



W.P.(MD).No.25920 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.11.2023

ORDER PRONOUNCED ON : 06 .12.2023

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

**W.P.(MD).No.25920 of 2023
and W.M.P(MD).Nos.22272 &22273 of 2023**

N.Kalimuthu

....Petitioner

Vs

1.The Joint Registrar of Co-operative Societies
Office of the Joint Registrar of Co-operative Societies
Virudhunagar Region
Virudhunagar

2.The Deputy Registrar of Co-operative Societies
Office of the Deputy Registrar of Co-operative Societies
Aruppukkottai Circle
Virudhunagar District

3.The Administrator
SP.SPL.13, Krishnapuram Primary
Agricultural C-operative Credit Society
Virudhunagar District

4.R.Nagalakshmi
Saleswoman
SP.SPL.135, P.Pudhupatti Primary
Agricultural Co-operative Credit Society
Kariyapatti Taluk
Virudhunagar District

...Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding passed by the second respondent vide ந.க.108/2022 தொவேச நாள் :20.02.2023 and the consequential order dated 10.10.2023 passed by the third respondent and quash the same and consequently direct the respondents 1 to 3 to permit the petitioner to work continuously in the promotional post of Attender in pursuance of the order of promotion dated 01.09.2022 passed by the third respondent.

For Petitioner : Mr.D.Shanmugaraja Sethupathy

For R1 & R2 : Mr.Shaji Bino
Special Government Pleader

For R3 : MR.T.Ravichandran

For R4 : Mr.M.Ganesan

ORDER

The present writ petition has been filed by an Attender/Fertilizer Salesman of the third respondent society challenging the show cause notice issued by the second respondent herein on 20.02.2023 to the President of Krishnapuram Primary Agricultural Co-operative Credit Society seeking explanation from him for illegal promotion order passed in favour of the writ petitioner. Consequently, the third respondent who is the Administrator of the said Society has issued a show cause notice to the writ petitioner on



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10.10.2023 seeking explanation why his promotion should not be cancelled.

These two orders are under challenge in the present writ petition.

(A).Contentions of the learned counsel for the petitioner:

2.According to the learned counsel appearing for the writ petitioner, he had joined Krishnapuram Primary Agricultural Co-operative Credit Society as Salesman on 16.06.2014. He was promoted as an Attender/Fertilizer Salesman by an order of the third respondent on 01.09.2022. The fourth respondent herein was appointed as Saleswoman in Pudupatti Primary Agricultural Co-operative Credit Society. The said Society was running a fair price shop at Kilavaneri and Allipuram Villages. Since the fourth respondent Society was not financially viable, the District Supply Officer had passed an order transferring the said fair price shop to be under the control and administration of the third respondent in which the petitioner is working.

3.The order of the second respondent impugned in the writ petition has been passed on the basis of a representation made by the fourth respondent herein. As per the impugned of the second respondent, the fourth respondent is senior to the writ petitioner and therefore, she should have been promoted as an Attender instead of the writ petitioner. Therefore, the promotion order granted in favour of the writ petitioner was an illegal promotion and on the said premise, the impugned show cause notice has been issued to the Krishnapuram Society President who in turn had issued a consequential show



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cause notice to the writ petitioner.

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4. According to the learned counsel for the petitioner, the fourth respondent continues to be an employee of Pudupatti Society and the said Society has not merged with Krishnapuram Society. Therefore, the fourth respondent is only on a deputation from Pudupatti Society to Krishnapuram Society.

5. The learned counsel had further contended that unless the fourth respondent is an employee of the Krishnapuram Society, she cannot claim any seniority above the employee of the Krishnapuram Society. Therefore, the impugned show cause notice as against Krishnapuram Society President and the consequential show cause notice to the Krishnapuram Panchayat President as against the writ petitioner are not legally sustainable and they have to be set aside.

