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W.A.No.1338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.No.1338 of 2023

and

C.M.P.No.13104 of 2023

1. The Registrar of Cooperative Societies
"NVN Maaligai"
No.170, E.V.R. Periyar Salai,
Kilpauk, Chennai – 600 010.
2. The Joint Registrar of Cooperative Societies,
Vellore Region at Vellore,
Now at Tirupattur Region at Tirupattur.

... Appellants/ Respondents

Vs

K.Ramalingam

...Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent Act, against
the order dated 11.04.2015 in W.P.No.5061 of 2015.

For Appellants : Mr.Abishek Murthy
Government Advocate



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W.A.No.1338 of 2023

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This Writ Appeal has been preferred against the order of the learned Single Judge dated 11.04.2022 made in W.P.No.5061 of 2015, in allowing the Writ Petition filed by the respondent herein by setting aside the order of the first appellant herein.

2. The appellants are the respondents in the Writ Petition. The petitioner in the Writ Petition has joined in the service as Junior Inspector of Cooperative Societies and his service were regularised on 15.10.1989. Thereafter, the petitioner was promoted as a Senior Inspector on 23.08.1995 and he was to be placed under the next level of promotion for the post of Cooperative Sub Registrar. Since he was served with a Charge Memo, dated 10.05.2005 under Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules [in short TNCS(D&A)Rules] by the Deputy Registrar, Tirupattur, his name was not included in the Promotion Panel for Cooperative Sub Registrar.



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3. On 05.06.2007, charges were dropped by the order of Joint Registrar. By exercising power under Section 36(1) of the Rules the Registrar of Cooperative Societies/Head of Department suo-mottu reviewed dropping of charges by the Joint Registrar and the same was cancelled consequently charges under Rule 17(b) of TNCS(D&A)Rules, were framed. Hence the writ petitioner lost his opportunity to include his name in the promotion panel on 01.05.2007 and 01.05.2008. Aggrieved over the non inclusion of petitioner's name in the promotion panel, the writ petitioner approached this Court in W.P.No.3006 of 2009, to include his name in the promotion panel. In which, an interim order dated 18.04.2009 was passed to include his name in the promotion panel.

4. On 27.01.2010, the writ petitioner was promoted as Cooperative Sub Registrar, subject to result of W.P.No.3006 of 2009. In the mean time, the said Writ Petition was taken up for hearing and disposed on 10.03.2010 without prejudice to the rights of the parties on the ground that the Writ Petition has become infructuous. In the enquiry held, the petitioner was found guilty and a punishment of stoppage of increment for one year without cumulative effect was imposed on him. Against which, the



W.A.No.1338 of 2023

petitioner had preferred an appeal before the appropriate authority/Government and the same was also rejected.

5. As per order dated 11.08.2011, the writ petitioner was demoted back to the post of Senior Inspector. This order of demotion was challenged in W.P.No.19857 of 2011 and as per the order dated 12.06.2012, this Court has directed the respondents therein to include the petitioner's name in the panel released on 04.08.2011 with reference to crucial date 01.05.2010 and to grant him promotion. Accordingly, the petitioner was once again promoted to the post of Cooperative Sub Registrar on 17.04.2013.

6. During this interregnum period, after the order of demotion, dated 11.08.2011 he applied leave for the period from 18.08.2011 to 23.07.2012 and on the basis of his leave application, this period was treated as eligible leave period. The petitioner also gave a representation requesting to treat the period between 24.07.2012 and 16.04.2013 as “Compulsory Wait” since he has not been issued posting orders and this representation was dismissed by the impugned order dated 10.12.2014 by the first respondent therein.



7. Before the Writ Court, the appellants contended that the writ petitioner was reverted to the post of Senior Inspector on 11.08.2011 and he ought to have joined the said post, which he had failed and owing to the failure on the part of the petitioner, he was not entitled for considering the period between 24.07.2012 to 16.04.2013 as “Compulsory Wait”. The impugned order is valid and need not be interfered with.

8. The learned Single Judge, vide order dated 11.04.2022, allowed the Writ Petition by setting aside the order dated 10.12.2014 passed by the first appellant herein. The operative portion of the order dated 11.04.2022, passed by the learned Single Judge reads as under:

“15. Though the petitioner had raised this specific ground in the affidavit filed in support of the Writ Petition that the posting orders were not given, the respondents have not denied the same in their counter-affidavit. Neither was any posting orders produced to prove otherwise. However, when the petitioner had requested them to treat the period between 24.07.2012 to 16.04.2013, as compulsory wait, the same was rejected through the impugned order dated 10.12.2014, stating that after the orders of reversion was passed, the petitioner had failed to join to the post of Senior Inspector and owing to his fault, this period was directed to be treated as non-duty period on the principle of 'No work No pay'. Such a decision is contrary to the Fundamental Rule 9 Ruling 3. When the petitioner was promoted to the post of Co-operative Sub Registrar but no posting



orders were issued, his position had become precarious for he would not have been in a position to join the promotional post in the absence of the posting order nor could he continue in the post of Senior Inspector since he was technically promoted.

16. It is in this unsettled position, the petitioner was made to compulsory wait for the outcome of the orders of this Court in W.P.No.19857 of 2011. When the Fundamental Rules provide that during such period of compulsory wait, the period of waiting should be treated as duty period, the impugned order rejecting such a request, is illegal. The Fundamental Rule 9 Ruling 3 also provides that the petitioner would be entitled for pay plus special pay for the duty period of compulsory wait in the post he earlier held or to the promoted post, whichever is less. The petitioner would thus be entitled for such salaries applicable to the post of a Senior Inspector, during the period of compulsory wait.”

9. When the matter was taken up for hearing, it is contended by the learned counsel for the appellants that the individual has been issued posting orders as Senior Inspector. In pursuance of the above order, he should have joined the post of Senior Inspector, since he did not comply with the order the individual is not entitled to claim compulsory wait.

10. The demotion order dated 11.08.2011, in paragraph No.6, the Registrar has ordered reversion to the writ petitioner as a Senior Inspector and allotted him to Vellore Region and also directed the Joint Registrar of



W.A.No.1338 of 2023

Cooperative Societies, Vellore Region to give posting order as Senior Inspector of Cooperative Societies. But no proceeding or orders relating to post have been issued by the Joint Registrar as directed by the Registrar in the demotion order. Before this Court also no such posting orders have been produced to sustain the impugned order. As rightly held by the Single Judge in paragraph Nos.15 and 16 as referred supra, without issuing any posting orders, the writ petitioner could not be in a position to join and continue the post of Senior Inspector. We are of the view that there is no merit in the contentions raised by the appellants herein, and the Writ Petitioner is entitled for claiming the period between 24.07.2012 to 16.04.2013 as compulsory wait and consequential direction issued in the order of Writ Petition, dated 11.04.2022.

11. In the light of the above discussions there is absolutely no case warranting interference with the order of the writ court. Writ Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(S.S.S.R.J.) (K.R.S.J.)
03.07.2023

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Index :Yes/No
Speaking Order :Yes/No
Neutral Citation Case : Yes/No

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W.A.No.1338 of 2023

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