

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019
Coram

The Honourable Mr. Justice D. Krishnakumar

W.P.No.21102 of 2015
and
W.M.P.No.29785 of 2017

J. Balakrishnan

...Petitioner

Vs.

1. The Registrar of Cooperative Societies,
No.170, EVR High Road, Kilpauk, Chennai -600 010.
2. The Joint Registrar,
Office of the Joint Registrar of Cooperative Societies,
District Collectorate Campus, Ariyalur,
Ariyalur District.
3. Ponparappi Agriculture Cooperative Credit Society,
rep. By its Secretary,
Ponparappi Post, Senthurai Taluk,
Ariyalur District - 621710.
4. The President,
Ponparappi Agriculture Cooperative Credit Society TY, Spl-
75
Ponparappi Post, Senthurai Taluk,
Ariyalur District - 621710.
5. S. Adavan ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records of the second respondent in relation to the impugned order dated 19.01.2015, in proceeding No.Pa.Ve.39/2014, Ve Se Sa passed by the second respondent and to quash the same and issue a consequential direction to the respondents 1 to 4 to reinstate the petitioner to the post of Junior Assistant with effect from 24.01.2013.

For Petitioner : Mr.S.Saravanan
For Respondents 1 &2 : Mr.Bala Ramesh
Special Government Pleader
For Respondents 3 and 4 : Mr.L.P.Shanmugasundaram
Special Government Pleader
For Respondent - 5 : No appearance

O R D E R

The petitioner has filed this Writ Petition challenging the order passed by the second respondent dated 19.01.2015, and to quash the same and issue a consequential direction to the respondents 1 to 4 to reinstate him to the post of Junior Assistant with effect from 24.01.2013.

2. The case of the petitioner as stated in the affidavit filed in support of this Writ Petition in short is as follows :-

i) The petitioner was selected and appointed by the District Selection Committee as a Salesman on 22.01.2010, and joined service under the third respondent/Society from 27.01.2010. As per Circular of the first respondent, dated 03.08.2012, the petitioner is eligible to be appointed as Junior Assistant on completion of three years of service.

ii) The petitioner worked as Salesman under the third respondent from 27.01.2010 to 31.01.2013, and completed three years of service as Salesman. The third respondent appointed the petitioner as Junior Assistant on 24.01.2013 and the writ petitioner joined on 01.02.2013.

iii) The grievance of the petitioner is that, the third and fourth respondents, without following any Rules, on instructions from the second respondent, appointed the fifth respondent to the post of Clerk in the February, 2013, with retrospective effect from 17.08.2012, by bypassing two lower posts, viz., Salesman and Junior Assistant. Further, the third and fourth respondents in order to accommodate the fifth respondent, reverted the petitioner from the post of Junior Assistant to the post of Salesman. Aggrieved by the same, the petitioner has filed this Writ Petition.

3. Mr.S.Saravanan, the learned counsel appearing for the petitioner has submitted that the impugned order passed by the third respondent by reverting the petitioner from the post of

Junior Assistant to the post of Salesman on the ground that the petitioner has not completed three years of service as Salesman is not sustainable. In fact, the reasons assigned in the impugned order for such reversion is contrary to both on law and on facts. The petitioner actually joined service as Salesman under the third respondent on 27.01.2010, and was promoted as Junior Assistant/Clerk on 24.01.2013, however, given charge as Junior Assistant/Clerk only on 01.02.2013, whereas, the impugned order states as if the petitioner joined service as Salesman on 27.01.2010 and even before completion of three years service, he was promoted as Junior Assistant/Clerk on 01.02.2012, and signed the Attendance Register from 01.02.2013 onwards and since the petitioner has not completed three years of service, he has been reverted as Salesman from 29.03.2013. According to the learned counsel for the petitioner, the petitioner has completed three years of service. Therefore, he was promoted as Junior Assistant/Clerk. In support of the his contention, the learned counsel appearing for the petitioner is relying upon the appointment letter, dated 24.01.2013, issued in favour of one Kamakshi, who was appointed as Salesman, wherein, at the conclusive portion, it is stated that the said Kamakshi has to receive charge as Clerk of Ponparappi Agriculture Cooperative Society from J.Balakrishnan (petitioner herein), Junior Clerk, and the aforesaid appointment order copy was also marked to the petitioner, mentioning him as a Junior Clerk. The self contained documents per se, is a evidence that to show that the petitioner was promoted to the post of Junior Assistant/Clerk as on the date of 24.01.2013. Therefore, the reasons stated in the impugned order for reverting the petitioner is factually incorrect, as the same has been passed without considering the said proceedings, dated 24.01.2013, as well as the fact that the petitioner has signed in the attendance register as Junior Assistant/Clerk from 01.02.2013. Therefore, the learned counsel for the petitioner submitted that all the aforesaid documents would show that the petitioner was promoted as Junior Assistant/Clerk on completion of three years of service as Salesman. Further, it is the specific contention of the learned counsel that the fifth respondent was appointed as Clerk in the respondent/Society on compassionate grounds, but subsequently, during verification, it was found by the Deputy Registrar of Cooperative Societies that the fifth respondent is not eligible to be appointed to the post as Clerk directly. Therefore, the learned counsel contended that the impugned order of the second respondent reverting the petitioner from the post of Junior Assistant to the post of Salesman in order to accommodate the fifth respondent is highly arbitrary in nature and liable to be set aside. Further, the learned counsel contended that the above order has been passed without providing an opportunity to the petitioner and the same amounts to violation of principles of natural justice.

