



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.01.2020
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**W.P (MD)No.11716 of 2014
and
M.P (MD)No.2 of 2014**

P.Mayalagu .. Petitioner

Vs.

1.The Joint Registrar,
Co-operative Societies,
Office of the Joint Registrar of
Co-operative Societies,
Ramanathapuram Region,
Ramanathapuram District.

2.The President,
N.N.223, Mangalakudi Primary Agricultural
Co-operative Bank Ltd.,
Mangalagudi Post,
Thiruvadanai Taluk,
Ramanathapuram District.

3.M.Ravi,
Secretary,
N.N.223, Mangalakudi Primary Agricultural
Co-operative Loan Society,
Mangalagudi Post,
Thiruvadanai Taluk,
Ramanathapuram District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order of the 1st respondent in Na.Ka.No.6933/2013/Sa Pa dated 17.04.2014 confirming the order of 2nd respondent dated 02.04.2012, quash the same and consequently direct the respondents 1 and 2 to promote the petitioner as secretary of the 2nd respondent society in the place of the 3rd respondent with all attendant benefits from 01.04.2013.

For Petitioner : Mr.M.Saravanakumar
For Respondent No.1 : Mr.S.Dhayalan,
Government Advocate.
For Respondents 2 & 3 : No appearance



ORDER

This writ petition has been filed for issuance of a Writ of Certiorari and Mandamus to call for the records of the impugned order of the 1st respondent in Na.Ka.No.6933/2013/Sa Pa dated 17.04.2014 confirming the order of 2nd respondent dated 02.04.2012, quash the same and consequently direct the respondents 1 and 2 to promote the petitioner as secretary of the 2nd respondent society in the place of the 3rd respondent with all attendant benefits from 01.04.2013.

2.The case of the petitioner is that the petitioner was appointed as Attender on 01.04.1994 in the 2nd respondent Co-operative Bank on consolidated pay and thereafter, based on the employment seniority, he was absorbed in the regular time scale of pay on 01.10.1996. His appointment was made within the cadre strength and his services were regularised. He was promoted as Clerk on 02.01.2000. Contrary to the bye-laws of the Society and the principles of natural justice, the then Special Officer of the 2nd respondent Co-operative Society, passed a reversion order dated 14.02.2002 against the petitioner, against which, he filed Revision Petition No.1 of 2003 and the 1st respondent by order dated 30.09.2003 allowed the same and also directed the 2nd respondent to get an approval of the fixation of cadre strength and to give preference to the petitioner for promotion in the arising vacancy. In the meantime, the 2nd respondent appointed the 3rd respondent as clerk on 01.09.1996 contrary to the rules and also illegally promoted him to the post of Senior Clerk on 14.12.2002. As per the decision of the Full Bench of this Court, the 2nd respondent society passed Resolution No.1 on 20.09.2007 stating that since the appointment of the 3rd respondent was made beyond the cadre strength and his services cannot be regularized, on humanitarian ground he may be permitted to continue as salesman in one of the fair price shops functioning under the control of the 2nd respondent society.

3.According to the petitioner, the secretary of the 2nd respondent society viz., Mr.Arumugam attained the age of superannuation on 31.03.2012 and the 2nd respondent illegally promoted the 3rd respondent as Secretary by resolution dated 02.04.2012. Therefore, he filed W.P(MD)No.3951 of 2012 seeking to direct the 1st respondent to consider him for promotion and this Court directed him to approach the competent authority, upon which, he filed a revision petition in Revision Petition No.11 of 2013 before the 1st respondent against the illegal promotion given to the 3rd respondent. But, the 2nd respondent dismissed same. Against which, the present writ petition has been filed.

4.The learned counsel for the petitioner submitted that the 3rd respondent was promoted as Secretary contrary to the rules and bye-laws of the society. The petitioner is the only candidate for



promotion to the post of Secretary. The initial appointment of 3rd respondent was made contrary to the fixation of the cadre strength. In the earlier revision filed by the petitioner in Revision Petition No.1 of 2003, the 1st respondent held that preference should be given to the petitioner in further promotion.

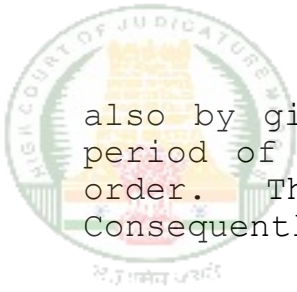
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5.The learned Government Advocate appearing for the first respondent submitted that the appointment of the third respondent is a regular one and he was promoted to the post of clerk and he is senior to the petitioner and he has requisite qualification for getting promotion to the post of Secretary and there is no violation in giving promotion to the 3rd respondent.

6.Despite notice being served on the respondents 2 and 3 and their names are being printed in the cause list, there is no representation on behalf of them either in person or through counsel.

7.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the 1st respondent and perused the materials available on record.

8.It is an admitted fact that the petitioner was appointed as Attender and based on the employment seniority, he was absorbed in the regular time scale of pay on 01.10.1996 and he was promoted to the post of Clerk on 02.01.2000. Against the reversion order passed against the petitioner, he filed Revision Petition No.1 of 2003, in which, the 1st respondent directed the 2nd respondent to give preference to the petitioner for promotion. The 3rd respondent was initially appointed as Clerk in the society on 01.09.1996. As his appointment was made beyond the cadre strength and his services cannot be regularised, as per the Judgment of the Full Bench of this Court in **L.Justine and another v. The Registrar of Co-operative Societies and 2 others** reported in **2002(4) CTC 385**, the 2nd respondent society passed a resolution dated 20.09.2007 permitting the 3rd respondent to continue as salesman in one of the fair price shops functioning under the control of the 2nd respondent society. Without considering the above aspects, the 2nd respondent has given promotion to the 3rd respondent, vide impugned order, dated 02.04.2012, against which, the petitioner also filed Revision Petition No.11 of 2013. But, the 1st respondent also without considering his earlier order passed in Revision Petition No.1 of 2003, dated 30.09.2003 and due to non-application of mind, has dismissed the same, vide impugned order, dated 17.04.2014. Moreover, the services of the 3rd respondent in the post of senior clerk was also not regularised, which is the feeder category to the post of secretary. Therefore, the impugned order, dated 17.04.2014 passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent and the 1st respondent is directed to pass orders afresh by considering all the materials placed before him and



also by giving opportunity of hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Joint Registrar,
Co-operative Societies,
Office of the Joint Registrar of
Co-operative Societies,
Ramanathapuram Region,
Ramanathapuram District.

+1 CC to SPL.GP (SR-3135[F] dated 27/01/2020)

+2 CC to M/s.V.MUTHUKAMATCHI, Advocate (SR-3300[F] dated 28/01/2020)

**ORDER MADE IN
W.P (MD) No.11716 of 2014
24.01.2020**

MK (06.02.2020) 4P 5C