



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.369 of 2020

W.M.P.No.417 of 2020

P.Rajamanickam

... Petitioner

Vs.

1.The Chairman Common Cadre Committee/
Joint Registrar of Co-operative Societies,
Villupuram Region, Villupuram.

2. The Deputy Registrar of Co-operative Societies,
Thirukoilur Circle, Thirukoilur, Villupuram District.

3. II549, K.Mudiyanur Primary Agricultural
Co-operative Credit Society Ltd., Rep by its President,
K.Mudiyanur Post, Kallakurichi Taluk,
Villupuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the order passed in Na.Ka.No.1973/2011.Tho.Ve.Sa. dated 18.10.2019 on the file of the second respondent and consequential order of reversion passed by the third respondent dated 02.01.2020 quash the same.

For Petitioner	:	Mr.M.S.Palaniswamy
For Respondents	:	M/s.C.Meera Arumugam, Additional Government Pleader, For R1 & R2.



Mr.G.Mohanraj, For R3.

ORDER

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This petition has been filed to call for the records of the order passed in Na.K.No.1973/2011.Tho.Ve.Sa. dated 18.10.2019 on the file of the second respondent and consequential order of reversion passed by the third respondent dated 02.01.2020 quash the same.

2. The case of the petitioner is that the petitioner was appointed as Clerk of the third respondent Society on 27.07.1993. Thereafter one Mr.P.Pandian, who working as Secretary in the third respondent Society retired on 31.12.2015. From 01.01.2016, the Secretary post was kept vacant and being a senior most person, the petitioner requested the Board to consider his name for the post of Secretary. The Board, after considering the merit and ability as well as the seniority, promoted the petitioner as Secretary of the Society on 01.01.2018. The further case of the petitioner is that the Government of Tamil Nadu issued G.O.Ms.No.14, dated 12.02.2019, thereby bringing the Secretaries of the Primary Co-operative Societies under the common cadre under Section 75 of Tamilnadu Cooperative Societies Act. Under the said G.O., any action taken against the Secretaries of the Society,



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the jurisdiction is vested with the common cadre authority, the first respondent Joint Registrar of Co-operative Society. The impugned communication was addressed by the second respondent in Na.Ka.No.1973/2011.Tho.ve.sa, dated 18.10.2019 to the third respondent to cancel the promotion. Pursuant to the communication dated 18.10.2019, the third respondent passed an order dated 02.01.2020 reverting the petitioner from Secretary to the post of Clerk. According to the petitioner, the second and third respondents have no jurisdiction to revert the petitioner from the post of Secretary to Clerk.

3. The learned counsel for the petitioner relied on all the averments set out in the affidavit filed in support of the writ petition. He submitted that second and third respondents have no jurisdiction to pass the impugned orders reverting the petitioner from the post of Secretary to the post of Clerk. Accordingly, the learned counsel for the petitioner prays for the allowing writ petition.



4. It is well settled that any order passed without giving notice to the affected party is in violation of the principles of natural justice. In the case of ***N.K.Durga Devi Vs Commissioner of Commercial Taxes, Hyderabad and others reported in (1997) 11 SCC 9***, the Hon'ble Supreme Court held that the order which affects the rights of parties passed in violation of the principles of natural justice and without hearing to the affected parties is void and unenforceable in law. In paragraph 3, the Hon'ble Supreme Court held as under:-

"3. In view of the decisions of this Court in Govt. of A.P. Vs. D.Janardhana Rao, R.R.Verma Vs. Union of India and Amrik Singh Vs. Union of India, it is conceded by the learned counsel for Respondent 3 that the order of relaxation could not have been validly passed without giving notice to all affected parties since that would be in violation of the principles of natural justice. The position in law is quite clear. A relaxation order which affects rights of third parties, if passed in violation of the principles of natural justice and without giving a hearing to the affected parties would be void, or in any event, unenforceable in law. The impugned Government Order No.569, dated 22.05.1986 is, therefore, set aside."
(emphasis supplied)



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5. The learned Additional Government Pleader appearing for the first and second respondents submitted that the petitioner was appointed on 27.07.1993 as Clerk and his appointment was in excess of cadre strength and in view of that his service was not regularised. The petitioner has purposely and wantonly did not disclose the factum of non-regularisation of his service and hence he is not entitled for promotion to any higher post. Accordingly, the learned Additional Government Pleader appearing for the respondents refuted the contentions set out in paragraphs 2 to 4 of the affidavit filed in support of the writ petition and submitted that the very basis of the order of promotion issued to the petitioner is against the Byelaw and circular issued by the Registrar of Co-operative Societies and that is the basis for issuing the impugned order. He has also urged that it is incorrect to allege that the second and third respondents have no authority or jurisdiction to pass the impugned orders and, accordingly, the learned Additional Government Pleader prays for dismissal of the writ petition.

6. Heard both sides and perused the materials available on record.



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7. Admittedly the petitioner was appointed as Clerk in the respondents' Society on 27.07.1993 and was subsequently promoted as Secretary in the vacant post that arisen due to the superannuation of the Secretary of the Society.

8. Rule 2(g) of the the Tamil Nadu Primary Agricultural Co-operative Credit Societies Common Cadre Service Rules, 2019 provides that "Common Cadre Employee" means "the Secretary of the Primary Agricultural Cooperative Credit Societies, to whom these rules shall apply".

9. Rule 4 reads that for the first three years from the date of constitution of the Common Cadre of Service, the Joint Registrar of Co-operative Societies, Chennai shall be the Competent Authority under the first proviso to sub-section (3) of Section 75 of the Act.

10. In view of the above, it is clear that the Joint Registrar of Co-operative Society, Chennai is the only Competent Authority to pass any



order with respect to the common cadre employees. In this case, the respondent Society is governed by the Tamil Nadu Co-operative Societies Act and the Tamil Nadu Primary Agricultural Credit Societies Common Cadre Service Rules.

11. In the case on hand, admittedly, no notice was served on the petitioner and no opportunity was given before passing the impugned order. The aforesaid act of the respondents is in clear violation of the principles of natural justice.

12. Therefore, even as per the Government Order, which is applicable to the Societies like the third respondent, the Joint Registrar of Co-operative Society, the first respondent herein is the competent authority to pass any order with respect to the common cadre employees. Accordingly on the said ground the impugned order is liable to be quashed and accordingly the same is quashed.



13. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2023

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Index : Yes/No

Speaking Order : Yes/No

To:

1. The Chairman Common Cadre Committee/
Joint Registrar of Co-operative Societies,
Villupuram Region,
Villupuram.
2. The Deputy Registrar of Co-operative Societies,
Thirukoilur Circle,
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J.SATHYA NARAYANA PRASAD,J.

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