4. On the other hand, the learned Special Government Pleader for the respondents has submitted that the Deputy Registrar of Cooperative Societies made a surprise inspection at the fourth respondent-Society on 28.03.2014, and it was found that the fifth respondent was appointed directly to the Clerk post and the petitioner was promoted to Junior Assistant/Clerk before completion of three years of service, which is against the bylaws. Hence, the Deputy Registrar of Cooperative Societies instructed the fourth respondent-Society to follow the Rules and bylaws and guidelines issued by the Registrar of Cooperative Societies, pursuant to which, the fourth respondent re-called the promotion given to the petitioner and direct appointment given to the fifth respondent, vide Resolutions Nos.2 and 3 respectively, dated 29.03.2014 and accordingly, the fifth respondent was reverted from Clerk post to Junior Clerk and the petitioner also reverted from Junior Clerk to Salesman. The learned Special Government Pleader further submitted that if the petitioner is aggrieved by the order of reversion, he ought to have filed appropriate revision before the Revisional Authority under Section 153 of the Act, but, without doing so, the petitioner made a representation to the second respondent to consider his case. The second respondent, on receipt of such representation, called for files from the Deputy Registrar, Ariyalur, and directed the Field Officer to file a report, and based on the report from the Field Officer, the Joint-Registrar of Cooperative Societies, the second respondent passed the impugned order, on 19.01.2015, upholding the order/resolution passed by the fourth respondent on 29.03.2013. Therefore, he contended that the impugned order passed by the second respondent is in accordance with law, valid and warrants no interference by this Court.

5. Heard the learned counsel for both the sides and perused the materials available on record.

6. By the impugned order, the petitioner has been reverted to the post of Salesman and the reasons stated in the impugned order for such reversion is that the petitioner has not completed three years of service. In order to prove that the petitioner has been promoted to the post of Junior Assistant/Clerk, he has not placed any material before this Court, except, the appointment order, dated 24.01.2013, issued in favour of Kamakshi, wherein, his designation has been demoted as Junior Clerk and the attendance register signed by him by holding the post as Junior Clerk from 01.02.2013. Had the petitioner had placed the appointment order issued to him promoting him to the post of Junior Assistant/Clerk, that would have fortified his case, and merely based on the appointment order issued to one Kamakshi, dated 24.01.2013 and the

attendance register, this Court cannot set aside the impugned order passed by the second respondent.

7. In the Writ Petition, the respondent/Society has taken a stand in the counter affidavit that the fifth respondent was appointed by the third respondent on compassionate ground and during verification by the Deputy Registrar of Cooperative Society, it was found that the fifth respondent is not eligible for direct appointment to the post of Clerk and therefore, the fifth respondent has been reverted to the post of Junior Clerk. Therefore, it is clear that without following any Rules or Bylaws of the Cooperative Society, the fifth respondent was appointed to the post of Clerk under compassionate ground, and when it was found that the appointment of the fifth respondent is contrary to the rules, fifth respondent was reverted to the post of Junior Clerk and as rightly pointed out by the petitioner, since there is no immediate vacancy to the post of Junior Clerk, the second respondent in order to accommodate the fifth respondent to the post of Junior Clerk, reverted the petitioner to the post of Salesman. If the order of appointment of the fifth respondent to the post of Clerk is found to be illegal, the respondent/Society ought to have passed appropriate orders as per rules without reverting the petitioner to the post of Salesman.

8. Therefore, this Court has no hesitation to quash the impugned order. Accordingly, the impugned order is quashed. The second respondent is directed to consider the matter afresh and pass appropriate orders as expeditiously as possible within a period of twelve weeks from the date of receipt of a copy of this order, after providing an opportunity to the parties concerned.

9. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

sd

To

1. The Registrar of Cooperative Societies,
No.170, EVR High Road, Kilpauk, Chennai -600 010.
2. The Joint Registrar,
Office of the Joint Registrar of Cooperative Societies,
District Collectorate Campus, Ariyalur,
Ariyalur District.
3. The Secretary,
Ponparappi Agriculture Cooperative Credit Society,
Ponparappi Post, Senthurai Taluk,
Ariyalur District - 621710.
4. The President,
Ponparappi Agriculture Cooperative Credit Society TY,
Spl-75
Ponparappi Post, Senthurai Taluk,
Ariyalur District - 621710.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.95203

+1cc to Mr.S.Saravanan, Advocate SR.No.94464

+1cc to Special Government Pleader SR.No.95089

W.P.No.21102 of 2015

RP (CO)
GMY (31/01/2020)

सत्यमेव जयते

WEB COPY