(B).Contentions of the learned counsel for the respondents:

6. Per contra, the learned Special Government Pleader appearing for the respondents 1 and 2 had relied upon a communication of the District Revenue Officer, Virudhunagar dated 11.01.2009 and contended that the fair price shop run by Pudupatti Society was merged with Krishnapuram Society along with the employee namely the fourth respondent herein. Therefore, the fourth respondent has become an employee of the Krishnapuram Society in the year 2009. Admittedly, the fourth respondent is senior to the writ petitioner and



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therefore, the petitioner could not have been promoted as an Attender in the year 2022.

7.The learned Special Government Pleader had further contended that the fourth respondent is receiving salary only from Krishnapuram Society right from the date on which the shop was merged with Krishnapuram Society and her service records are also maintained only by Krishnapuram Society. Therefore, for all purposes, the fourth respondent namely R.Nagalakshmi should only be construed to be an employee of Krishnapuram Society. Being a senior in service, the writ petitioner should not have been promoted ignoring her seniority.

8.The learned counsels appearing for the respondents 3 and 4 herein have relied upon various proceedings to contend that the fourth respondent namely R.Nagalakshmi has been transferred to Krishnapuram Society along with the fair price shop. Her service records and other administrative control are managed only by Krishnapuram Society. In view of the orders of the District Revenue Officer, Virudhunagar dated 11.01.2009, the fourth respondent namely R.Nagalakshmi had become an employee of Krishnapuram Society. Admittedly, the fourth respondent was appointed in Pudupatti Society on 10.09.2023 whereas the petitioner has been appointed only in the year 2014 in Krishnapuram Society. Therefore, the fourth respondent is senior to the writ petitioner and she ought to have been



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promoted as an Attender. When the said irregularity was found out by the third respondent herein, he had issued a notice to the President of Krishnapuram Society why action should not be initiated against him for illegally promoting the writ petitioner. Consequently, the President of the said Society has issued a show cause notice to the writ petitioner.

9.It is settled position of law that a writ petition is not maintainable as against a show cause notice. The petitioner is at liberty to offer his explanation to the President of Krishnapuram Society and explain the circumstances in which he was promoted. Therefore, the writ petition is not maintainable.

10.I have considered the submissions made on either side and perused the material records.

(C).Discussion:

11.The petitioner has been appointed as Salesman in the fair price shop run by Krishnapuram Primary Agricultural Co-operative Credit Society on 16.06.2014. The fourth respondent namely R.Nagalakshmi has been appointed as a Saleswoman in the fair price shop run by Pudupatti Primary Agricultural Co-operative Credit Society on 10.09.2003. The Pudupatti Society has become financially unviable and therefore, the fair price shop run by the said Society was handed over to Krishnapuram Society along with the employee (fourth respondent) by an order of District Revenue Officer,



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Virudhunagar dated 11.01.2009. These facts are not in dispute.

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12.The issue that arises for consideration is whether an employee of a fair price shop of one Society, when the same is annexed to another Society, would become an employee of the transferred Society or not?

13.A perusal of the order passed by the District Revenue Officer, Virudhunagar on 11.01.2009 indicates that there is no permanent employee in Pudupatti Society for supervising the fair price shop run by the said Society. Therefore, no one is available in Pudupatti Society to receive the daily sales amount and issue a receipt. In view of the said reason, the District Revenue Officer had decided to hand over the fair price shop run by Pudupatti Society to a nearby namely Krishnapuram Society so that the daily activities of the said fair price shop can be properly supervised. In the said order, it is further indicated that the fair price shop shall be handed over to the Krishnapuram Society along with its staff.

14.The Pudupatti Society has passed a resolution on 24.12.2018 requesting the District Revenue Officer to re-handover the fair price shop to Pudupatti Society on the ground that the permanent staff have been appointed to Pudupatti Society on deputation basis. The Krishnapuram Society has passed a resolution on 25.02.2019 agreeing to hand over the fair price shop to Pudupatti Society. Based upon these two resolutions, the first respondent herein had addressed a communication to the third respondent on 19.11.2019



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calling for a report from him. Based upon the said communication, the second respondent had addressed a letter to the President of Krishnapuram Society requesting him to send a proposal to rehandover the fair price shop to Pudupatti Society. Pursuant to the said request, Krishnapuram Society again had passed a resolution on 28.01.2020 to rehandover the fair price shop to Pudupatti Society.

