

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.18351 of 2008
and M.P. No.2 of 2008

M.C.Kuppan

.. Petitioner

-vs-

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

2.K.K.349, The Dharmapuri District
Central Co-operative Bank Ltd.,
rep. by its Special Officer,
Dharmapuri-636 701.

3.The General Manager,
K.K.349, The Dharmapuri District
Central Co-operative Bank Ltd.,
Dharmapuri-636 701.

.. Respondents

Prayer: Petition filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Certiorarified Mandamus, calling for the records relating to the
proceedings made in Na.Ka.No.2710/2007 Sa.Pa.dated 15.04.2008
passed by the first respondent confirming the order made in
Na.Ka.No.2881/98.PB-4 dated 12.03.2005 passed by the third
respondent and quash the same and directing the respondents to
fix the salary of the petitioner with that of the Senior Grade
Assistant and calculate the retirement benefits with that of the
same and pay the amount with arrears along with 18% interest.

For Petitioner : Mr.R.Dhanaram for
Mr.G.Ethirajulu

For Respondents : Mr.L.P.Shanmugha Sundaram,
Special Government Pleader
for R1

Mr.M.S.Palaniswamy,
for R2 and R3

ORDER

The writ has been filed challenging the correctness of the impugned proceedings made in Na.Ka.No.2710/2007 Sa.Pa. dated 15.04.2008 issued by the first respondent confirming the order made in Na.Ka.No.2881/98.PB-4 dated 12.03.2005 passed by the third respondent and seeking a direction to the respondents to fix the salary of the petitioner as that of the Senior Grade Assistant and calculate the retirement benefits and pay the amount with arrears along with 18% interest.

2.Learned counsel appearing for the petitioner submitted that after the petitioner was appointed as Attender in Dharmapuri District Central Co-operative Bank Ltd., Denkanikotta Branch at Rayakottah on 19.10.1973, he was issued with the charge memos dated 23.10.1976, 12.02.1979 and 29.12.1979 alleging that he failed to send stock register report and maintain deficit account and misappropriated the funds of the society. Simultaneously, criminal proceedings were initiated in C.C. Nos.68 and 69 of 1980 on the file of the Sub Divisional Judicial Magistrate, Hosur. However, the learned Trial Court, accepting the case of the Society, convicted the petitioner, imposing punishment of one year rigorous imprisonment in both cases. Based on the order of conviction, imposing the sentence of one year rigorous imprisonment in both cases, the petitioner was dismissed from service by order dated 02.09.1983 passed by the General Manager of the Dharmapuri District Central Co-operative Bank Ltd., Dharmapuri. Aggrieved by the conviction, the petitioner preferred an Appeal, which was allowed by this Court, setting aside the conviction, vide order dated 16.12.1991. Despite the said order, the Management has not taken steps to re-instate the petitioner in service and therefore, the petitioner raised an Industrial Dispute in I.D. No.409 of 1992 before the Labour Court, Vellore praying for re-instatement with back wages. However, the learned Labour Court, finding that the petitioner was dismissed from service only on the basis of the order of conviction passed by the learned Sub-Divisional Judicial Magistrate, Hosur, which was set aside by the High Court, re-instated the petitioner in service with continuity of service with payment of 25% of back wages.

3.According to the learned counsel appearing for the petitioner, although the petitioner was re-instated in service with payment of 25% of back wages, his junior one S.Ramanujam was promoted to the post of Senior Grade Assistant on 17.08.1993. Therefore, the respondents are bound to enforce and implement the Award passed by the Labour Court directing them to re-instate the petitioner in service with continuity of service

along with the payment of 25% of back wages on par with his junior. Although repeated representations were given to the respondents, they have not come forward to consider the request of the petitioner. Challenging the same, the petitioner has come to this Court.

4.A detailed counter affidavit has been filed by the second respondent. Reiterating the averments made in the counter affidavit, learned Standing Counsel appearing for respondents 2 and 3 would submit that the Award passed by the Labour Court directing the respondents to re-instate the petitioner in service with payment of 25% of back wages has been fully complied with. With regard to promotion on par with Ramanujam, it is submitted that the prayer is un-tenable and un-justified. Referring to the seniority list prepared by the respondents, learned Standing Counsel would submit that the petitioner has been placed in seniority No.152 and two more seniors namely, P.Ganesan and K.Ramakrishnan are above him in the seniority and therefore, the promotion cannot be given to the petitioner overlooking them. Secondly, after the year 1993, no promotion has been given including two of the petitioner's seniors namely P.Ganesan and K.Ramakrishnan because there was no situation warranted for giving promotion including the petitioner's seniors. Therefore, the prayer made to give him promotion on par with his juniors is wholly un-justifiable and not maintainable.

