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W.P.No.17294 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**WP.No.17294 of 2022 &
WMP.Nos.16635 & 16636 of 2023**

S.Sathya

... Petitioner

Vs

1. The Deputy Registrar of Co-operative Societies,
Thiruvarur Circle,
Backside of Collectorate, Thiruvarur,
Thiruvarur District – 610 001.

2. The C-operative Sub Registrar / Field Officer,
O/o.Deputy Registrar of Co-operative Societies,
Backside of Collectorate,
Thiruvarur, Thiruvarur District – 610 001.

3. The President,
ZA.105, Nadukandankudi Primary Aricultural
Co-operative Credit Society,
Kollapuram Village & Post – 609 608
Nannilam Taluk, Thiruvarur District.

... Respondents



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Prayer:- Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the entire records relating to the impugned Order passed by the first respondent in his proceedings Na.Ka.No.1241/2022/Tho.Vae.Sa, dated 13.05.2022 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.S.Arumugham
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned Order passed by the first respondent in his proceedings Na.Ka.No. 1241/2022/ Tho.Vae.Sa, dated 13.05.2022.

2. The case of the writ petitioner is that the writ petitioner was appointed as a Clerk in the third respondent Society on 01.03.1996. Thereafter, as per the resolution dated 01.07.2000, she was posted as an attender and subsequently, as per the resolution dated 01.07.2015 passed by the third respondent, the petitioner was promoted as a clerk and on



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01.07.2020, the petitioner was promoted as a Secretary in the third respondent Society as per Resolution dated 02.11.2020. Pursuant to the same, she joined as a Secretary and the salary of the petitioner was also fixed as per another resolution passed on the same day and Orders have also been issued in proceedings in Na.Ka.No.1-Pa.2020 dated 02.11.2020. Thereafter, her service has been regularized as per the Circular of the Registrar by passing a resolution dated 24.03.2022. The Circular was issued by the Registrar by following the Orders of this Court in W.P.No.21440 of 2015 dated 19.02.2021 for regularizing the services of the petitioner. After regularization, the petitioner was promoted as Secretary from 02.11.2020 and she has been continuously working in that post. When the matter stood thus, the impugned Order came to be passed by the first respondent inter alia contending that without promoting her as a Clerk from attender, she has been promoted as a Secretary. Hence, a direction has been given to the third respondent to cancel the promotion and give the petitioner appropriate promotion from the lower cadre. Challenging the same, the present Writ Petition has been filed.



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3. Counter has been filed by the first respondent. The main contention of the respondents is that Registrar of Co-operative Societies had issued general instructions on 09.09.2021 based on the Order of this Court in various Writ Petitions regarding regularization of employees appointed irregularly and submitted that as per the circular of the Registrar, an irregularly appointed employee's services can be regularised only in the next category. It is further submitted that the petitioner has to be regularized in the category of clerk and without regularisation of her services as a Clerk, the petitioner cannot be promoted to the post of Secretary and her services cannot be regularised in that post. Hence, it is the contention of the respondents that the Writ Petition is not maintainable.

4. I have perused entire materials. The main contention of the learned counsel for the petitioner is that the first respondent has no right whatsoever to interfere with the service matter of the employees working in the Co-operative Societies and Registrar alone is competent to issue



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Order as per G.O.Ms.No.2D No.1108 Co-operation, Food and Consumer Protection Department, dated 31.08.2005 wherein the powers delegated to the Deputy Registrar have been taken away in respect of the service matters of the employees working in the Co-operative Societies. The said power has been specifically empowered to the Joint Registrar of the Co-operative Societies. Hence, it is his contention that, in this regard, this Court in a Writ Petition in W.P.No.2628 of 2015 has passed a similar Order. Hence, the petitioner seeks to set aside the impugned Order.

5. Whereas the learned Government Advocate appearing for the respondents submitted that the very promotion to the post of Secretary is not in Order and she has not been regularized in the lower cadre and without regularisation in the post of clerk, she has been promoted as a Secretary and therefore, the impugned Order came to be passed and a provision of appeal is available to the petitioner under section 153 of the Co-operative Societies Act and without availing the alternative remedy, the petitioner has filed the present Writ Petition, which is not maintainable.



