



W.P(MD)No.7472 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7472 of 2023

P.Muthuvel Raja

... Petitioner

Vs.

- 1.The Registrar of Cooperative Societies,
Office of the Registrar of Cooperative Societies,
E.Ve.Ra.High Road, Chennai.
 - 2.The Joint Registrar of Cooperative Societies,
Office of the Joint Registrar of Cooperative Societies,
Madurai Region, Ground Floor,
Thirupuramkundram Road,
Near Palanganatham Roundana,
Madurai – 625 003.
 - 3.The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies,
Madurai Circle, Ground Floor,
Thirupuramkundram Road,
Near Palanganatham Roundana,
Madurai – 625 003.
 - 4.The President,
A2401, Othakadi Cooperative Rural
Credit Society Ltd.,
Othakadi, Madurai District.
- ... Respondents



W.P(MD)No.7472 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 3 to fix the pay scale of the petitioner based upon the proposal sent by the 4th respondent dated 28.02.2022 in the cadre of Assistant / Clerk and pay the salary and the arrears of salary with interest and attended benefits for the cadre of Assistant / Clerk within a time stipulated by this Court.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.K.S.Selvaganesan,
Addl. Government Pleader for R1 to R3.
Mr.G.Mohan Kumar for R4.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner joined the fourth respondent as Salesman in the year 2013. He was promoted as Junior Clerk in the year 2016. He became a Clerk with effect from 05.10.2018. The grievance of the petitioner is that he is not being paid the salary attached to the post of Clerk. His representation was favourably considered by the management.



W.P(MD)No.7472 of 2023

It sent recommendatory proposal to the third respondent. Since the third respondent had not passed order on the proposal, the present writ petition came to be filed

3.The respondents 1 to 3 have filed counter affidavit. The learned Additional Government Pleader took me through its contents. His objections are two fold. (a) Grant of promotion to the petitioner as Clerk was illegal. (b) The petitioner was not holding a post within the sanctioned cadre. Paragraph Nos.5 and 7 of the counter affidavit filed by the third respondent is as follows:-

“5) It is further submitted that the above said condition laid down by the 1st Respondent was later modified by another letter of him in Na.Ka.No. 52437/2012/ Tho.Ve.Sa.1 dated 03.08.2012, wherein instructions were given to give promotions to the salesman of the Fair Price Shops, if they had fulfilled all the conditions laid down in Rule 149 of Tamil Nadu Cooperative Societies Act 1983 to the next higher vacant post of Attender (Junior Clerk) or Fertilizer Salesrian or Clerk if such posts are within the approved cadre strength of the society. It is pertinent to



note here that the 4th Respondent's society which was originally registered as Primary Agricultural Cooperative Credit Society was converted into an Urban Cooperative Credit Society as per the proceedings of the 3rd Respondent issued in his Na.Ka. No. 3841/2014/Tho.Va. dated 30.11.2015. Subsequent to this conversion the cadre strength of the 4th Respondent's society whose members loan outstanding was Rs. 6,90,69,152/- as on 31.03.2010 was re-fixed as Secretary 1, Assistant Secretary 1, Accountant - 1, Assistant - 1 and Office Assistant - 1 as per the proceedings of the 1st Respondent issued vide his Na.Ka. No. 12738/2010/Va.Aa.1 (2) dated 07.12.2010. So, when this approved cadre strength was in vogue, the petitioner was promoted to the Post of Junior Clerk (Attender) which was not an approved post in the above said cadre strength. So, his promotion from the post of salesman to the post of Junior Clerk (Attender) which was not existing in the approved cadre strength was wholly illegal.

7) It is further submitted that the petitioner who was illegally promoted as Junior Clerk (Attender) was again promoted as clerk with effect from 05.10.2018. It is pertinent to note here that Rule 149 (1) of the Tamil



W.P(MD)No.7472 of 2023

Nadu Cooperative Societies Rules 1988 prescribes the following condition for eligibility for promotion from one category to the immediate next higher category of post.

"Provided that in the case of the post other than the post of manager, superintendent and above a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post"

But here in the case of the petitioner who was illegally promoted to the post of Junior Clerk with effect from 01.11.2016 was again promoted as clerk with effect from 05.10.2018 even before the completion of years of satisfactory service in the feeder category. Hence this 2nd Promotion conferred upon the petitioner was wholly illegal and so he cannot claim the Revised pay fixation which was sanctioned to the other staff of the 4th Respondent's society by the 3rd Respondent vide his proceedings Na.Ka.No.6095/2018/Se.Ku dated 06.07.2020. Under such circumstances the proposal sent by the 4th Respondent to the 3rd Respondent for fixing the pay of the petitioner as per the proceedings of the 1st Respondent. in Na.Ka. 93630/ 2015 / Va.Aa.1 (2) dated



WEB COPY



W.P(MD)No.7472 of 2023

08.11.2018 and 01.03.2018 could not be entertained for the reason that the promotions conferred upon the petitioner was wholly illegal and were made in violations of the instructions issued by the 1st Respondent and also in violations of the Rule 149 of the Tamil Nadu Cooperative Societies Rules 1988.”

He pressed for dismissal of this writ petition.

4.I carefully considered the rival contentions. The learned standing counsel for the society clarifies that the fourth respondent was originally Cooperative Rural Credit Society and that it became an Urban Credit Society in the year 2015. The cadre strength of the rural credit society was as follows:-

Sl. No.	Category of Post	No of Post
1	Secretary	1
2	Asst. Secretary / Manager	1
3	Senior Clerk / Accountant / Cashier	1
4	Clerk / Typist / Jewel Apprasier	2
5	Junior Asst. / Junior Clerk / Fertilizer Salesman	1
6	Sub – Staff / Night Watchman	2
	Total	7



WEB COPY



W.P(MD)No.7472 of 2023

5.The cadre strength of an urban credit society is as follows:-

வ.எண்.	புணி நிலைகள்
1	செயலாளர்
2	உதவி செயலாளர்
3	கணக்கர்
4	உதவியாளர்
5	அலுவலக உதவியாளர்

6.When the petitioner was promoted as Junior Clerk in the year 2016, he could have been promoted as Clerk only in the year 2019 after completing three years of service as Junior Clerk. I uphold the objection of the learned Additional Government Pleader that granting promotion as Clerk to the petitioner in the year 2018 was bad in law. But on this ground, the petitioner cannot be denied his legitimate pay for ever. The petitioner can be considered as Clerk with effect from 05.10.2019 onwards.

7.I am satisfied that the post of Clerk being equivalent to that of Assistant is very much within the cadre sanctioned by the department. Therefore, the third respondent is directed to pass an appropriate order on



W.P(MD)No.7472 of 2023

the proposal submitted by the fourth respondent management. This shall be done within a period of six weeks from the date of receipt of a copy of this order. The benefits payable to the petitioner shall be disbursed thereafter as expeditiously as possible.

8.This writ petition is allowed on these terms. No costs.

27.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

- 1.The Registrar of Cooperative Societies,
Office of the Registrar of Cooperative Societies,
E.Ve.Ra.High Road, Chennai.
- 2.The Joint Registrar of Cooperative Societies,
Office of the Joint Registrar of Cooperative Societies,
Madurai Region, Ground Floor,
Thirupuramkundram Road,
Near Palanganatham Roundana,
Madurai – 625 003.
- 3.The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies,
Madurai Circle, Ground Floor,
Thirupuramkundram Road,
Near Palanganatham Roundana,
Madurai – 625 003.

8/10



WEB COPY



W.P(MD)No.7472 of 2023



WEB COPY



W.P(MD)No.7472 of 2023

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.7472 of 2023

27.06.2023