



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.4927 of 2012

and

M.P. (MD)No.2 of 2012

WEB COPY

1.R.Elango (died)
2.M.Thirugnanaselvi
3.E.Tamilselvan
4.E.Kanimozhi ... Petitioners
(Petitioners 2 to 4 were substituted
vide order dated 08.02.2021
in WMP(MD)No.2001 of 2021)

Vs.

- 1.The Registrar,
Registrar of Co-operative Societies Office,
Keelpauck,
Chennai.
- 2.The Joint Registrar,
Joint Registrar of Co-operative Societies Office,
Trichy Division,
Trichy-20.
- 3.The Special Officer,
R-828, Viragalur,
PACCS, Viragalur Post,
Lalgudi Taluk.
4. S.Chelladurai ... Respondents
(R.4 was impleaded vide Court order
dated 24.08.2020 made in WMP(MD)No.10818
of 2019)

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari and Mandamus to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.7954/11/Sa.Pa., dated 31.01.2012 and the consequential order passed by the third respondent dated 01.03.2012 and quash the same as arbitrary, illegal and violative of the provisions in Co-operative Societies Act 1983 and consequently direct the respondents to permit the petitioner in



continue his service as Secretary and to pay all withhold benefits till today.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.D.Muruganandam
Additional Government Pleader
for R.1 to R.3
: No Appearance for R.4
* * * * *

ORDER

The Writ Petition is filed seeking for issuance of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.7954/11/Sa.Pa., dated 31.01.2012 and the consequential order passed by the third respondent dated 01.03.2012 and quash the same and consequently direct the respondents to permit the petitioner to continue his service as Secretary and to pay all withhold benefits till today.

2. It is represented that during the pendency of the writ petition, the writ petitioner died and hence, the petitioners 2 to 4 are brought on record as legal representatives of the first petitioner.

3. The case of the petitioner is that the petitioner was originally appointed as writer in Viragaloor Primary Agricultural Co-operative Credit Society in the year 1990 and from the date of appointment till the date of filing of the writ petition, he was working without any adverse records. In the above said Society, the petitioner was in Rank-2 in the seniority list, wherein one Chelladurai was in Rank-1 and he worked in the post of senior writer. As the post of Secretary to the said Society fell vacant during the relevant period, the said Chelladurai was appointed as in-charge Secretary to the said Society. While he was working as in-charge Secretary, the said Chelladurai was issued with a charge sheet dated 07.11.2006 and based on the said charge, the Special Officer of the said Society withheld the increment of said Chelladurai cumulatively for two years and also reduced the seniority to next level to that of the petitioner. Challenging the said punishment, Chelladurai filed a revision petition before the second respondent under Section 153 of the Co-operative Societies Act. The revisional authority confirmed the first punishment, however the second punishment was modified on the ground that it was not in terms and the matter was remanded back to original authority for fresh consideration.



4. In the meantime, the petitioner was given promotion to the post of Secretary. Consequent upon the revisional order, the revisional authority, by way of *suo motu* revision, revisited the promotion given to the petitioner and after elaborate discussions, set aside the promotion given to the petitioner and also ordered to recover the excess of salary paid to the petitioner for the post of Secretary. The second punishment by reverting the Chelladurai was set aside by the second respondent. Challenging the order passed against the petitioner by the second respondent, the present Writ Petition is filed.

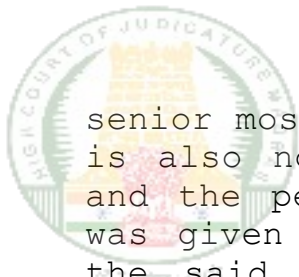
5. Learned Counsel appearing for the petitioner would submit that though the petitioner was fixed in Rank-2 and Chelladurai was in Rank-1 as per the seniority list, the petitioner was given promotion as Secretary, consequent to the punishment imposed on Chelladurai and the same was cancelled by the second respondent, which is non-erst in law. Further, the learned Counsel would submit that the salary in respect of the Secretary post was paid cannot be ordered to recover, since there was no misappropriation on the part of the petitioner in his promotional post. Accordingly, the learned Counsel would pray for appropriate orders.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that two punishments were imposed against Chelladurai after conducting disciplinary proceedings and the petitioner was given promotion hurriedly without giving sufficient opportunity to Chelladurai to prefer an appeal against the punishments. He would further submit that the award of punishment withholding of two years increments with cumulative effect on Chelladurai was confirmed and with regard to the punishment of down grading Chelladurai was set aside by the second respondent and the matter was remitted back to the third respondent for fresh consideration.

7. Learned Additional Government Pleader appearing for the respondents 1 to 3 would further submit that the second respondent has taken a *suo motu* revision and after elaborate discussion, cancelled the order of promotion given to the petitioner. Hence, the learned Additional Government Pleader would pray for dismissal of the writ petition.

8. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3 and perused the materials placed on record.

9. The facts in the present case are not in dispute. The petitioner himself admitted that the said Chelladurai is the



senior most person and next to him, the petitioner was placed. It is also not disputed that Chelladurai was promoted as Secretary and the petitioner was working as senior clerk. The petitioner was given promotion to the post of Secretary on the ground that the said Chelladurai visited two charges and imposed with two punishments and the first punishment was withholding of increment with cumulative effect for two years and the second punishment was downgrading Chelladurai from his original seniority to the second place that was next to the petitioner. The said punishment was set aside by the second respondent under Section 153 of the Tamil Nadu Cooperative Societies Act and the said order has also become final. When the order passed by the third respondent itself is set aside and the matter was remanded back to the original authority, the earlier post occupied by the said Chelladurai is restored. Hence, automatically the petitioner is not entitled to hold the said post. Even in the promotion itself, the petitioner was transferred to another Society only on deputation. Since the petitioner was appointed in the post of Chelladurai and when the said Chelladurai is restored to his original position, claiming the said post by the petitioner is unsustainable one.

10. With regard to the recovery of excess salary which was received at the time of holding the post of Secretary by the petitioner, admittedly, the petitioner, at the relevant point of time, was functioning as Secretary. There was no misrepresentation on the part of the petitioner while he was holding the promotional post. Hence the order of recovery of the amount paid to the petitioner, while he was holding the post of Secretary is unsustainable one.

11. In view of the above discussions, the petitioner is not entitled to the post of Secretary and the recovery order passed against the petitioner is set aside.

12. With the above observations, this Writ Petition is disposed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

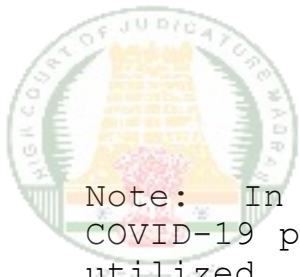
Assistant Registrar(AS)

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/ /2021

Sub Assistant Registrar(CS)

SSL



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Registrar,
Registrar of Co-operative Societies Office,
Keelpauck, Chennai.
- 2.The Joint Registrar,
Joint Registrar of Co-operative Societies Office,
Trichy Division, Trichy-20.
- 3.The Special Officer,
R-828, Viragalur,
PACCS, Viragalur Post,
Lalgudi Taluk.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-4168[F]
dated 10/02/2021)

+1 CC to M/s.GP (SR-4244[F] dated 10/02/2021)

W.P(MD)No.4927 of 2012

09.02.2021

SSS(CO)

TR(02.03.2021) 5P 6C