

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.21972 of 2004 &  
W.M.P.No.26534 of 2004

N. Venkatesan

.. Petitioner

-vs-

1. The Registrar of Co-operative Societies,  
Kilpauk,  
Chennai 600 010.
2. The Deputy Registrar of Co-operative Societies, Omalur Circle,  
Omalur, Salem.
3. The Joint Registrar of Co-operative Societies, Salem Region,  
Salem.
4. The Special Officer,  
S.M.2, Thiruvalluvar Town Co-operative Bank Ltd.,  
Jalakandapuram, Mettur Taluk,  
Salem

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus after calling for the records relating to the order in Na.Ka.1583/02, Sa.Pa(3) dated 30.1.2004 of the 2<sup>nd</sup> respondent, quash the same and consequently to direct the respondents to restore the petitioner as Manager in 4<sup>th</sup> respondent Bank, award costs.

For Petitioner : Mr. V. Ajoy Khose  
For Respondents : Mr. L.P. Shanmugasundaram  
Special Govt. Pleader (Co-op)  
for R1 to R3

O R D E R

According to Government order published in G.O.216, Co-operation, Food and Consumption Protection Department, dated 1.1.1998, while making appointment in Co-operative banks,

Senior Most Person registered with the Employment Exchange shall be considered for appointment. As per G.O.57 Co-operation, Food and Consumer Protection Department, dated 21.2.2001, the Cooperative Bank shall call for only required number of persons to fill the vacancies.

2. Accordingly, the 4<sup>th</sup> respondent called for names from the Employment Exchange Salem. The Employment Exchange has sent five names, among them, the petitioner's name stood first. As per the above Government Order, G.O.216, dated 1.9.1998, the petitioner should have been selected, but, to his shock and surprise, one Mani was selected and appointed.

3. The petitioner challenged the said selection immediately in W.P.No.21362 of 2001, wherein, this Court, vide its order dated 7.11.2001, directed the first respondent to consider the representation of this petitioner and pass orders thereon, on merits and in accordance with law within a period of eight weeks therefrom. Pursuant to which, the respondents have cancelled the appointment of said Mani and appointed the petitioner as Manager in the Bank by order dated 28.11.2001. Thereafter, the said Mani challenged his termination in W.P.No.7921 of 2002, wherein, this Court, vide its order dated 11.3.2002, has granted an interim injunction restraining the petitioner from functioning as a Manager, pursuant to which, the respondents have passed order dated 24.4.2002, terminating the petitioner from service.

4. Challenging the same, the writ petitioner filed a Writ Petition in W.P.No.44642 of 2002. Both W.P.No.7921 of 2002 and W.P.No.44642 of 2002 were disposed of by a common order dated 13.2.2003, wherein, a direction was given to the 1<sup>st</sup> respondent to hold an enquiry under section 81 of the Act and it was made clear that when it comes to making appointment as Manager, the claims of both Mani and Venkatesan shall be considered. As per the directions of this Court, by order dated 13.2.2003, the respondents have conducted an enquiry under section 81 of the Act, in which, it was found that the appointment to the post of Manager was held illegal in view of selection not conducted by the duly constituted committee.

5. Insofar as the request of the petitioner is concerned, the post of Manager was cancelled in proceedings Na.Ka.5955 of 2001 dated 5.9.2001 by the Deputy Registrar, Omalur Circle and in view of that, the petitioner cannot also be appointed as a Manager. Thereafter the petitioner made representations to the respondent to comply with the order of the court to appoint him as Manager. The same was rejected in Proceedings

Na.Ka.1583 of 2002 sa.pa.3 dated 30.1.2004. Aggrieved over the same, the petitioner is before this Court.

6. According to the learned counsel appearing for the petitioner, the respondent cannot take multiple stands . On the one hand, it is stated that Manager post is cancelled, whereas, at the time of disposal of the Writ Petitions viz., W.P.No.7921 of 2002 and W.P.No.44642 of 2002 on 13.2.2003, the post of Manager was very much available. Secondly, the order passed under Section 81 enquiry was not communicated to the petitioner. Thirdly, during the pendency of this enquiry proceedings, at the request of Mr.Mani, he was appointed as Assistant without giving any opportunity to him. In all these aspects, the learned counsel would submit that the action of the respondents is illegal, malafide and amounts to arbitrary exercise of power.

