co-operative Societies, clearly postulating the manner in which deputation has got to be made. But in the present case on hand, the same has not been followed and he stated that the respondents have given a go-by to their own circular.

4. Further, it is contended by the learned counsel for the petitioners that the respondents have stated in their counter affidavit that there has been a resolution passed by both the Societies , viz., the Society deputing the staff and the other Society that has made a request for deputation. In the absence of the same in the impugned order, it has got to be presumed that there has been victimization and misuse of the power to select, pick and choose the Union activists to be transferred to the other society.

5. Learned counsel for the petitioner would state that the impugned order issued by the respondents cannot be improved by means of filing a counter affidavit. He further stated that the



petitioners were not willing to go on deputation and there was no requirement with regard to deputations at all. Unfortunately, the respondents have selected four candidates including the petitioners and two of them are before this Court.

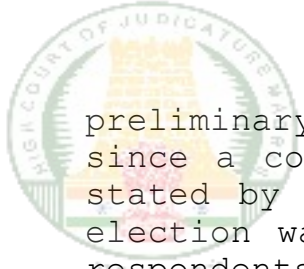
6. Learned counsel for the petitioners would further contend that they are all regular permanent employees. Therefore, the second respondent shall not disturb the petitioners in the name of deputation and their consent has got to be obtained for the same. Hence, the impugned order suffers from various defects and it has got to be interfered with by this Court.

7. Per contra, the respondents have filed a counter affidavit. The sum and substance of the counter affidavit is that there was a requirement in the Nazareth Co-operative Urban Bank/third respondent. Pursuant to the resolution passed by the second and third respondents separately, there was deputation of four staff, out of which, two persons have already joined in the deputed place, and the other two persons viz., the petitioners herein, have not joined in the deputed place. It is incorrect to say that there was no resolution passed at all, although it has not been referred / reflected in the impugned order. Unless and otherwise there is a specific instruction from the Registrar / Joint Registrar office, there cannot be any deputation made.

8. That apart, the petitioners are all not permanent / regular employees and their employment is itself a questionable one. Anyhow, without going into that aspect, the respondents would contend that it is no doubt true that, there has been an announcement of Elections to be conducted and the Code of Conduct has been declared. According to the Code of Conduct, they cannot depute any persons much less the petitioners. In the present case on hand, the Election to the Cooperative Societies have been done in a phased manner and there is no declaration of Election with regard to the second and third respondent Societies. Deputation order was made on 08.03.2018 much before the declaration of elections to the Societies. Unless and until, there is commencement of Election Code of Conduct, the petitioners have no rights to question the deputation made to another Society.

9. Learned counsel appearing for the respondents reiterated that the petitioners have not been appointed in the posts of Clerk and Attendar and they are irregular appointees and their services may be ousted at any point of time. Reserving that point which has got to be adjudicated in an appropriate time, the present case on hand has an issue with regard to deputation and it is submitted by the learned counsel for the respondents that they have not improved their case by filing the counter affidavit and they have confined their arguments only based on the impugned orders.

10. Even though it is stated, that the final resolution is not reflected in the impugned order, there is no need for the



preliminary resolution to be reflected and it is also not necessary, since a copy of the same is given to the petitioners. Further, as stated by the petitioners' counsel, the Code of Conduct regarding election was made available from 05.03.2018 and based on that, the respondents have filed that elections were not declared in the respondent Societies. That apart, the consent of the petitioner is not required, more particularly, in the light of Rule 149 (2A) of the Tamil Nadu Cooperative Societies Rules, 1988 which read as follows:

"A society may transfer an employee to another society for a period of not less than one year on deputation basis and the other society may avail the services of that employee on the terms and conditions agreed to by both the societies:

Provided that no such transfer shall be made for a period exceeding 3 years."

11. From the aforesaid rule, it is very clear that for deputation, consent of the employees is not required. It is also made very clear that in the guidelines dated 01.04.2018 with regard to deputing an employee from one society to another Society, the same has not been violated.

12. In the present writ petitions, this Court has not considered the factual aspect whether there are more strength of staff required to the second respondent Society or the third respondent Society or whether the appointment is regular or not. As the deputation made by the second respondent is in pursuance to the provisions of the Cooperative Societies Act, more particularly, in terms of Rule 149 (2A), when there was no election declared with regard to the 2nd and 3rd respondent Societies, the respondents have not violated any Code of Conduct of election and the deputation is perfectly valid. Hence, the vacate stay petitioner's contentions cannot be rejected. Interim order granted by this Court in W.M.P. (MD) No.5376 of 2018 in W.P.(MD) No.5444 of 2018 is vacated.

13. Once, the interim stay is vacated, there is nothing to adjudicate further and these writ petitions are closed. A period of 15 days is granted from the date of receipt of a copy of this order for the petitioners herein, to join in the deputed place. Apart from that, subsequently after the deputation of these persons, elections have been declared to the Society and the election itself is over.

14. With regard to W.P.(MD) No.5446 of 2018, this Court makes it very clear that, in case, if any one of the petitioners have applied for Voluntary Retirement Scheme (VRS), it is open for them to withdraw the same, if not already accepted by the respondents. If the same is accepted within the stipulated time, then it automatically becomes invalid.



15. With these observations and directions, these Writ Petitions are closed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

- 1) The Joint Registrar of Co-operative Societies,
Thoothukudi Region,
Thoothukudi.
- 2) The President,
E.E.423, Udangudi Primary Agricultural
Co-operative Credit Society Ltd.,
29-A, Sathiyamoorthy Bazar,
Udangudi,
Thoothukudi District.
- 3) The President,
Nazareth Co-operative Urban Bank,
Nazareth,
Thoothukudi District.
- 4) The Election Commissioner,
Tamil Nadu State Co-operative
Societies Election Commission,
1st Floor, Kamadheni Super Market,
Anna Salai,
Chennai 600 018

+1CC to Mr.D.Srinivasaragavan, Advocate, SR.No.83426
+2CC to Mr.N.Dilip Kumar, Advocate, SR.No.83615, 83616
+1CC to the Special Government Pleader SR.No.84081

Common Order made in
W.P(MD).Nos.5444 & 446 of 2018
10.09.2018

STS

ES/SV/SAR 2/20.11.2018/5P/9C