



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)Nos.1545 and 1947 of 2021

and W.M.P. (MD)Nos.1324, 5767, 1666 and 5769 of 2021

WEB COPY

T.Vimala Bai

... Petitioner in both W.Ps

vs.

1.The Joint Registrar of Co-operative Societies/
Common Cadre Authority,
Kanyakumari Region,
Kanyakumari District.

2.The Deputy Registrar of Co-operative Societies,
Thuckalay Region,
Kanyakumari District.

3.The President,
Kumarankudi Primary Agricultural Co-operative
Credit Society,
Kumarankudi,
Kanyakumari District.

4.The President,
Peechiparai Primary Agricultural Co-operative
Credit Society,
Peechiparai,
Kanyakumari District.

... Respondents 1 to 4
in both W.Ps.

5.Mr.S.T.Thanga Crose

... 5th respondent in
W.P. (MD)No.1947/2021

PRAYER IN W.P. (MD)NO.1545/2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of transfer passed by the 1st respondent herein in his proceedings vide Na.Ka.No.2870/2020/Thovesa (2), dated 11.01.2021 and quash the same and consequently direct the 1st respondent not to disturb the petitioner's position in the 3rd respondent society.

PRAYER IN W.P. (MD)NO.1947/2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of suspension passed by the 1st respondent herein in his proceedings vide Na.Ka.3024/2019 Thovesa, dated 29.01.2021 and quash the same and consequently direct the 1st respondent to permit the petitioner to continue in service before the 3rd respondent society.



For Petitioner : Mr.B.Brijesh Kishore
(In both W.Ps)

For Respondents : Mr.P.Subbaraj,
(In both W.Ps) Government Advocate for R1 & R2

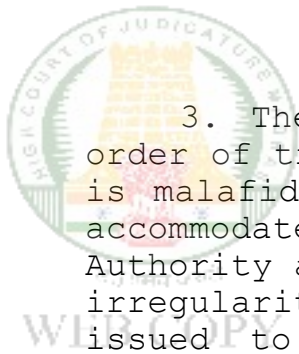
Mr.D.Shanmugarajasethupathy for R3
Mr.V.H.S.Prathap for R4

Mr.M.Suresh for R5
in W.P. (MD)No.1947/2021

COMMON ORDER

Both the Writ Petitions filed by the Writ Petitioner challenging the order of transfer dated 11.01.2021 and the order of suspension dated 29.01.2021.

2. According to the petitioner, she joined in service as Clerk in N.2071 Ponmani Primary Agricultural Co-operative Credit Society. Thereafter, promoted as Manager in the year 2008. Again, in the year 2017, she was promoted and was posted as Secretary in the same Society. Thereafter, as per the proceedings of the first respondent on 16.07.2019, she was posted as Secretary in Y.256 Kulasekharam Primary Agricultural Co-operative Credit Society. The said society did not relieve the incumbent Secretary and hence, the petitioner could not join in the transferred society. In view of the same, the first respondent cancelled the transfer order dated 16.07.2019, and again transferred the petitioner to the third respondent society. Subsequently, by the impugned order dated 11.01.2021, the first respondent transferred the petitioner from the third respondent Society to the fourth respondent Society. The first respondent on the same day, transferred one Thanga Crose, who is the fifth respondent in W.P.(MD)No.1947 of 2021 and transferred him to the third respondent society. In the transfer order of the fifth respondent in W.P.(MD)No.1947 of 2021, dated 11.01.2021, the first respondent has stated that the post of Secretary in third respondent society is vacant. The second respondent's office made an endorsement dated 19.01.2021, in the transfer order and communicated to the petitioner on 21.01.2021 and served the same on 23.01.2021. According to the petitioner, she is not relieved from third respondent society. Hence, she filed W.P(MD)No.1545 of 2021, challenging the order of transfer and this Court granted interim stay on 29.01.2021. As per the order of this Court dated 29.01.2021, the learned Additional Government Pleader communicated the said order to the respondents 1 to 3 on the same day. In spite of the said order, the first respondent by the order dated 29.01.2021, impugned in W.P.(MD)No.1947 of 2021, temporarily suspended the petitioner from the service with effect from 29.01.2021 to 31.03.2021.



3. The learned counsel for the petitioner contended that the order of transfer of the petitioner to the fourth respondent society is malafide and the petitioner is transferred only with a view to accommodate the fifth respondent. The petitioner is a Common Cadre Authority and she can be transferred only on the ground of financial irregularity or mismanagement. Within 1 ½ years, three orders were issued to the petitioner from 16.07.2019 to 11.01.2021. The Society, to which the petitioner is transferred, is 30 kms away from third respondent Society and it is hill area. The petitioner is maintaining her aged father-in-law and mother-in-law.

4. The learned counsel for the petitioner further submitted that the first respondent, knowing the interim order granted by this Court, staying the order of transfer, by the order dated 29.01.2021, suspended the petitioner from service, which is arbitrary. Challenging the said order of suspension, the petitioner filed W.P. (MD)No.1947 of 2021. This Court, by the interim order dated 02.02.2021, stayed the order of suspension. Now, the petitioner is working in the Society for three months till 31.03.2021 and now, the petitioner is continuing in the said society and prayed for setting aside both the orders.

