



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.13275 of 2021 and
WMP(MD) No.10272 of 2021

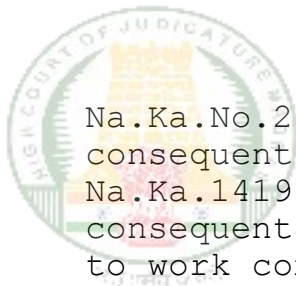
M.Periyasamy

...Petitioner

vs.

- 1.The Joint Registrar of Co-operative Societies,
Common Cadre Authority,
O/o Joint Registrar of Co-operative Societies,
Dindigul Region,
Dindigul.
 - 2.The Deputy Registrar of Co-operative Societies,
O/o The Deputy Registrar of Co-operative Societies,
Palani Circle,
Dindigul District.
 - 3.The President,
A 622, Thottanampatty Primary Agricultural
Co-operative Credit Society,
Thottanampatty,
Vedachanthur Taluk,
Dindigul District.
 - 4.The President,
A 693, Vellabommanpatty Primary Agricultural
Co-operative Credit Society,
Vellabommanpatty,
Vedachanthur Taluk,
Dindigul District.
 - 5.The President,
DD 524, Maniyakaranpatty Primary Agricultural
Co-operative Credit Society,
Maniyakaranpatty, Vedachanthur Taluk,
Dindigul District.
- ...Respondents

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 relating to the impugned orders of transfer passed by the first respondent vide Na.Ka.No.2327/2019/Ve.Se.Sa (4), dated 02.06.2021 and



Na.Ka.No.2327/2019/Ve.Se.Sa (2) dated 08.07.2021 and the consequential impugned order passed by the second respondent vide Na.Ka.1419/2019/Ve.Se.Sa dated 19.07.2021 and quash the same and consequently direct the respondents 1 to 3 to permit the petitioner to work continuously in the third respondent Society as Secretary.

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For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.S.Saji Bino
Special Government Pleader

O R D E R

This writ petition is filed as against the order of transfer dated 08.07.2021 and the consequential order dated 19.07.2021, directing the petitioner to hand over the charges.

2.The learned counsel appearing for the petitioner submits that the petitioner is working as Secretary in the third respondent Society. The third respondent Society is profit oriented Society and classified as 'A' category. By the order impugned in this writ petition, the petitioner was transferred from the third respondent society to the fourth respondent society, which comes under either 'B' or 'C' category Society. According to the learned counsel for the petitioner, the petitioner was not permitted to join duty by the fourth respondent Society, claiming that the fourth respondent is under loss and they are not having sufficient fund to pay the salary to the Secretary and the same was reported to the first respondent and the first respondent has also passed another transfer order on 08.07.2021, transferring the petitioner to the fifth respondent society. According to the learned counsel for the petitioner, the fifth respondent is also a Society under loss and not permitted the petitioner to join as Secretary stating that they are not having sufficient funds to pay the salary to the petitioner. The learned counsel appearing for the petitioner by referring the Common Cadre regulations submits that a person can be transferred from one Society to another Society, which is the same class and category of Society in terms of business and financial conditions. Here, in this case, the fourth and fifth respondents have not allowed the petitioner to join duty in the respective Societies on the ground of financial conditions. The petitioner cannot be deprived of his salary and emoluments in the guise of transfer.

3.The learned counsel appearing for the petitioner further submits that the petitioner, who was working in 'A' Class Society has been transferred either to 'B' or 'C' category Society, which is already in loss and the Society have also not permitted the petitioner to join duty, in view of their financial conditions. The learned counsel also relied on Section 18 of Common Cadre Services, which reads as follows:-



"18.Posting and transfer:-

(1) The transfer of the Common Cadre Employee may be made by the Common Cadre Authority suo motu or at the request of the Primary Agricultural Co-operative Credit Societies concerned. The Common Cadre Authority shall order a transfer of a Common Cadre Employee when directed by the Registrar of Co-operative Societies. No Common Cadre Employee shall be posted to the parent Society or to a Society which is situated in his native village:

Provided that a Common Cadre Employee whose Parent Primary Agriculture Co-operative Credit Society is 'A' Class shall be transferred only to 'A' Class Primary Agricultural Co-operative Credit Society. Similarly, a Common Cadre Employee whose Parent Primary Agricultural Co-operative Credit Society is 'B' Class shall be transferred to 'B' Class Primary Agricultural Co-operative Credit Society and a Common Cadre Employee whose Parent Primary Agricultural Co-operative Credit Society is 'C' Class shall be transferred to 'C' Class Primary Agricultural Co-operative Credit Society only.

