



W.P.(MD)No.20149 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2022

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.20149 of 2013

and

M.P.(MD)Nos.1 & 2 of 2013

K.Jothi Babu

... Petitioner

Vs.

1. The Registrar of Cooperative Societies,
EVR High Road,
Chennai – 10.
2. The Joint Registrar of Cooperative Societies,
Collectorate,
Dindigul.
3. The Deputy Registrar of Cooperative Societies,
Palani Circle,
Palani.
4. The Management,
D.P.8 Guziliamparai Panchayat Union Noon
Meals and Nutrition Employees Cooperative
Thrift & Credit Society Ltd.,
Guziliamparai, Vendasandur -T.K
Dindigul District.



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5. The Management
A-598 R.Vellore Primary Agricultural Cooperative
Credit Society Ltd.,
R.Vellodu,
Vedasandur Taluk,
Dindigul District.

6. The Secretary to Government,
Food and Cooperative Society,
Chennai.

.. Respondents

***(R6, Suo Motu impleaded, vide Court order,
dated 07.11.2022 in W.P.(MD)No.20149 of 2013)***

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the third respondent relating to the impugned order 28.11.2013 passed in Pave.28/2013 Niva, quash the same and consequently to direct the Respondents No.1 to 3 to approve the absorption of the service of the petitioner in the fourth respondent Society.

For Petitioner	: M/S.Geethanjali for M/S.Ajmal Associates
For R1 to R3	: Mr.S.Shanmugavel Additional Government Pleader
For R4	: Mr.S.Deenadhayalan
For R5	: No appearance



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ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned, order dated 28.11.2013 passed by the third respondent and consequently, direct the respondents No.1 to 3 to approve the absorption of the service of the petitioner in the fourth respondent Society.

2. The brief facts as stated in the affidavit is that the petitioner had passed Higher Secondary School Education, underwent and completed the course of Diploma in Cooperatives in the year 1996 and registered his name in the employment office. The vacancy arose to the post of Attender in the fifth respondent Society and the petitioner's candidature was considered and selected and he was appointed in the post of Attender from 18.01.1997 on daily wages basis. The post of Attender is purely clerical in nature. Thereafter, vide proceedings, dated 20.04.2007, the petitioner's service was regularized with effect from



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13.03.2001. In the meanwhile, the petitioner has completed B.A degree at Annamalai University through Correspondence course and the petitioner was granted promotion to the post of Clerk with effect from 01.11.1998. The petitioner was given the additional work of 'Secretary in-charge' in the fourth respondent Society from 01.12.2006 by the Special Officer of the fifth respondent Society, who was functioning as Special Officer of the fourth respondent as well. Hence, the petitioner was carrying the works of Secretary in-charge in the fourth respondent in addition to the duties in the fifth respondent Society. From the year 2007-2008 onwards, the fifth respondent Society was incurring loss and unable to pay even wages to its employees. The Department of Cooperative, Government of Tamil Nadu passed an order, dated 23.11.2007, directing the first respondent to transfer/deploy the excess/surplus staff of one Cooperative Society to another Society which is in need of employees. Based on the same, the first respondent issued circular, dated 17.06.2008 to the concerned authorities to find out the excess employees and to deploy the excess employees. The petitioner was found to be an excess employee in the fifth respondent Society and



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vide proceedings of the second respondent, dated 18.12.2008, the petitioner was deployed/transferred to the fourth respondent Society. The fifth respondent Society is a Primary Agriculture Cooperative Credit Society, whereas the fourth respondent is an Employees Thrift and Credit Society. But the petitioner was deployed to the fourth respondent only because the petitioner was having the required qualifications and the petitioner was also carrying out the additional charge of Secretary in-charge of the fourth respondent society from 01.12.2006 onwards. As per Government Order, dated 23.11.2007, the period of deputation of an employee who is deputed from one Society to another Society shall not exceed three years. But, in the deputation order of the second respondent, dated 18.12.2008, it was mentioned that the petitioner ought to work for a period of one year or till the petitioner's transfer whichever is earlier. The petitioner joined the fourth respondent Society on 19.01.2009.