5. The third respondent filed counter affidavit along with the vacate stay petition.

6. In the counter, the third respondent submitted that the transfer order of the petitioner is dated 11.01.2021, but the first respondent signed the same on 12.01.2021. Similarly order of transfer of the fifth respondent also is dated 11.01.2021, but the same was signed on 13.01.2021 and therefore, there is no illegality in mentioning in the order of transfer of the fifth respondent that the post of Secretary in the third respondent Society is vacant. The order transferring the petitioner was communicated to the petitioner on 21.01.2021 and she was relieved on the same day. The fifth respondent joined and took charge on 21.01.2021. The petitioner has not handed over the jewel locker key and safety room key and other materials to the fifth respondent in W.P.(MD)No.1947 of 2021. Hence, the third respondent Society passed the following three resolutions:

(i) accepting the transfer of the petitioner from the 3rd respondent society and ratification of relieving order issued to the petitioner;

(ii) ratification for having joined the above said T.Thanga Crose as Secretary in the 3rd respondent society; and

(iii) requesting the petitioner to hand over the Jewel locker key and saftety room key and other materials to the newly assumed Secretary Mr.T.Thanga Crose on or before 27.01.2021.



In spite of passing the above resolutions on 25.01.2021, the petitioner had not handed over the keys and charge to the fifth respondent. Hence, the third respondent lodged a complaint on 28.01.2021, to the Sub-Inspector of Police, Thiruvattar Police Station. The petitioner, suppressing all the above facts, filed W.P. (MD)No.1545 of 2021 and this Court stayed the order of transfer. In view of the interim order, the petitioner is signing the Attendance Register. The third respondent is not in a position to pay salary to both the Secretaries. The contention of the learned counsel for the petitioner that Common Cadre Authority can transfer an employee only when there is financial irregularities, is contrary to the Common Cadre Rules. The Secretary can be transferred on administrative reasons and also to a Society, where the said post is vacant. There is no malafide in the order transferring the petitioner to the fourth respondent society. The petitioner failed to join in the fourth respondent society and failed to hand over the jewel locker key and safety room key and hence, order of suspension is valid and legal and prayed for dismissal of both the writ petitions.

7. Heard the learned counsel appearing for the petitioner, respective learned counsel appearing for the respondents and perused the materials available on record carefully.

8. W.P.(MD)No.1545 of 2021 is filed challenging the order of transfer dated 11.01.2021. According to the learned counsel for petitioner, the petitioner was transferred three times from 16.07.2019 to 11.01.2021. The said contention is contrary to the materials on record. By order dated 16.07.2019, the petitioner was transferred to Y.256, Kulasekharam Primary Agricultural Co-operative Credit Society. She could not join in the said society, due to non relieving the incumbent Secretary in the transferred society. In view of the same, the first respondent cancelled the order of transfer dated 16.07.2019, and posted her in the same third respondent society, by the proceedings dated 10.10.2019. Therefore, the earlier transfer and subsequent posting in the third respondent society cannot be termed as two transfers. The contention of the learned counsel for the petitioner that Common Cadre Authority can transfer an employee, only if there is any financial irregularities in the society, is without merits. As rightly submitted by the learned counsel for third respondent that the first respondent is a Common Cadre Authority and he can transfer the Secretaries on administrative reasons or in a vacant place. Further, the allegation that the first respondent transferred her with malafide intention and to accommodate the fifth respondent, is not supported by any materials. The petitioner failed to prove such contention. The transfer is a condition of service and an employee cannot insist of being continued in the same place. The contention of the learned counsel for the petitioner that the order dated 11.01.2021, transferring the fifth respondent to the third respondent society, mentioning that said post is vacant, shows malafide intention of



first respondent, is without merits. The transfer orders of both the petitioner and the fifth respondent are dated 11.01.2021. But, order of transfer of the petitioner was signed on 12.01.2021, whereas order of transfer of fifth respondent was signed on 13.01.2021. On 13.01.2021, in view of the order of transfer of the petitioner signed on 12.01.2021, the post of Secretary in the third respondent Society has become vacant. In view of the same, there is no malafide intention of the first respondent in passing the order transferring the petitioner to the fourth respondent society. The petitioner has not made out a prima facie case for interfering with the order of transfer and hence, W.P.(MD)No.1545 of 2021 is dismissed. The petitioner is directed to join in the transferred place, within a period of two (2) weeks from the date of receipt of a copy of this order.

9. Suspension order in W.P.(MD)No.1947 of 2021 is with effect from 29.01.2021 to 31.03.2021 and subsequently, it was not extended. In view of the same, W.P.(MD)No.1947 of 2021 has become infructuous.

10. In the result, both the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

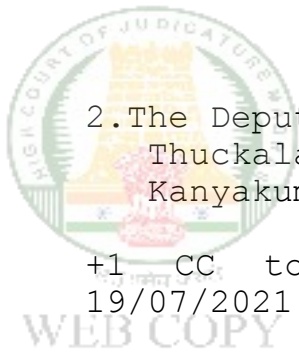
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Note :

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 Joint Registrar of Co-operative Societies/
Common Cadre Authority,
Kanyakumari Region,
Kanyakumari District.



2.The Deputy Registrar of Co-operative Societies,
Thuckalay Region,
Kanyakumari District.

+1 CC to M/s.B.BRIJESH KUMAR, Advocate (SR-23150[F] dated
19/07/2021)

+1 CC to M/s.GP (SR-23307[F] dated 20/07/2021)

W.P(MD)Nos.1545 and 1947 of 2021
and W.M.P. (MD)Nos.1324, 5767, 1666
and 5769 of 2021
19.07.2021

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