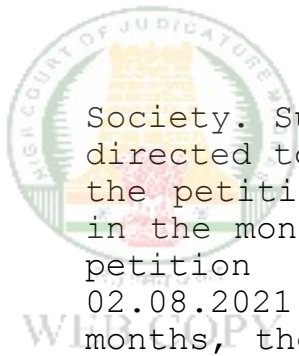
(2) The Common Cadre Authority may also effect transfer on ground of financial irregularity or mismanagement."

4.The learned counsel appearing for the petitioner further submits that the petitioner and his wife were taken to the police station and they were harassed in the police station. The learned counsel reiterated that transfer is against the Common Cadre Regulations and the same is liable to be quashed.

5.On the other hand, the learned Special Government Pleader appearing for the respondents submits that Transfer is an incident of service and the scope of Judicial review is very limited. He further submits that the petitioner has not raised any allegations as against any of the officials in the Society that the transfer order has been passed with any malafide. In the absence of any such ground, the petition is not at all maintainable. He further submits that pursuant to the order of transfer, the petitioner did not hand over the files to the transferor Society before joining in the transferee Society. Therefore, the order dated 19.07.2021, directing the petitioner to hand over all the files, which he dealt with in the transferor Society does not require any interference of this Court.

6. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

7.The petitioner, who is working as Secretary in the third respondent Society has been transferred to the fourth respondent Society and the petitioner was not permitted to join in the fourth respondent Society and another transfer order, dated 08.07.2021 came to be passed, transferring the petitioner to the fifth respondent



Society. Subsequently, by order dated 19.07.2021, the petitioner was directed to hand over the charges. Challenging the aforesaid orders, the petitioner approached this Court, by way of this writ petition in the month of July 2021. This Court has also entertained the writ petition by way of granting an order of interim stay on 02.08.2021. Though the writ petition is pending for the past six months, the respondents have not filed their counter affidavit. The petitioner by referring the Common Cadre Services made out a case, that any posting or transfer can be made only depending upon the Class and financial conditions of the Societies. According to the learned counsel for the petitioner, when he was working in 'A' category Society, he was transferred to lesser Cadre Societies, where the Societies are in financial difficulties and the same is against the Common Cadre Regulations. In view of the regulations, the first respondent ought to have considered the financial condition of the Society before passing the order of transfer. It is also seen that the petitioner was transferred twice within a short span of time, even without considering the Cadre and financial conditions of the Society and the impugned order of transfer has been passed as against the Common Cadre Regulations.

8. In view of the foregoing reasons, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2022

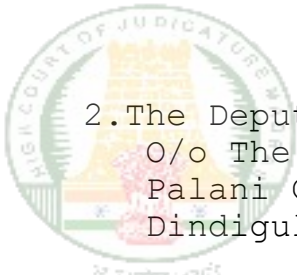
Sub Assistant Registrar(CS)

vrn

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,
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O/o Joint Registrar of Co-operative Societies,
Dindigul Region,
Dindigul.



2.The Deputy Registrar of Co-operative Societies,
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Maniyakaranpatty, Vedachanthur Taluk,
Dindigul District.

+1cc to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate, SR.No.3561
DATED:02.02.2022

+1cc to M/s.SPL GP, Advocate, SR.No.3702 DATED:02.02.2022

ORDER MADE IN
W.P (MD) No.13275 of 2021 and
WMP (MD) No.10272 of 2021
01.02.2022

IMS (CO)
GC (25.03.2022) 5P 8C