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6. In the light of the above submission, when the materials are perused, the fact that the petitioner's service has been regularized is not in dispute. Though the petitioner was appointed in the year 1996 as clerk, thereafter, by a resolution of the society, she was promoted as an attender on 01.07.2000. Thereafter, in the year 2015, she was promoted as a clerk and again on 01.07.2020, pursuant to the resolution passed by the Society, she has been promoted as a Secretary. As per the above resolution she has been promoted as a Secretary and in the meanwhile, a circular has also been issued by the Registrar to regularize the services of the persons who are appointed during the period from 08.07.1980 to 12.03.2001 pursuant to the direction of this Court in W.P.No.21440 of 2015 dated 19.02.2021. These circumstances are not in dispute.

7. Now the impugned Order has been passed on the ground that she has not been regularized in the cadre of clerk, whereas she has been directly promoted as a Secretary. It is relevant to note that the Government Order in G.O.[2D] No.108 Co-operation, Food and Consumer Protection Department dated 31.08.2005 deals with delegation



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of powers of Co-operative Societies. In the above Government Order, the Deputy Registrar of the Co-operative Societies has no power in respect of service matters. The Joint Registrar is empowered with said powers. In this regard also a Writ Petition in W.P.No.2628 of 2015 has been filed wherein this Court has held as follows :

6. In this regard, the Government issued G.O.(2D) No.108, Cooperation, Food and Consumer Protection Department, dated 31.08.2005, delegating the powers of the Registrar of Cooperative Societies under the Act. As per the delegation of powers notified under the provisions of the Tamil Nadu Cooperative Societies Act, 1983, the Deputy Registrar of Cooperative Societies is not empowered to exercise the powers in respect of service matters of the employees working in the Cooperative Societies. The said power has been delegated to the Joint Registrar of Cooperative Societies.



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7. The learned counsel appearing on behalf of the fourth respondent-employee objected the said contentions raised on behalf of the petitioner by stating that the Deputy Registrar of Cooperative Societies is having control over the Cooperative Societies and he is also an Authority under the provisions of the Tamil Nadu Cooperative Societies Act. Thus, the present writ petition is to be rejected.

8. Under Section 172 of the Tamil Nadu Cooperative Societies Act, the powers of the Government may be delegated. Sub-section (1) to Section 172 of the Act, contemplates that “The Government may, by Notification, authorise any Authority or Officer to exercise any of the powers vested in them by this Act except the powers conferred under sections 170 and 180 and may in like manner withdraw such Authority”. Pursuant to the said powers conferred under Section 172 of the Act, Government issued Notification delegating the powers to



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certain Subordinate Authorities. As per the delegation of powers, the Joint Registrar of Cooperative Societies is the Authority to deal with the revision petition under Section 153 of the Cooperative Societies Act and relating to the service matters and the grievances of the employees in respect of the Cooperative Societies. Therefore, such a power delegated to the Joint Registrar, cannot be usurped by the Deputy Registrar. Thus, the Deputy Registrar, in the present case, has issued the impugned order without any jurisdiction and therefore, the same is liable to be set aside.”

8. Considering the above judgment, the Deputy Registrar is not vested with the power to deal with the service matters of the employees of the Cooperative Societies and and he has no jurisdiction to pass the impugned Order. Therefore, when any Order is passed by a person who has no jurisdiction, this Court is of the view that this Writ Petition is very well maintainable. In such view of the matter, the impugned Order



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passed by the authority without any jurisdiction, such an Order cannot be sustained in the eye of law.

9. Accordingly, this Writ Petition is allowed and the impugned Order passed by the first respondent dated 13.05.2022 is set aside. Consequently, connected miscellaneous petitions are closed. No costs.

07.07.2023

Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

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Thiruvarur District – 610 001.
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N.SATHISH KUMAR, J.

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