



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.11.2021

DELIVERED ON : 11.01.2022

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.483 of 2018

W.M.P (MD).Nos.483 and 484 of 2018

S.Kalpana

...Petitioner

/Vs./

- 1.The Deputy Registrar of Co-operative Societies,
State Bank Colony,
Dindigul.
- 2.M.D.105, Dindigul Aided High and Higher Secondary School,
Teaching and Non-teaching,
Employees Co-operative Thrift and Credit Society,
Rep. through its President,
17/A/3, L.G.B.Compound,
Dindigul District.
- 3.M.D.6, Dindigul Circle Co-operative,
Employees Co-operative Thrift and Credit Society,
Rep. through its President,
17/A/3, L.G.B.Compound,
Dindigul District.

...Respondents

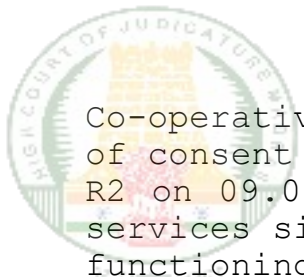
PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent Na.Ka.517/2016/nu.ku dated 22.12.2017 and quash the same.

For Petitioner	: Mr.V.O.S.Kalaiselvam
For Respondents	: Mr.D.Sadiq Raja
	Additional Government Pleader
	for RR1 & 3
	Mr.S.Arivalagan for R2

O R D E R

The petitioner had joined the third respondent Society i.e., M.D.6, Dindigul Circle Co-operative Employees Thrift and Credit Society [R3/Parent Society] on 21.08.1999 in the capacity of a clerk. Her services were regularized on 12.06.2007.

2. By resolution passed by R3 Society, consent was accorded for deputation of the petitioner to M.D.105, Dindigul Aided High and Higher Secondary School, Teaching and Non-teaching, Employees



Co-operative Thrift and Credit Society, [R2/Deputed Society]. Letter of consent is dated 07.03.2016 and the petitioner entered service of R2 on 09.07.2016. According to her, she has continued to discharge services simultaneously in R3 and R2 Societies as both Societies are functioning in the same premises.

WEB COPY

3. Even prior to the petitioner assuming charge in R3 Society, there were various malpractices and misappropriation of amounts in excess of Rs.24,00,000/- by the then Board of Management and employees. R3 Society had become defunct and a Special Officer had been appointed.

4. In counter filed by the Deputy Registrar of Co-operative Societies, he states that the Society has not been audited for the last two decades and R3 Society is under an obligation to effect repayments of members debts to the tune of Rs.3,66,386/-. A loan availed from Dindigul District Central Co-operative Bank Limited of a sum of Rs.68,83,832/- remains unpaid. On the other hand, loans availed by members of a total sum of Rs.73,47,112/- as per Audit report for the year 1996-97, remains outstanding.

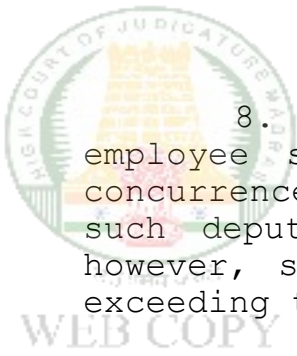
5. Records were sought to ascertain the efforts of the Society to recoup the loans. The records present a dismal picture and though a Special Officer is stated to have been appointed and a duly elected board thereafter, there have been no efforts whatsoever to recover the loans and other outstandings.

6. The short point that arises in this writ petition is the challenge of the petitioner to order dated 22.12.2017 passed by R1 recalling the petitioner from R2 Society and placing her back to her original post in the parent R3 Society. The petitioner argues that R3 Society is defunct and has no resources to pay her salary. Her intention is clear to continue her deputation to R2 Society as she is in receipt of regular salary and her employment is not under threat.

7. Whether this is a tenable enough reason to interfere with the impugned order, must be decided in light of the provisions of Rule 149 (2-A) of the Tamil Nadu Co-operative Societies Rules, 1988 ['Rules'], in terms of which, the transfer/deputation of employees from one Society to another is contemplated and effected. The Rule reads as follows:

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 service 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.



8. The Rule provides that the deputation/transfer of an employee shall be made for a period of one year, upon mutual concurrence by both Societies i.e., parent and receiving Society and such deputation may be extended upto three years. The proviso, however, states that no transfer/deputation shall be for a period exceeding three years.

9. The resolution under which deputation had been occasioned is dated 08.07.2018. Though it does not mention the specific period, such deputation, in my considered view, would have to be in terms of Rule 149(2) and the time limit set out thereunder. In the present case, the one year period was completed on 08.07.2017 and by letter dated 14.12.2017, R3 requested R1 to re-transfer the petitioner to itself. This is ostensibly to enable R3 to commence its activities of recovery of loans and outstandings.

10. While the deputation of petitioner is no doubt to be strictly in accordance with the relevant Rules, I am unable to appreciate the logic that all deficiencies and malpractices in R3 Society can be corrected by a single person, that is, the petitioner herein. That is to say, to do what a Special Officer and thereafter an Elected Board has failed to do.

11. I had, vide order dated 15.11.2021, directed learned respondent counsel to (i) ascertain the financial position of R3 Society and obtain copies of receipts and payments and income and expenditure accounts and balance sheets for the previous three years, (ii) produce the list of employees/staff and (iii) produce details in regard to statutory payments made for the last three years. On 17.11.2021, the files were produced before me which did not contain any of the particulars that I had sought for in the earlier order.

12. I thus directed R1 to file an affidavit indicating the constitution of the Board of Management of R3 Society from the year 1998 onwards till date. The financial position of the Society as on 31.03.1998 was also directed to be produced.

