

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14556 of 2010

P.Manivannan

... Petitioner

vs.

- 1.The Special Officer,
The Ranipet Leather Finishing and
Servicing Industrial Cooperative Society Ltd,
Ranipet.
- 2.Industries Commissioner and Director of
Industries and Commerce and
Registrar of Industrial Cooperative Societies,
Chepauk, Chennai - 600 005. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the First Respondent relating to his order dated 15.12.2005 and those of the Second Respondent relating to his order No.Rc.833/ICS/2006 dated 12.04.2007 confirmed in No.Rc.27419/ICS/2007 dated 26.03.2010 in so far as they relate to the said order dated 15.12.2005 of the First Respondent and quash the same.

For Petitioner : Mrs.M.Meenatchi
For Respondents : Mr.L.S.M.Hasan Fizal

ORDER

Petitioner has come up with the present Writ Petition challenging the impugned order dated 15.12.2005 passed by the 1st Respondent and the order dated 12.04.2007 passed by the 2nd Respondent vide No.Rc.833/ICS/2006 confirmed in his order No.Rc.27419/ICS/2007 dated 26.03.2010.

2. According to the Petitioner, he was appointed as Supervisor in Ranipet Leather Finishing and Servicing Industrial Co-operative Society Ltd., Ranipet, Vellore District on 01.06.1983 and was promoted as Technical Assistant on 01.12.1989. Thereafter, the Management created the post of 'Administrative Officer' and promoted the Petitioner on

09.05.2001 and he worked in that post till 15.12.2005. While so, the 1st Respondent, by his order dated 15.12.2005, reverted the Petitioner to the lower post of Technical Assistant on the ground that, creation of the post of 'Administrative Officer' and the Petitioner's promotion were not made in accordance with the Tamil Nadu Co-operative Societies Act and the Rules made thereunder. Further, by a separate order dated 28.12.2005, the 1st Respondent ordered recovery of the difference of salary amounting to Rs.44,854/-.

3. Challenging both the orders passed by the 1st Respondent, the Petitioner made a Revision Petition dated 18.01.2006 before the 2nd Respondent under Section 153 of the Tamil Nadu Co-operative Societies Act (in short 'Act'). It is the case of the Petitioner that, in accordance with By-law No.37 (i) of the By-laws of the Respondent/Society, the Board of Management of the Society has created the post of 'Administrative Officer', prescribed duties for the post and also fixed the pay and allowances for the post.

4. According to the Petitioner, the 2nd Respondent, vide order No.Rc.833/ICS/2006 dated 12.04.2007, without proper appraisal of the said legal provisions, set aside the order dated 28.12.2005 passed by the 1st Respondent, relating to recovery of the amount of Rs.44,854/- and upheld the order dated 15.12.2005, reverting the Petitioner to the lower grade and also observed that, an Appeal against the said order will lie before the Government, under Section 154 of the Act. Accordingly, the Petitioner preferred an Appeal to the Government, but the Government transferred the Petition to the 2nd Respondent on the ground that, powers under Section 154 of the Act are exercisable by him. The 2nd Respondent, reviewed the matter and by an order dated 26.03.2010, confirmed his earlier order dated 12.04.2007. Challenging the same, the Petitioner is before this Court.

5. The 1st Respondent has filed counter Affidavit, wherein, it is stated that, on 09.05.2001, pursuant to a Resolution passed by the then Board of Management, the Petitioner had been promoted as Administrative Officer (Technical). However, the said Resolution was not approved by the General Body of the Society and by the Industrial Commissioner and Director of Industries and Commerce and Registrar of Industrial Co-operative Societies, which is mandatory under Rule 25(1)(d) of the Tamil Nadu Co-operative Societies Rules, 1988 (in short 'Rules') as per the provisions of the Act.

6. It is further stated in the counter that, even as per By-Law No.37(i) of the Ranipet Leather Finishing and Servicing Industrial Co-operative Society Ltd., the Board of Management is competent to prescribe from time to time, the strength of

establishment of the Society and the pay and allowance admissible to each member, subject to sanction of Budget and the approval of the General Body. According to the 1st Respondent, as the creation of the post of Administrative Officer (Technical) and the appointment of the Petitioner therein was neither budgeted nor approved by the General Body of the Society nor approved by the Registrar, the very by-law quoted by the Petitioner has been violated, which is contrary to the Act and the Rules.

7. Thus, it is the case of the 1st Respondent that, in order to rectify the illegality committed by the then Board of Management, the same had to be rectified by reverting the Petitioner to his original post prior to his alleged promotion. Since the very payments made to the Petitioner in the alleged Administrative Officer Post were illegal, the same was ordered to be recovered from the Petitioner and that, by rejecting the Petitioner's Revision Petition and Appeal, Respondents had acted in accordance with law.

8. Heard the learned counsel for the parties and perused the material documents available on record.

9. It is no doubt true that, for the services rendered in the higher post of Administrative Officer (Technical), the Petitioner would be entitled to wages and it may not be recovered. Even assuming that, the Petitioner was not given an opportunity of hearing before the original order of reversion, dated 15.12.2005 was passed, he was paid wages for the services rendered as 'Administrative Officer' and he cannot claim wages beyond 12.04.2007, on which date, the 2nd Respondent upheld the order of reversion passed by the 1st Respondent. That apart, the said order was reviewed and confirmed by the 2nd Respondent, by an order dated 26.03.2010. When the order of recovery dated 28.12.2005 passed by the 1st Respondent has been set aside by the 2nd Respondent, the Petitioner cannot have any grievance. Since the factual aspect has been dealt with by the Reviewing Authority, this Court finds no reason to interfere with the same.

In view of the foregoing, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

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- 2.Industries Commissioner and Director of
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Chepauk, Chennai - 600 005.

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