5.I also find merits on the submission made by the learned Standing Counsel appearing for respondents 2 and 3. The reason being that the Award passed by the Labour Court directing the respondents to re-instate the petitioner in service with 25% of back wages along with continuity of service has been fully complied with. When the petitioner was dismissed from service by order dated 02.09.1983 and aggrieved by the order of conviction, the petitioner preferred an Appeal and finally his Appeal was allowed by this Court on 16.12.1991, setting aside the order of conviction. Thereafter, the petitioner went before the Labour Court by raising I.D. No.409 of 1992 and the Labour Court, taking note of the fact that the order of conviction was set aside by this Court on 16.12.1991, passed an Award granting re-instatement with back wages and therefore, the petitioner was re-instated in service. After the re-instatement was ordered on 25.03.1997 with 25% back wages and continuity of service, the petitioner was re-instated in service on 30.07.1997 and after putting in service, attained the age of superannuation in the year 2006. Since Mr.P.Ganesan and Mr.K.Ramakrishnan are admittedly seniors to the petitioner, the prayer for giving promotion to the petitioner, overlooking his two seniors is wholly un-tenable and they were given promotion only by order

dated 31.07.2008, but, sadly, the petitioner was retired from service. Accordingly, the writ petition fails and the same is dismissed. Consequently, M.P. is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vga

To

The Joint Registrar of
Co-operative Societies,
Salem Region,
Salem District.

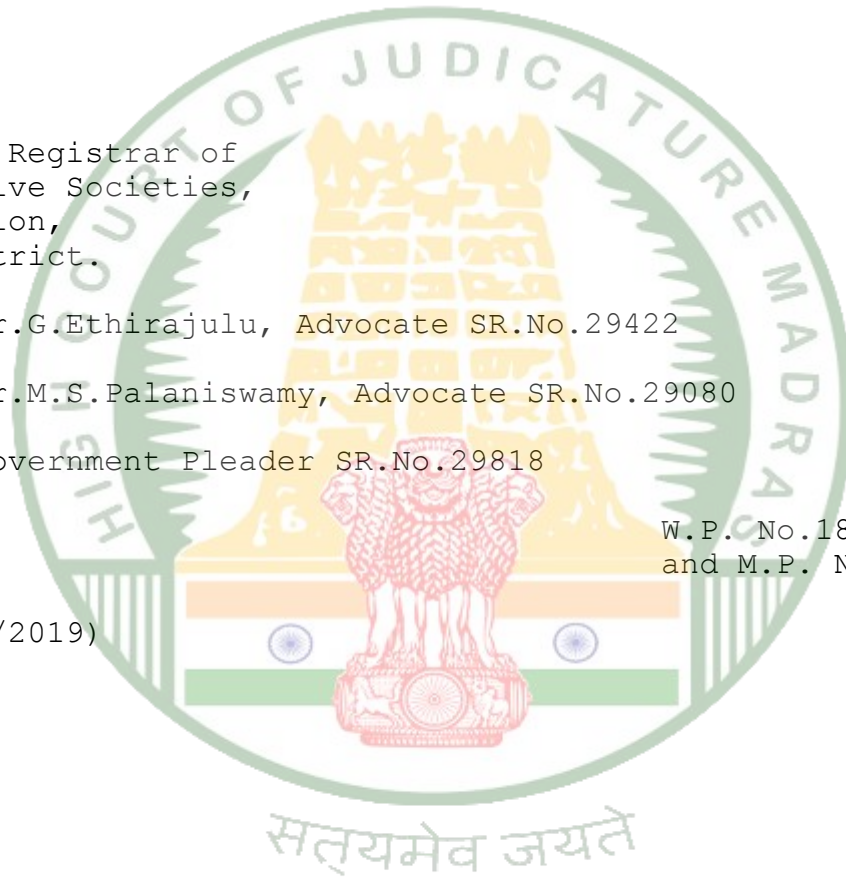
+1cc to Mr.G.Ethirajulu, Advocate SR.No.29422

+1cc to Mr.M.S.Palaniswamy, Advocate SR.No.29080

+1cc to Government Pleader SR.No.29818

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CP(CO)
GMY(07/05/2019)



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