



W.P.No.16739 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 16739 of 2020

and

W.M.P.Nos.20759 and 20762 of 2020

A.Manickam

.. Petitioner

Vs

1. The Joint Registrar of Co-Operatives Societies,
Kanchipuram Region, Kanchipuram,
Kanchipuram District.
2. The Deputy Registrar of Co-Operatives Societies,
Kanchipuram Circle, Kanchipuram,
Kanchipuram District.
3. The President,
KP(SPL) 177, Arasanimangalam Primary Agricultural
Co-operative Credit Society,
Arasanimangalam Kammalampoondi Village & Post-603402,
Uthiramerur Taluk, Kanchipuram District.
4. The President,
KP(SPL) 93, Kammalampoondi Primary Agricultural
Co-operative Credit Society,
Kammalampoondi Village & Post-603406,
Uthiramerur Taluk,
Kanchipuram District.

.. Respondents



W.P.No.16739 of 2020

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.6044/2019/Sa.Pa dated 24.02.2020 and consequential order passed by the first respondent in his proceedings Na.Ka.1680/2020/Sa.Pa dated 21.08.2020 and quash the same and consequently directing the respondents 1 to 3 to permit the petitioner to continue in the post of Clerk in the third respondent society.

For Petitioner :Mr.C.Prakasam

For Respondents : Mrs.S.Anitha, Special Govt Pleader
for R1 to R2
:Mr.L.P.Shanmugasundaram for R3
:Mr.V.Kamaraj for R4

ORDER

The case of the petitioner is that the petitioner was appointed as Salesman in the 4th respondent society in the year 1997. Due to financial crises in the 4th respondent society and as per the orders of the 1st respondent, the petitioner was absorbed in the 3rd respondent society and joined duty on 01.08.2007. The petitioner was absorbed permanently in the 3rd respondent society and on the basis of the seniority in the 3rd respondent society, the petitioner was promoted as clerk on 01.10.2012 . As per G.O.Ms.No. 326,



W.P.No.16739 of 2020

dated 23.11.2007, the period of deputation will be in force for three years and after completion of three years, the employees should return back their parent society. Without considering the fact that the petitioner was permanently absorbed in the 3rd respondent society, the 2nd respondent directed the 3rd respondent society to send back the petitioner to the 4th respondent society and also to recover the salary paid to the petitioner. Challenging the said order of the 2nd respondent, the petitioner has preferred a Revision before the 1st respondent, but the 1st respondent without considering the its own order dated 26.07.2007 had rejected the revision petition and subsequent review application was filed by the petitioner. Hence, the present writ petition.

2. According to the learned counsel for the petitioner as per G.O.Ms.No. 145, Cooperative Department, dated 01.08.2005, the 1st respondent had passed orders to absorb the petitioner in the 3rd respondent society in the year 2007 and in the year 2012, he was promoted as Clerk in the same 3rd respondent society, which was recognised by the respondents 1 & 2. After a lapse of 12 years, the 2nd respondent issued orders to the 3rd respondent society that the petitioner should not work in the 3rd respondent society for more than three years and asked the 3rd respondent society to send



W.P.No.16739 of 2020

back the petitioner to the 4th respondent society and also ordered to recover the salary paid to the petitioner. According to the petitioner, the said order is illegal and violation of principles of natural justice.

3. Counter affidavit is filed on behalf of the 2nd respondent. It is stated in the counter that due to critical financial position of the 4th respondent/Society and based on the application made by the petitioner, he was transferred to the 3rd respondent Society by proceedings of the 1st respondent, dated 26.07.2007.

4. It is further stated in the counter that as per G.O.Ms.No. 326 Cooperative Food and Consumer Protection Department, dated 23.11.2007, a society may transfer an employee to another society for a period of not less than one year on deputation basis and the other society may avail the services of that employee on the terms and conditions agreed to by both the societies, provided that no such transfer shall be made for a period exceeding three years. Further, the petitioner was not transferred on permanent status to the 3rd respondent society and no conditions stated in the order of the 1st respondent dated 26.07.2007 that he was permanently transferred as



W.P.No.16739 of 2020

contended by the learned counsel for the petitioner. Therefore, the contentions of the learned counsel for writ petitioner is liable to be rejected.

5. Heard both sides and perused the documents available on record.

6. On perusal of the impugned order passed by the revisional authority/1st respondent dated 24.02.2020, it is stated that petitioner ought to have sent back to the parent society i.e 4th respondent society after completion of three years deputation. It is also observed that the promotion granted by 3rd respondent society to the petitioner as Clerk with effect from 01.10.2012 is against the circular issued by the Registrar, therefore the said promotion is improper and against the Rules, therefore the revisional authority directed the 2nd respondent to issue necessary orders to send back the petitioner to the 4th respondent society and revert him to the post of Salesman and recover the salary paid to the petitioner for the post held as Clerk w.e.f 01.10.2012.

7. On perusal of the grounds raised by the petitioner, it is stated that after a lapse of 12 years, the impugned order cannot be issued and the petitioner had put in 37 years of total service in the respondent-society and



W.P.No.16739 of 2020

without considering the same, the 1st respondent has passed the order to send back the petitioner to the 4th respondent society and for recovery of salary paid in the post of Clerk. Apart from the above said ground, no other grounds has been raised by the petitioner challenging the findings of the authority concerned with regard to the said transfer order. Therefore, in the absence any specific ground challenging the transfer order issued to the petitioner and in view of the above statement made in the counter affidavit, this Court is not inclined to interfere with the impugned order passed by the 1st respondent insofar it relates to the transfer of the petitioner.

8. Insofar as recovery order is concerned, since petitioner comes under Grade 'C' category, in the light of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White washer & others)* reported in (2015) 4 SCC 334 the recovery order passed by the respondent is liable to be quashed.



W.P.No.16739 of 2020

WEB COPY

9. In the result, this writ petition is partly allowed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

22.03.2022

Index : Yes/No

Internet : Yes

ak

To

1. The Joint Registrar of Co-Operatives Societies,
Kanchipuram Region,
Kanchipuram,
Kanchipuram District.

2. The Deputy Registrar of Co-Operatives Societies,
Kanchipuram Circle,
Kanchipuram,
Kanchipuram District.



WEB COPY



W.P.No.16739 of 2020

D.KRISHNAKUMAR. J

ak

W.P.No. 16739 of 2020

and

W.M.P.Nos.20759 and 20762 of 2020

22.03.2022