



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-08-2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

WRIT APPEAL NO.1818 OF 2019

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Vellakovil Primary Agricultural Cooperative
Credit Society Limited
rep. by its President
Muthur Road, Vellakovil - 638 111
Kangeyam Taluk
Tiruppur District

.. Appellant

Versus

1. The Revision Authority/Joint Registrar
of Cooperative Societies
Tiruppur Region
377, Kamarajar Salai
Palladam Road
Tiruppur - 641 604

2. S.unasekaran

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 31.01.2019 passed in W.P.No.14383 of 2014 on the file of this Court.

W.P.No.14383 of 2014:-

Writ Petition filed under article 226 of Constitution of India, to issue a writ of certiorari calling for the entire records relating to the impugned order passed by the first respondent in the proceedings Na.Ka.No.2594/2012/Ve3.1, dated 07.04.2014 and quash the same.

For Appellant : Mr.K.Premkumar
for Mr.R.Krishnamoorthy

For Respondents : Mr.L.P.Sivashanmuga Sundaram
Special Government Pleader for R1
Mr.V.Shanmuganathan for R2



JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant is the writ petitioner in WP No. 14383 of 2014 before the learned single Judge. The writ petition was filed praying to issue a Writ of Certiorari to quash the proceedings dated 07.04.2014 of the first respondent, by which, the revision filed by the second respondent herein was allowed. The learned single Judge, on consideration of the submissions made by both sides, dismissed the writ petition on 31.01.2019 and confirmed the order passed by the first respondent on 07.04.2014. The relevant portion of the order passed by the learned single Judge reads as follows:-

"4. Admittedly, there was an award passed by the Labour Court, Salem District directing reinstatement of the petitioner into service with all service and monetary benefits. Pursuant to such award, the second respondent was earlier promoted as Assistant Secretary by the very same petitioner. Subsequently, without assigning any reason whatsoever, based on the instructions given by the first respondent, that order of promotion was cancelled which was challenged before the Government and the Government had passed an order setting aside the order of the first respondent and directing the reinstatement of the second respondent in the post of Assistant Secretary. Pursuant to the same the second respondent was reinstated as Assistant Secretary. In the said circumstances, now it is not open to the petitioner once again to cancel the promotion without any valid reason whatsoever.

5. In the light of the above, this Court is of the considered view that the first respondent was right in allowing the revision and set aside the order of the first respondent which does not call for any interference at the hands of this Court and the writ petition deserves only to be dismissed.

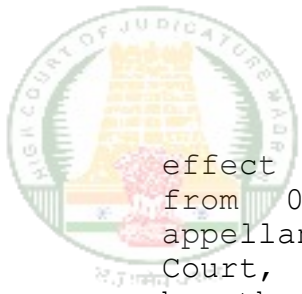
6. In the result, this writ petition is dismissed. No costs. Consequently, connected MP is closed."

