

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM :

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

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3960 of 2019
and C.M.P.No.24833 of 2019

R.Dhanasekaran Appellant

-vs-

- 1.The Joint Registrar of Co-operative Societies and Common Cadre Authority, Thiruvarur Region, Thiruvarur.
- 2.The Deputy Registrar of Co-operative Societies, Thiruvarur Circle, Thiruvarur District.
- 3.The President
Z 421 Kachanam Primary Agricultural Co-operative Credit Society Ltd.,
Kachanam 610 201, Thiruthuraipoondi Taluk, Thiruvarur District. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 18.10.2019 passed in W.P.No.25874 of 2019 on the file of this Court.

Prayer in W.P.No.25874 of 2019:

Writ Petitioner filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to Call for the records relating to the orders of the first Respondent in NA.KA.NO 2323/2019 THO.VESA(7) dated 16.7.19 and quash the same and consequently direct the respondents to permit the Petitioner to continue in the third respondent society.

For Appellant : Mr.S.Kamadevan

For Respondents : Mr.Bala Ramesh
Spl.G.P. For RR 1 and 2

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard learned counsel for the appellant and learned counsel for respondents 1 and 2. From the nature of order that we propose to pass, it is not necessary to issue notice to the third respondent or await his arrival in the present proceedings.

2.The appellant claims that he was in-charge Secretary of Kachanam Primary Agricultural Credit Co-operative Society Ltd., Thiruvarur District. The respondent no.1, treating the appellant to be a Secretary and a member of the Common Cadre, exercised the statutory powers under Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 and has transferred him to Mannargudi. This order of transfer dated 16.07.2019 came to be challenged by the appellant before the learned Single Judge contending that he holds the substantive post of Accountant and was only made to officiate as a Secretary, hence, he does not fall within the definition of common cadre and therefore, such regulations do not apply on him empowering the first respondent to transfer him.

3.The writ petition was dismissed holding that the appellant was, in fact, functioning as a Secretary and therefore, the power exercised is valid, inasmuch as there was an averment to the effect that he had been promoted as a Secretary on 21.08.2017. The said document of Resolution is alleged to have been tampered or removed and therefore, the learned Single Judge concluded that the appellant was working as a Secretary and hence, the impugned order did not require any interference.

4.The appellant is in appeal questioning the correctness of the impugned judgment dated 18.10.2019 on the same grounds and a counter-affidavit has been filed on behalf of respondent no.1 before us. In paragraph 6 (a), it has been asserted that vide Resolution No.1 - 6 dated 21.08.2017, the appellant had been promoted as a Secretary. However, paragraph 6 (c) states as under:-

6.(c) In the 3rd respondent Society, 5 employees are working and on perusal of Service Book entries of these employees reveals that entries like increment,

surrender leave sanction, leave sanction, promotion have not been made after 2011. As such it is unable to furnish the details like on promotion when the employees joined in the new post, when increment sanctioned, how much days are permitted to surrender for encashment of privilege leave and how many days of leave were availed by the employees;"

5. Again in paragraph 6 (m), it has been stated that the appellant was promoted as Secretary by the third respondent, but, it further goes on to recite that no file was maintained to show when the appellant joined as Secretary. It is, however, asserted that the appellant was working as Secretary. In paragraph 6 (n) of the counter-affidavit, certain more facts have been narrated to urge that the matter relating to fixation of pay and maintenance of the Service Book was the duty of the appellant himself, who failed to do so and therefore, any fault either on the part of the appellant or respondent no.3 cannot exclude the appellant out of the category of a Secretary, which is obviously within the common cadre regulations.

6. On having considered the submissions raised, it is no doubt true that the appellant had been appointed as an Accountant, but his status of promotion as a Secretary is absolutely unclear, keeping in view the averments that have been made in the counter-affidavit referred to hereinabove. The respondent no.1 claims to have no knowledge of the date of joining and even as to the payments to which the appellant was entitled to as Secretary were uncertain.

7. The aforesaid facts, therefore, lead to the conclusion that without asserting as to whether he had been promoted or had been substantively appointed as a Secretary, action has been taken transferring him vide order dated 16.07.2019 by the first respondent. The learned Single Judge has assumed that since on the basis of the records available, the appellant had been, in effect, working as a Secretary, and therefore, he was governed by the common cadre regulations for being transferred from one place to another.

8. We are unable to agree with the aforesaid conclusion drawn by the learned Single Judge, inasmuch as in order to establish a fact, the very foundation and material of the promotion of the appellant as a Secretary appears to be uncertain as is evident from the stand taken in the counter-affidavit of the respondents. The very material including the Resolution and the consequential letter of appointment or maintenance of Service Record are all determinative of the factor of promotion of the appellant, which documents are either not available or have not

been examined by respondent no.1. In the absence of a firm determination about the actual status of the appellant as to whether he was working as a permanently appointed Secretary or was simply an in-charge Secretary, the applicability of common cadre regulations cannot be assumed as a matter of attribute merely because he was officiating as a Secretary. The duty of the Registrar was, therefore, to have summoned all the documents and after assessing the same, should have recorded a clear finding as to whether the appellant had been promoted and was working against the substantive post of Secretary or not. Since such a clear finding is unavailable on record, we are satisfied that the exercising of powers by respondent no.1 transferring the appellant on 16.07.2019 was not justified.

The appeal is, therefore, allowed. The order dated 16.07.2019 is quashed and the impugned judgment dated 18.10.2019 is set aside. The respondent no.1 is directed to examine all the necessary details and facts necessary for coming to the conclusion that the appellant had been actually and substantively promoted as a Secretary and therefore, in the event such facts are established, it will be open to the Registrar-respondent no.1 to exercise such powers that may be available in law. The said exercise may be concluded expeditiously preferably within six weeks of the date of presentation of a certified copy of this order. There shall be no order as to costs. Consequently, C.M.P.No.24833 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

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सत्यमेव जयते
Sub Assistant Registrar

sra

To

1. The Joint Registrar of Co-operative,
Societies and Common Cadre Authority,
Thiruvavarur Region, Thiruvavarur.

2.The Deputy Registrar of Co-operative,
Societies, Thiruvarur Circle,
Thiruvarur District.

3.The President,
Z 421 Kachanam Primary Agricultural
Co-operative Credit Society Ltd.,
Kachanam 610 201, Thiruthuraipoondi
Taluk, Thiruvarur District.

+lcc to Mr.S.Kamadevan, Advocate Sr.8264

+lcc to the Government Pleader Sr.8544

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