13. In compliance, affidavit dated 19.11.2021 has been filed by the first respondent which reveals that:

(a) for the period 1995 to 1999, one D.Ravi, the then Secretary of the Society in collusion with the President and Staff, had committed several serious irregularities in the issue of loan and recovery of loan dues by forging accounts, tampering of records and issuing bogus receipts for the loan amounts collected from the members. In total, Rs.24,91,300/- was misappropriated.

(b) action was taken in terms of Section 81 of Tamil Nadu Co-operative Societies Act, 1983 ["Act"] and a criminal case filed which is presently under trial.

(c) surcharge proceedings under Section 87 of the Act, have

<https://hcs.eb.org.in/hcservices>



(d) thereafter, a Special Officer was appointed, after supersession of the then Elected Board of R3 Society on 18.08.1999 held office upto 08.05.2013. An elected Board assumed charge of the Society on 09.05.2013 and continues till date.

14. The last audit under Section 80 of the Act was conducted for the year 1996-97 and no audit has been carried out thereafter for want of records and non-maintenance of accounts. The contents of paragraph No.6 in regard to present financial position of R3 Society are extracted hereunder:

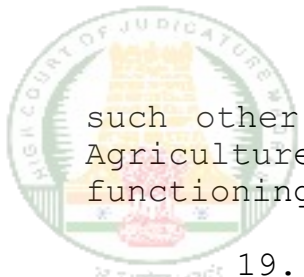
6. With regard to the yearly audit of the third respondent Society, I submit that the Audit under Section 80 of the Tamil Nadu Co-operative Societies Act, 1983 was lastly conducted for the year 1996-97. The Subsequent audit could not be carried out for want of records and due to the lack of maintenance of the accounts. As per the audit report in the year 1996-97, the assets of the Society was calculated to be Rs.147.95 lakhs and whereas the liability has was calculated to Rs.149.74 lakhs. The Society was under the obligation of repaying the sum of Rs.116.94 lakhs to the Dindigul District Central Cooperative Bank, the amount borrowed for its lending activities. The members loan outstanding as on 31.03.1997 was Rs.129.16 lakhs.

15. Since the petitioner was appointed as a Clerk on 21.08.1999, the full responsibility of day-to-day functioning is placed at her door step. The counter of R1 states that even though she was on deputation to R2, she had been fixed as in-charge Secretary of R3 Society and is stated to be guilty of not having taken any action to set right its affairs for the last twenty years. The counter is blissfully silent as to what the Special Officer and the duly Elected Board of Management have been doing all these years.

16. The mismanagement of the Society and the misappropriation relate to the periods prior to when the petitioner joined. When R3 Society is under the management of an elected Board or Management, primary responsibility must be assumed by them to set right the affairs of the Society.

17. Section 33 under Chapter-IV of the Act deals with constitution of the Board. The second proviso to Section 33 provides for co-option of two members with experience in the fields of banking, management, finance or specialization in designated subjects.

18. The third proviso to Section 33 provides for appointment of upto nine functional Directors, defined in Explanation-I to mean a paid officer of the Society or an officer of the Government department or the representative of a central or apex society or



such other bodies like Reserve Bank of India or National Bank for Agriculture and Rural Development that may have a relation with functioning of the registered society.

19. Thus, it is clear that the Board of Management is the primary body that is to take charge of the affairs of the Society and the efforts of the respondents to say the blame for the malpractices, misappropriations and poor recovery upon the petitioner is in poor taste and condemnable.

20. Coming to the merits of the challenge of the petitioner, I agree with the respondents that in view of the proviso to Rule 149 (2-A), the transfer/deputation of employee beyond a period of three years cannot be accepted. The impugned order re-transferring the petitioner to R3 Society is confirmed.

21. The petitioner has relied up on a decision of a learned Single Judge in the case of *K.Palanimurugan vs. Registrar of Co-operative Societies (Housing)* (W.P.(MD).No.8298 of 2021) dated 23.06.2021. In that writ petition, the prayer of that petitioner to be retained in the transferee Society has been accepted by this Court, taking note of the statement of the Parent Society that they are in financial difficulties and will be unable to pay him salary.

22. In the present case, there is no such statement by R3 Society. Though the Society was declared as defunct in the year 1998, the fact that a Special Officer was appointed upto 2013 and a newly elected Board has assumed charge from 2013, leads the Court to hope that the resources would be adequate to pay the employees of the Society.

23. Although the impugned order does not refer to Rule 149 and only states that the presence of the petitioner was required to set right the management, the apprehension of the petitioner to the effect that she would not receive regular salary from R3 Society, is allayed by directing the respondents to be regular in effecting salary payments to her. The petitioner is granted liberty to approach this Court in the event of their failure to do so. With this protection, this Writ Petition is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

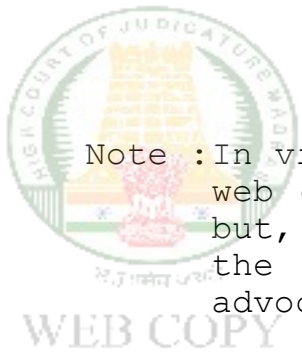
Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ssb



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 Deputy Registrar of Co-operative Societies,
State Bank Colony,
Dindigul.

2.M.D.105, Dindigul Aided High and Higher Secondary School,
Teaching and Non-teaching,
Employees Co-operative Thrift and Credit Society,
Rep. through its President,
17/A/3, L.G.B.Compound,
Dindigul District.

3.M.D.6, Dindigul Circle Co-operative,
Employees Co-operative Thrift and Credit Society,
Rep. through its President,
17/A/3, L.G.B.Compound, Dindigul District.

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-1220[F] dated 11/01/2022)

+1 CC to M/s.SPL.GP (SR-1466[F] dated 12/01/2022)

W.P. (MD)No.483 of 2018
11.01.2022

RD(20.04.2022) 6P 6C