2. Aggrieved by the aforesaid order passed by the learned single Judge, the appellant has filed this writ appeal.

3. Before examining the contentions urged in this appeal, the factual matrix of the case is required to be dealt with.



4. The second respondent herein was appointed as an Attender in the appellant Society on 13.05.1977. He was subsequently promoted as Clerk with effect from 01.01.1981. While he was working as such, he was placed under suspension by the then President with effect from 09.11.1983. The suspension order culminated in passing an order of termination on 28.02.1984, which the second respondent challenged by raising an Industrial Dispute before the Government. The dispute so raised by the second respondent was referred by the Government of Tamil Nadu to the Labour Court, Salem and it was taken on file as I.D. No. 32 of 1993. The Labour Court, by an award dated 14.09.1995 set aside the order of dismissal dated 28.02.1984 with a direction to reinstate the second respondent in service with back wages and all other attendant benefits. The award dated 14.09.1995 passed by the Labour Court was challenged by the appellant herein by filing W.P. No. 124 of 1996. The writ petition was dismissed on 01.02.2002 and the appeal filed thereagainst in W.A. No. 712 of 2002 was also dismissed by the Division Bench of this Court on 11.07.2007. During the pendency of the Writ Appeal, in order to avoid payment of last drawn wages to the second respondent, he was reinstated in service on 14.06.2007 subject to the result of the Writ Appeal No. 712 of 2002. After his reinstatement, the second respondent was given promotion to the post of "Assistant Secretary" on 01.01.2008 by the then Special Officer of the society. However, the promotion conferred to the second respondent was recalled and he was de-promoted to the post of Clerk from the post of Assistant Secretary by an order dated 09.08.2010 passed by the then Special Officer of the Society. But the Government passed an order in G.O. Ms. No.134, Co-operation, Food and Consumer Protection Department dated 03.12.2010 and set aside the order of demotion dated 09.08.2010 passed against the second respondent on technical grounds. On the basis of such order dated 03.12.2010 of the Government, the second respondent was reinstated in the post of Assistant Secretary. Notwithstanding the order passed by the Government, the Special Officer of the Society had issued a notice dated 15.04.2011 under Section 9A of The Industrial Disputes Act, 1947 for alteration/change of condition of service by once again reverting him back to the post of Clerk. Challenging the notice dated 15.04.2011, the second respondent filed W.P. No. 18767 of 2011 before this Court. This Court disposed of the writ petition on 11.08.2011 with a direction to the second respondent to prefer a statutory revision under Section 153 of the Tamil Nadu Cooperative Societies Act, before the Joint Registrar of Cooperative Societies. Accordingly, the second respondent preferred a revision application before the Joint Registrar of Cooperative Society. The Joint Registrar, after conducting an enquiry, passed an order on 07.04.2014 holding that the second respondent is entitled for all the promotional benefits as a Clerk with



effect from 01.01.1984 and as Assistant Secretary with effect from 01.01.1987 with corresponding pay and directed the appellant/Society to implement the award passed by the Labour Court, Salem in I.D. No. 32 of 1993 dated 14.09.1995. Aggrieved by the order dated 07.04.2014 the appellant has filed the aforesaid WP No. 14383 of 2014 before the learned single Judge and it was dismissed on 31.01.2019.

5. The learned counsel appearing for the appellant-Cooperative Society would vehemently contend that the first respondent has no authority, while exercising revisional jurisdiction under Section 153 of Tamil Nadu Cooperative Societies Act, to deal with the a dispute arising out of the provisions under The Industrial Disputes Act. It is contended that the second respondent is not entitled for conferment of promotion and therefore, the appellant, after following the procedure contemplated under Section 9-A of The Industrial Disputes Act, reverted the second respondent to the post of Clerk by the order dated 15.04.2011. The order dated 15.04.2011 cannot be treated as the one passed under the Tamil Nadu Cooperative Societies Act, rather, it was passed under the provisions of The Industrial Disputes Act. While so, the first respondent/Joint Registrar of Cooperative Societies, without authority or jurisdiction, had interfered with the order of reversion dated 15.04.2011 passed by the appellant. Above all, it is contended that the award passed by the Labour Court, Salem was already implemented and the second respondent was reinstated in service with effect from 14.06.2007. While so, the direction issued by the first respondent/Joint Registrar, directing the appellant to implement the award passed by the Labour Court, is without application of mind. In any event, the first respondent failed to note that the appellant had duly complied with the statutory provisions under Section 9A of The Industrial Disputes Act, while so, interference of the first respondent is not warranted. The learned single Judge also, without dealing with the above issue, dismissed the writ petition filed by the appellant and therefore, the learned counsel for the appellant/Society prayed for allowing this appeal.

6. The main ground on which the present appeal is filed is that the first respondent, in exercise of powers conferred under Section 153 of Tamil Nadu Cooperative Societies Act, has no jurisdiction to deal with the dispute arising out of the provisions of The Industrial Disputes Act and therefore, the order passed by the first respondent is without jurisdiction. It is further contended that the first respondent did not consider that the order of reversion came to be passed against the second respondent only after issuing notice under Section 9-A of The Industrial Disputes Act, 1947 and therefore, the first respondent ought not to have interfered with the order of

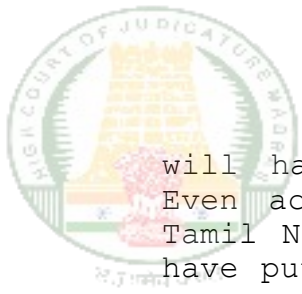


reversion passed against the second respondent.