7. I have considered the submissions. When a similar petition was filed by the rival party namely R. Mani, challenging the very same order dated 30.1.2014, this Court in W.P.No.39717 of 2004, by its order dated 12.12.2017 has recorded that the Deputy Registrar has already canceled the post of Manager in the Bank and that the said rival individual had taken alternative employment as Supervisor in TASMAAC and is continuing there and upheld the impugned order. The very same impugned order is now under challenge in this Writ Petition.

8. From perusal of the records, it is clear that the order passed under Section 81 enquiry itself clearly held that the Manager post was cancelled as early as on 5.9.2001. When the Manager post is not available for promoting the petitioner and that the method of recruitment is only by promotion, this Court is not in a position to take a contrary view other than the decision taken by the learned Single Judge in W.P.No.39717 of 2004. Even assuming the impugned order is set aside, it will not lead to appointment of petitioner to any post. Accordingly, the claim of the petitioner cannot be entertained. In the result, the Writ Petition is dismissed. No costs. Consequently connected W.P.M.P.No.26534 of 2004 is closed.

Sd/-  
Assistant Registrar(CS VI)  
//True Copy//

Sub Assistant Registrar

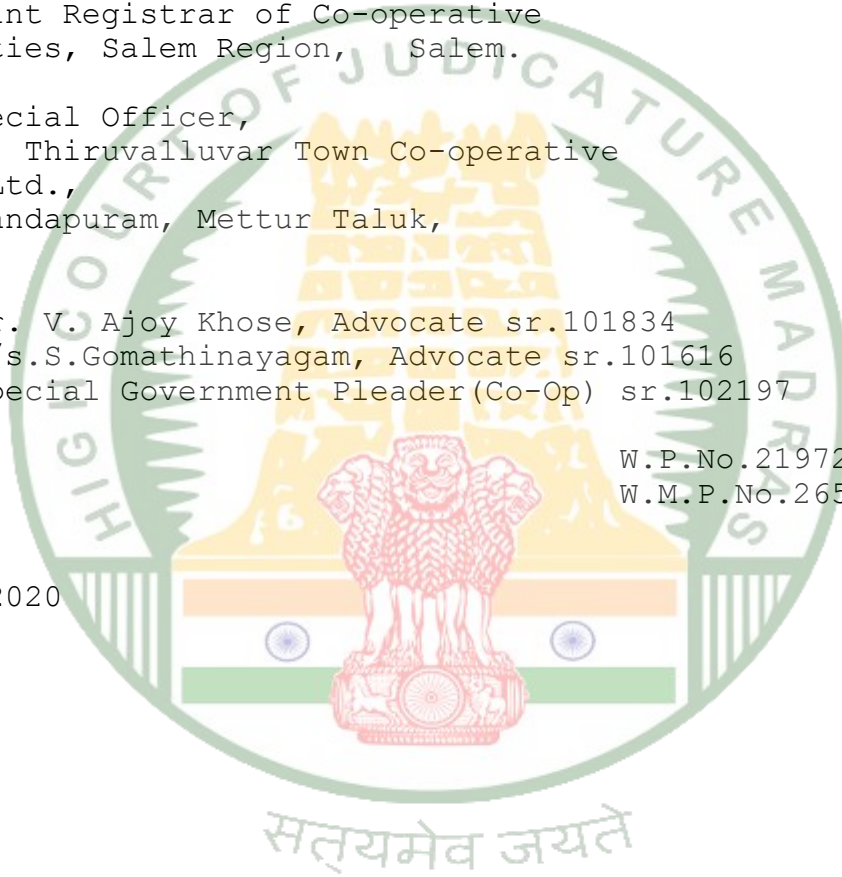
To

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S.M.2, Thiruvalluvar Town Co-operative Bank Ltd.,  
Jalakandapuram, Mettur Taluk,  
Salem

+1cc to Mr. V. Ajoy Khose, Advocate sr.101834  
+1cc to M/s.S.Gomathinayagam, Advocate sr.101616  
+1cc to Special Government Pleader(Co-Op) sr.102197

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rsk(co)  
nr 30/01/2020



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