

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1549 of 2018
and C.M.P.No.12547 of 2018

Kurinjipadi Primary Agricultural
Co-operative Credit Society,
Pattai Veedhi, Kurinjipadi - 607 302,
Rep. by its Secretary. ... Appellant/4th Respondent

Vs.

1. T.Sivakumar ...1st Respondent/Petitioner
2. The Registrar of Co-operative Societies,
Kilpauk, Chennai.
3. The Joint Registrar / Revision Officer,
Joint Registrar of Co-operative Societies,
Beach Road, Cuddalore - 607 001.
4. The Deputy Registrar of
Co-operative Societies,
Pudupalayam Main Road,
Cuddalore - 607 001. ...2 to 4 Respondents/1 to 3 Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent
against the order of this Court, dated 05.06.2017, made in
W.P.No.7147 of 2013.

W.P.No.7147/2013:

Writ of certiorarified Mandamus , order or direction in the
nature of a Writ, Calling for the records of the second
respondent relating to his Order No.Rc 4258/ 2012 Thu.Va.Tha.1
dated 24.9.2012 and quash the same and consequently direct the
respondents to consider and pass orders for Notional Promotion
of the petitioner from the Post of Salesman to the post of
Junior Assistant with effect from the date of promotion of his
immediate junior with all monetary benefits seniority etc by
creating a supernumerary post of Junior Assistant within a time
schedule fixed by this Honourable Court.

For Appellant : Mr.SP.Yuaraj
For Respondent 1 : Mr.P.Anbarasan
For Respondents 2 to 4 : No appearance

J U D G E M E N T

(Judgement of the Court was made by SUBRAMONIUM PRASAD,J.)

Challenging the order dated 05.06.2017, passed by the learned Single Judge, in W.P.No.7147 of 2013, Kurinjipadi Primary Agricultural Co-operative Credit Society, Pattai Veedhi, Kurinjipadi, represented by its Secretary, has filed the instant writ appeal.

2. The writ petition had been filed with the following prayer:

"Writ petition praying for issuance of a Writ of Certiorarified Mandamus or any other appropriate Writ, order or direction in the nature of writ calling for the records of the Second Respondent relating to his order No.Rc.4258/2012 Thu.Va.Tha.1 dated 24.09.2012 and quash the same and consequently direct the respondents to consider and pass orders for the notional promotion of the petitioner from the post of salesman to the post of Junior Assistant with effect from the date of promotion of his immediate junior, with all monetary benefits, seniority etc., by creating a supernumerary post of Junior Assistant within a time schedule fixed by this Court."

3. Writ petitioner joined the services of the appellant as Sales Man on 01.12.1987. His services were regularized w.e.f. 12.03.2001.

4. Writ petitioner claims that his juniors namely one P.Balasubramanian, P.Ravi, T.Punniyamoorthy and K.Amirthalingam were given promotion as Junior Assistants vide Resolution No.11, dated 22.06.2000, w.e.f. 01.04.2000, but the writ petitioner was not promoted. The writ petitioner filed a representation to the Society, which was not considered. The writ petitioner, therefore, filed a petition under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 before the Deputy Registrar of Co-operative Societies, Pudupalayam Main Road, Cuddalore. The Deputy Registrar vide Award dated 24.06.2011, directed the appellant herein to examine the case of the writ petitioner with due consideration to the date of joining and the date of passing of the Co-operative Training.

5. The writ petitioner thereafter gave a second representation which was again not considered. The representation given by the petitioner under the Tamil Nadu Co-operative Societies Act was rejected on the ground of limitation. The writ petitioner approached this Court by filing W.P.No.17631 of 2012. The learned Single Judge allowed the writ petition vide order dated 16.07.2012 and directed the Joint Registrar / Revision Officer, Cuddalore to entertain the revision petition. The Joint Registrar entertained the revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act and rejected the revision petition on the ground that there is no vacancy, where the writ petitioner could be accommodated. The said order is extracted hereunder:

"Order: Thiru.T.Sivakumar, Kurinji Primary Agriculture Cooperative Credit Society to him on the basis of functioning of the Society is in contra and according to cadre, strength there is no vacancy in the society and considering the welfare of the society and members, the plea of the petitioner is rejected is ordered by this and informed."

6. The above said order is challenged in the instant writ petition.

7. It was contended by the learned counsel appearing for the appellant that juniors to the writ petitioner had passed the Diploma in Co-operative Training in the year 1993-1994, whereas, the writ petitioner has cleared the same only during the year 1997-98 and since he cleared the test later, he was given promotion later. It was also argued before the learned Single Judge that writ petition was barred by time.

8. The learned Single Judge, allowed the writ petition directing the appellant herein to consider the claim of the writ petitioner positively for promotion to the post of Junior Assistant and, if it needs creation of any supernumerary post can be done also.

9. Heard the learned counsel for both sides.

10. Material on record shows that when writ petitioner's juniors were promoted, the writ petitioner was fully qualified for appointment as Junior Assistant. Nothing has been placed on record by the appellant to show that whether the date of passing of the test has to be considered for deciding as to when a person should be promoted. On the date when writ petitioner's juniors were considered for promotion, the writ petitioner was

entitled to be promoted and there was no reason as to why the writ petitioner's case should have been overlooked. It is not the case of the appellant that the writ petitioner is not fit or unsuitable for being promoted. Taking such a view, the learned Single Judge passed the impugned order.

11. The learned counsel for the first respondent placed reliance on a judgement of the Hon'ble Supreme Court in R.B.Desai Vs. S.K.Khanolkar reported in (1997) 7 SCC 54. Paragraph No.11 of the said judgement reads as follows:

"11. If on the date of consideration, the appellants did not have the eligibility then certainly it is the first respondent who ought to have been considered for the said promotion and if he was so promoted earlier than the appellants he would have acquired a higher ranking in the seniority list of ACFs. That not being the case, we are unable to agree with the view taken by the High Court, as stated above, because on the date on which the avenue for promotion to the cadre of A.C.Fs. opened both the appellants as well as the first respondent had the necessary eligibility and their names figured in the eligibility list. That being so, as stated above, it is the appellants whose case ought to have been considered first and it was so done and they having been found otherwise suitable, they were rightly promoted earlier than the first respondent. Consequently, they are entitled to a higher ranking in the cadre of A.C.Fs. vis-a-vis the first respondent. The view taken by us also finds support from the judgment of this Court in Union of India represented by the U.T. of Pondicherry v. B.Jayaraman and ors. (1994 Supp. 1 SCC 95) wherein considering a similar argument this Court held:- जयते

The note in column 11 is only for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes of being considered for promotion to the post of Superintendent Grade 1 and not for the purpose of seniority at all.

with which view we respectfully agree."

12. The said judgement covers this case completely. The writ appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Registrar of Co-operative Societies,
Kilpauk, Chennai.
2. The Joint Registrar / Revision Officer,
Joint Registrar of Co-operative Societies,
Beach Road, Cuddalore - 607 001.
3. The Deputy Registrar of
Co-operative Societies,
Pudupalayam Main Road,
Cuddalore - 607 001.

+1 CC to Mr.SP.Yuaraj, Advocate sr 8566.
+1 CC to Mr.P.Anbarasan, Advocate sr 8522.

W.A.No.1549 of 2018 and
C.M.P.No.12547 of 2018

CA (CO)
SP (20/03/2019)

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