

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SETHILKUMAR RAMAMOORTHY

W.A.No.129 of 2020
and C.M.P.No.1816 of 2020

A.Mani

.. Appellant

-vs-

1.The Joint Registrar of Cooperative
Societies, Thiruvannamalai Region,
Thiruvannamalai, Thiruvannamalai District.

2.M.Subramani

... Respondents

Appeal filed under Clause 15 of the Letters Patent
against the order dated 14.11.2019 passed in W.P.No.21794
of 2019 on the file of this Court.

Prayer: Writ Petition is filed under Article 226 of the
constitution of India, to issue writ of certiorari, to call
for the entire records relating to the impugned order
passed by the 1st respondent in his proceedings
Na.Ka.No.1019/2018 Sa.Pa. Dated 28.06.2019.

For Appellant

: Mr.C.Prakasam

For Respondents

: Mr.L.P.Shanmugasundaram
Spl.G.P. for R-1

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and learned
Special Government Pleader for respondent no.1.

2.The legal issue raised is as to whether the appellant stood disqualified to be the President of the Society. The case hovers around the interpretation of Section 34 (1) (a) of the Tamil Nadu Co-operative Societies Act, 1983, which reads as under:-

34. Disqualifications for membership of board.-

(1) No person shall be eligible for being elected or nominated as a member of a board of any registered society if he -

(a) is such near relation, as may be prescribed, of a paid employee of such registered society; or

....

3.There is no dispute that Rajalakshmi, daughter-in-law of the appellant was working as a Saleswoman in Vanapuram Primary Agricultural Cooperative Credit Society on 02.02.2009 and continues to work even today.

4.The contention of the learned counsel for the appellant is that the appellant had not appointed her and therefore, he cannot incur disqualification inasmuch as the appointment was much prior in point of time to the election of the appellant.

5.The second contention of the learned counsel is that the daughter-in-law of the appellant is not a cadre employee and therefore, she does not hold a cadre post, hence, Section 34 would not be attracted, which mentions a paid employee of a registered society. As a natural supplement to this argument, he also argues that the source of salary of the appellant also does not make her a cadre employee and in such circumstances, the disqualification as per the order dated 28.06.2019 is contrary to law and the said order deserved to be quashed. The learned Single Judge, therefore, committed an error in proceeding to dismiss the writ petition.

6.We have also heard the learned Special Government Pleader for the first respondent and we have also perused Section 34 (1) (a) as well as Rule 63 of the Tamil Nadu Co-operative Societies Rules, 1988, which defines relationship. There is no dispute that the relationship that can cause disqualification otherwise does exist, and the argument which is being advanced is that the employment was much prior to the election of the appellant and secondly, she does not fall within the definition of paid employee, as she is not holding a cadre post in the society.

7. We have also perused Rule 151(5)(ii), which is extracted hereinunder:-

"151. Procedure to be followed by Recruitment Bureau.

...

(5) (ii) In the case of recruitment of paid servants below the category of Junior Assistant including technical posts in such rank, such as Driver, Wireman, Carpenter, Fitter, Welder, Binder, Mechanic, Helper and such other Tradesmen and Salesman and Packer, the Recruitment Bureau for the Revenue District shall conduct interview by itself or, if the situation warrants, may constitute more number of interview boards consisting of subject experts and of experienced officers. The members of the Recruitment Bureau for the Revenue District or of the interview boards, as the case may be, shall award marks on the basis of the performance of the candidates in the interview. The Controller of Examinations shall rank the candidates in accordance with the average marks obtained in the interview and the Recruitment Bureau for the Revenue District shall finalise the list of selected candidates."

8. A perusal of the aforesaid Rule would indicate that the recruitment of paid servants is done through the Recruitment Bureau, which includes recruitment on the post of salesman/saleswoman. It is, thus, clear that the daughter-in-law of the appellant was recruited by the said process and she was a paid servant. The source of her payment does not make any difference inasmuch as the disqualification under Section 34 categorically says that a person shall not be eligible for being elected as a member of the Society if his near relation, as may be prescribed, is a paid employee. The words used in Section 34 read with Rule 151(5)(ii) leave no room for doubt that the legislature has clearly intended to include all paid employees and does not confine only cadre employees, as asserted by the learned counsel for the appellant. This distinction which was sought to be drawn is nowhere decipherable in the provisions aforesaid and therefore, we are of the considered opinion that the appellant's daughter-in-law who was appointed as a saleswoman being a paid employee/paid servant, the disqualification stood incurred by the appellant.

Accordingly, for the foregoing reasons, we find no merit in the argument of the learned counsel for the

appellant. The appeal fails and is hereby dismissed. No costs. Consequently, C.M.P.No.1816 of 2020 is also dismissed.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

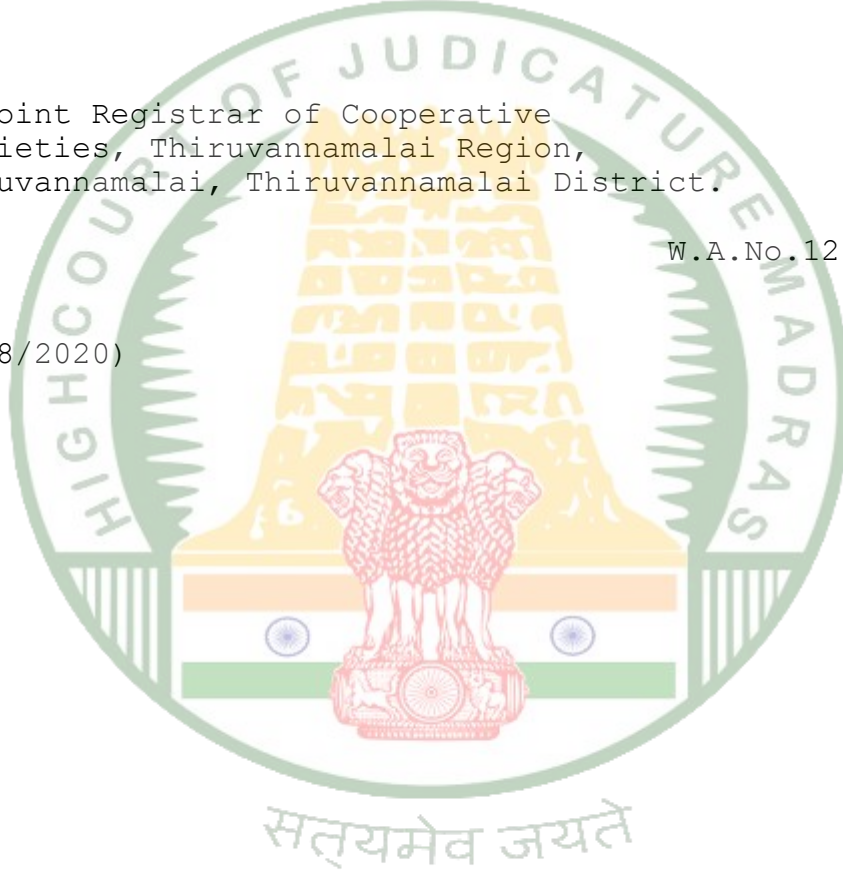
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To

1.The Joint Registrar of Cooperative
Societies, Thiruvannamalai Region,
Thiruvannamalai, Thiruvannamalai District.

W.A.No.129 of 2020

MG(CO)
CB(03/08/2020)



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