



W.A.(MD)No.1239 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1239 of 2014

and

M.P.(MD)Nos.2 & 3 of 2014

V.Paul Raj

...Appellant

/Vs./

- 1.The Joint Registrar of
Co-operative Societies,
No.33, Vethanantha Street,
Nagercoil.
- 2.The Deputy Registrar of
Co-operative Societies (Thuckalay Range),
Palace Road, Thuckalay, Kanyakumari District.
- 3.The President,
K.V.119, Kalkulam Taluk,
Teachers Co-operative Thrift
and Credit Society Ltd.,
Thuckalay, Kanyakumari District.

4.N.Justus John

...Respondents

[Cause title accepted vide order dated 24.09.2014]

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PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to set aside the order dated 05.08.2014 in W.P.(MD)No.9361 of 2011 by this Court.

For Appellant	: Mr.P.Vinoth for Mr.N.G.Ashok Kumar
For R1 & R2	: Mr.K.S.Selvaganesan
For R3	: Mr.Dennis Joe
For R4	: No Appearance

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The appellant is disgruntled with the order passed on 05.08.2014 rejecting the writ petition filed by him challenging fixation of seniority *inter se* himself and fourth respondent (in short 'R4'). Both the petitioner and R4 were employees in K.V.119, Kalkulam Taluk, Teachers Co-operative Thrift and Credit Society Ltd., Thuckalay, arrayed as R3 (in short 'R3'/'Society').



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2.The fixation of seniority *inter se* petitioner and R4, placing R4 at Serial No.1 and petitioner at Serial No.2, was assailed on the ground that the petitioner was senior to the fourth respondent. This argument turns on an application of proviso to Section 35(aa) of the Tamil Nadu State and Subordinate Service Rules (in short 'Service Rules'). Reference to the Service Rules is really not relevant as the methodology prescribed therein is based on the date of appointment of the candidate.

3.In this case, the date of appointment of both the petitioner and R4 is 06.02.1992 and thus, this would be no assistance in testing the question of seniority. The second respondent proceeds, instead, on the basis of Rule 149 of Tamil Nadu Cooperative Societies Rules (in short 'Co-operative Societies Rules'). This is objected to by the appellant pointing to the fact that there is no necessity to apply the Co-operative Societies Rules as each society would have framed its own Rules applicable to matters relating to its functioning, including appointments.



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4.It is true that Rules have been framed by R3. However, it is its case that such Rules do not provide any guidance on how seniority is to be decided in the matter of a tie between two candidates, whose date of appointment is one and the same. It is in such an event, that Rule 149 of the Co-operative Societies Rules provides guidance.

5.Rule 149 (2) of the Co-operative Societies Rules states that the date of filing applications by the employees in the employment exchange would be taken to be the relevant date in determining seniority and reads thus:

“149. Conditions of service of paid officers and servants of societies.

(1).....

(2) No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the society and also of the affiliated societies, inviting application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State: Provided that the above stipulation shall not apply-

(i) to the appointment made on compassionate grounds;



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(ii) for the absorption of surplus employee of other Co-operative Societies;

(iii) to the posts for which a Recruitment Bureau has been constituted under section 74 of the Act or in respect of which a common cadre of service has been constituted under section 75 of the Act."

6.In this context, one would have to compare the date of applications of the petitioner and fourth respondent before the employment exchange. The petitioner had admittedly filed an application on 17.11.1986, but let that application lapse. The explanation tendered by the petitioner in this regard is that he had secured temporary employment for a period of 5 years. We are not impressed with this explanation. The factum of employment, either temporary or otherwise, does not stand in the way of the petitioner renewing his application before the employment exchange. Clearly that there has been a conscious decision to allow the application to lapse.

7.The fourth respondent had registered his application on 08.01.1991. The petitioner filed his application afresh on 02.04.1991 having allowed application dated 07.11.1986 to lapse. On a comparison of the relevant dates of filing, being 08.01.1991 (R4) and 12.04.1991



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(appellant), the learned Single Judge has rightly concluded that the balance of seniority would tip in favour of the fourth respondent.

8.We find nothing untoward in the conclusion of the learned Single Judge or in the procedure and approach followed by the second respondent in determining the seniority qua the petitioner and R4.

9.To reiterate, in the absence of any Rule in this regard in the third respondent society, the appropriate rule to be applied would be Rule 149 of the Co-operative Societies Rules, and that is what has been done in the present case. This Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M.J.] & [R.V.J.]
12.07.2023

NCC :Yes/No
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)No.1239 of 2014

Dated:
12.07.2023