



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE Mr. JUSTICE KRISHNAN RAMASAMY

W.A.No.1572 of 2021 and C.M.P. No.9918 of 2021

1.The Registrar of Cooperative Societies

N.V.Natarajan Maligai
E.V.R. Periyar Salai
Kilpauk, Chennai - 10

2.The Regional Joint Director of Cooperative Societies

Dharmapuri Regional Office
Athiyaman Park
Collectorate Backside
Dharmapuri District

3.The Deputy Registrar of Cooperative Society

Dharmapuri Regional Office
Athiyaman Park, Collectorate Backside
Dharmapuri District

4.The President of S1002 Parayapatti Pudur (PACCS)

Parayapatti Pudur Post
Papireddipatti Taluk
Dharmapuri District - 636 903

5.The Additional Registrar of Cooperative Societies

(Sales Scheme and Development)(Full incharge)
N.V.Natarajan Maligai
E.V.R. Periyar Salai
Kilpuak, Chennai - 10

(impleaded as 5th respondent vide order dated 26.11.2019 in Wmp
33285/19 in W.P.2780/18

... Appellants/Respondents

Vs.

K.Mariappan

... Respondent/Petitioner



PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.11.2019 passed in W.P. No.2780 of 2018.

Prayer in W.P. No.2780 of 2018: Writ of certiorarified mandamus to call for the records of the respondents resulting in the 4th Respondents resolution dated 10.09.2008 which gives retrospective effect from 01.08.2008 through the resolution of the then special officer vide No.300 and the same was confirmed by the 5th Respondents impugned order dated 05.10.2010 passed in Na.Ka.No.3164/2010/SaPa and quash the same and direct the Respondents to regularize the post of Salesman with effect from the date of initial appointment of the petitioner in the post of Salesman and pay all attendant monetary benefits and back wages. (prayer amended vide court order dated 26/10/2019 made in Wmp 33400/19 in WP 2780/18).

For Appellants : Mr.R.Neelagandan
State Government Counsel

JUDGMENT
(Delivered by PUSHPA SATHYANARAYANA, J.)

This intra-court appeal is filed by the Cooperative Societies against the order of the learned single Judge passed in W.P. No.2780 of 2018 dated 26.11.2019, wherein the writ court directed the appellants herein to regularise the services of the writ petitioner from the date of his appointment to the post of Salesman.

2. The writ petitioner was originally appointed as Packer on 10.10.1993 by virtue of Resolution No.120 dated 11.10.1993 in the proceedings of the Special Officer/Cooperative Society Sub Registrar, Paraiyapattipudur. After satisfactory service, he was promoted as a Salesman on 11.3.1999 vide proceedings of the President, Primary Agricultural Cooperative Society Bank, Paraiyapattipudur. There was a revision of the salary of the writ petitioner, as per 18(1) settlement arrived between the Taimil Nadu Primary Agricultural and Co-operative Credit Society Employees' Association and the President of the Petitioner Society.



3. The writ petitioner was promoted as Salesman only after completing the requisite qualification for the same, when the vacancy arose for Salesman. However, the post of the writ petitioner was not regularised and he was only drawing a consolidated pay in the post of Packer, as the same did not fall within the cadre strength of the Society. It was further stated that since the appointment was not in accordance with Rule 49 of the Tamil Nadu Cooperative Societies Act and Rules, the post of the writ petitioner cannot be regularised as the appointment of the writ petitioner as a Packer originally was not through the Employment Exchange and his promotion as Salesman with effect from 01.03.1999 was also only pursuant to the Resolution No.279 of the Special Officer of the Society.

4. The said rejection order refusing to regularise the services of the writ petitioner was put to challenge in the writ petition, which was allowed by the learned single Judge on the ground that the very appointment was made by virtue of the Resolution of the 4th appellant society. Therefore, it cannot be contended that the post of Packer was not falling within the cadre strength of the society. Secondly, after the promotion to the post of Salesman, the writ petitioner was paid the basic pay of Rs.1,525/- per month and he has been continuing as Salesman with the 4th appellant for more than 27 years. He is also drawing the salary of Salesman for about 10 years. Having allowed him to serve the society for 27 years, it is not appropriate for the appellants to contend that the appointments were not under Rule 49(1) of the Tamil Nadu Cooperative Societies Rules. Having extracted the services of the writ petitioner for more than two and half decades, the appellant cannot contend that the post of a Packer was not an approved post in the cadre strength of the Society and his appointment was not a regular one.

5. The learned State Government Counsel placed his reliance on the decision of the Hon'ble Supreme Court in A.Umarani vs. Registrar, Cooperative Societies and others reported in (2004) 7 SCC 122 to contend that those who got appointment by back door cannot be regularised as the appointments are made in contravention of the statutory rules. We failed to understand that the appointment was made only by Resolution originally as a Packer on 11.10.1993 and thereafter, promoted the writ petitioner as a Salesman on 11.03.1999. The



salary of the writ petitioner had been disbursed only by the Society, which has regular auditing being done. While so, when the regularisation was sought for by the writ petitioner, it cannot be stated that his appointment itself was through back-door entry and that his services cannot be regularised. It is unfortunate that the appellants have to take 27 years to declare that the appointment of the writ petitioner was not in accordance with the law, when they had engaged him in the Society and he has rendered his services to the same.

6. It is also relevant to point out that the writ petitioner, pursuant to 18(1) settlement was receiving the revised scale of pay, which was given effect to and acted upon till 2008. Once the 18(1) settlement has been given effect to and acted upon, it amounts to regularisation of the writ petitioner's post as Salesman and the same has to be regularised. When the appointment and the promotion of the petitioner were through Resolutions and the salaries were disbursed by the Society, the denial of regularisation on the ground that it was a direct appointment, is unfair. Even presuming so, the writ petitioner alone cannot be punished even the persons in charge of the same also should be taken to task.

7. Therefore, considering the qualification and the fact that the writ petitioner had been employed in the Ration shop as per the by-laws of the Society for more than twenty five years, his service had to be regularized as has been directed by the learned single Judge. In view of the above discussions, we see no error in the said order of the learned single Judge to interfere with the same.

8. Accordingly, the writ appeal is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petitioner, is closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

Asr