3. The contention of the petitioner is that the petitioner is that from the time of joining in the fourth respondent society he is the



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only employee to carry out all the works of the fourth respondent society.

The 4th respondent society was allowed to have one post of Secretary and the petitioner was discharging the duties of Secretary. The petitioner is also discharging the duties of Clerk, since the employee who was working as Clerk was removed from service after petitioner joining in the said Society.

4. According to the petitioner he has put in work in the fourth respondent Society and the Society has become a profit making Society from 2008-2009 to 2012-2013. Taking note of the petitioner's service, the Special Officer of the fourth respondent Society passed resolution, dated 02.03.2011 to absorb the petitioner permanently in the fourth respondent Society and requested the respondents No.2 & 3 to approve the same. The petitioner further submitted that the parent Society has not made any improvement in its financial condition, as it is continuously incurring in loss and the fifth respondent is not interested to take back the petitioner into service. On the other hand, the fourth respondent has expressed its willingness to absorb the petitioner



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permanently. Without taking all these factors into consideration, the third respondent passed the impugned order directing the fourth respondent to relieve the petitioner from service. Challenging the said order, the present writ petition has been filed.

5. The fourth respondent has filed a counter affidavit stating that the fourth respondent has carried out his service to the satisfaction of the Society and the Society is running in profit from 2009 onwards and has expressed his willingness to absorb the petitioner permanently. The third respondent has filed a counter affidavit stating that as per the Government Order, dated 23.11.2007, any deputation order from one Society to another Society shall be passed, but the same shall not exceed three years. In the present case, the petitioner was deputed to the fourth respondent Society only for a period of one year and the same was subsequently extended beyond three years. The fourth respondent Society is not having any power to pass any order of deputation beyond the period of three years which is against the said Government Order. Therefore, the impugned order, dated 28.11.2013 was passed directing



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the fourth respondent Society to relieve the petitioner and so that the petitioner can join in the parent Society itself. Hence the order passed by the third respondent is legally sustainable and prayed to dismiss the writ petition.

6. Heard Mr.R.Geethanjali, learned Counsel appearing for the petitioner, Mr.S.Shanmugavel, learned Additional Government Pleader, appearing for the respondents No.1 to 3, Mr.S.Deenadhayalan, learned Counsel appearing for the fourth respondent and perused the records.

7. The learned Counsel appearing for the petitioner submitted that the fourth respondent is not having any objection to absorb the petitioner permanently in their Society. On the other hand, the fifth respondent Society is also willing to relieve the petitioner permanently from its Society. On perusing the Government Order, it is seen that any deputation cannot be passed beyond three years.



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8. After hearing the rival contention, this Court is of the considered opinion that the societies are not having power to pass deputation orders beyond three years as per Government Order. But the government has power to ratify if one society is in need of the employee and the other society is having excess employee. Moreover, the fifth respondent society is in financial crunch. Therefore, this Court is of the considered opinion that the appropriate authority is the Government who can consider the petitioner's case as a special case and grant absorption permanently in the fourth respondent Society. Since the Government is not a party in this writ petition, this Court *Suo Motu* impleading the Secretary to Government, Food and Cooperative Society, Chennai as sixth respondent. The sixth respondent government shall consider the petitioner's case in the light of resolution passed by the fourth and fifth respondents. The Government shall consider the petitioner's case as special case and grant approval to the petitioner's absorption in the fourth respondent Society. The Government shall issue orders within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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9. With the above direction, this Writ Petition is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

07.11.2022

Index : Yes / No
Internet : Yes / No
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To

1. The Registrar of CO-operative Societies,
EVR High Road,
Chennai – 10.
2. The Joint Registrar of Co-operative Societies,
Collectorate,
Dindigul.
3. The Deputy Registrar of Co-operative Societies,
Palani Circle,
Palani.
4. The Secretary to Government,
Food and Co-operative Society,
Chennai.

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S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.20149 of 2013

07.11.2022