7. Section 9-A of The Industrial Disputes Act deals with notice of change of service condition by the employer, who proposes to effect any change in the condition of service of any workman. In the present case, such a notice under Section 9-A was issued on 15.04.2011 by the appellant. As against the order of reversion, the second respondent preferred a revision before the first respondent. The first respondent framed a specific question as to the applicability of Section 9-A of the Act to the order of reversion passed against the second respondent and held that Section 9-A can be invoked in relation to 11 conditions incorporated under Schedule IV of the Act, but none of the conditions are satisfied in the present case. It was also stated that there is no provision for promotion or reversion in Schedule IV of the Act or Section 9-A can be invoked to decide whether promotion given to an employee is right or wrong. Therefore, the first respondent has concluded that the promotion given to the second respondent cannot be revoked or rescinded by invoking Section 9A of the Act. Such a conclusion arrived at by the first respondent is proper and it is in accordance with law.

8. The first respondent also stated in the order dated 07.04.2014 that the Labour Court has already passed an award on 14.09.1995 in ID No. 32 of 1993 which was also affirmed by this Court in the writ petition and in Writ Appeal, thereby the award passed by the Labour Court has become final. It is in those circumstances, the first respondent had directed the appellant to implement the award passed by the Labour Court especially when the appellant did not furnish any details to show that the award passed by the Labour Court was implemented. Having regard to the above, we find that the order passed by the first respondent cannot be said to be without authority of law or jurisdiction. In fact, the second respondent has filed the revision before the first respondent as directed by this Court in the order dated 11.08.2011 in W.P. No. 18767 of 2011.

9. Even on merits, when the second respondent was working as a Clerk, he was suspended on 09.11.1983 and consequently, he was terminated from service on 28.02.1984. Such an order of termination was set aside by the Labour Court, by an award dated 14.09.1995. Therefore, it is deemed that the second respondent continued to discharge the post of Clerk from 28.02.1984, the date of termination of his service. In other words, the second respondent deemed to continuously discharge the post of Clerk from 01.01.1981, the date on which he was given promotion as Clerk and had put in considerable number of service in such post. In such event, the order of suspension dated 09.11.1983 and the order of termination passed against him on 28.02.1984



will have no statutory force to defy him further promotion. Even according to the appellant, as per Rule 149 (1) of The Tamil Nadu Cooperative Society Rules the second respondent must have put in three years of service in the post of Clerk for the purpose of getting further promotion to the post of Assistant Secretary, but even before completion of three years from the date of his reinstatement, he was given promotion to the post of Assistant Secretary.

10. Admittedly, the award passed by the Labour Court, Salem in I.D. No. 32 of 1993 dated 14.09.1995 was subjected to challenge by the appellant herein by filing a Writ Petition before this Court in WP No. 124 of 1996 and it was dismissed on 01.02.2002. The writ appeal filed thereagainst before the Division Bench of this Court in W.A. No. 712 of 2002 was also dismissed on 11.07.2007 and therefore, the award passed by the Labour Court reached a finality. While so, the order dated 07.04.2014 passed by the Joint Registrar of Cooperative Society, directing the appellant to implement the award passed by the Labour Court, Salem is perfectly in order. The learned single Judge also taken note of the aforesaid fact and dismissed the writ petition filed by the appellant. We find no merits in the contentions urged before us by the appellant.

11. In the light of the above, we do not find any infirmity in the order dated 31.01.2019 passed in W.P. No. 14383 of 2014. The Writ Appeal therefore fails and it is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rsh

To

The Revision Authority/Joint Registrar
of Cooperative Societies, Tiruppur Region
377, Kamarajar Salai, Palladam Road, Tiruppur - 641 604.

+1cc to Mr.R.Krishnamoorthy, Advocate, S.R.No.27429
+1cc to Mr.V.Shanmuganathan, Advocate, S.R.No.27202
+1cc to the Government Pleader, S.R.No.27494

WA.No.1818 of 2019

KS(CO)
CS/18/09/2020