15.The transferor and the transferee Society had already passed a resolution to re-handover the fair price shop to Pudupatti Society. A decision on the said resolution of both the societies is pending before the second respondent herein. For the reasons best known, the second respondent has not chosen to pass any orders on the resolution passed by both the societies. However, the second respondent has shown urgency in issuing a show cause notice to Krishnapuram Society for promoting the fourth respondent in Krishnapuram Society.

16.The fourth respondent namely R.Nagalakshmi had made a request to the second respondent on 07.10.2022 seeking promotion. The said request was forwarded by the second respondent to the President of Krishnapuram Society on 13.10.2022. The Krishnapuram Society addressed a reply on 18.11.2022 to the second respondent indicating a fact that the fourth respondent namely R.Nagalakshmi can seek promotion only in her parent



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Society namely Pudupatti Society. After receiving the said communication, the second respondent had proceeded to pass the impugned show cause on 20.02.2023 calling upon the President of Krishnapuram Society why action should not be initiated against him for illegally promoting the writ petitioner which has resulted in a consequential show cause notice of the President of Krishnapuram Panchayat to the writ petitioner.

17.A perusal of the order of District Revenue Officer dated 11.01.2009 clearly indicates that the Pudupatti Society was never merged with Krishnapuram Society, but only the fair price shop was transferred from the administration of the Pudupatti Society to Krishnapuram Society. Therefore, it is clear that the fourth respondent namely R.Nagalakshmi never became an employee of Krishnapuram Society.

18.Rule 149 (2-A) of the Tamil Nadu Co-operative Societies Rules 1988 is extracted as follows:

“(2-A) A society may transfer an employee to another society for a period of not less than one year on deputation basis and the other society may avail the service of that employee on the terms and conditions agreed to by both the societies :

Provided that no such transfer shall be made for a period exceeding three years.”



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19.A perusal of the said Rule would clearly indicate that a Society can transfer an employee to another Society only on the terms and conditions agreed by both the Societies. Further such a transfer cannot exceed beyond a period of three years. In the present case, the transfer of fair price shop along with an employee could only be considered to be deputation of R.Nagalakshmi from Pudupatti Society to Krishnapuram Society. There is no provision under the Societies Act which permits the transfer of an employee from one Society to another Society unless merger of both the Societies takes place in a manner known to law. If the fourth respondent is not an employee of Krishnapuram Society, the question of her claiming seniority and promotion in Krishnapuram Society does not arise.

20.The Hon'ble Division Bench of this Court in a judgment reported in **(2009) 4 MLJ 955 (R.Seeniyappan Vs. Industries Commissioner and Director of Industries and Commerce, Chepauk, Chennai and others)** in paragraph No.17 has held as follows:

“17. The last contention of the appellant is that by virtue of Rule 149(2)(ii) of the Tamil Nadu Co-operative Societies Rules, 1988, the appellant should have been accommodated in any of the other Co-operative Societies in the State of Tamil Nadu. At the outset, we wish to state that the said contention of the appellant is based on a total misreading of the very Rule. For better



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appreciation of the contention, the said part of Rule 149(2) is extracted, which reads as under:-

"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 Exchanges issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspaper 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;

(ii) for the absorption of surplus employees of other co-operativesocieties;

(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."

The main part of the said Sub-Rule only states as to how and in what manner any appointment by direct recruitment to any Society governed by the provisions of the Act and the Rules can be made. Clause (ii) falling under the proviso to Sub-Rule (2) is only by way of an exception. In other words, under the substantive part of Sub-Rule (2) of Rule 149, it is stipulated that any appointment by way of direct recruitment can be resorted to only in a particular



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manner and by way of an exception, it is stated that such restriction contained in the said substantive part of Sub-Rule (2) will not apply if it is by way of absorption of surplus employees of other Co-operative Societies. From the said proviso contained in Rule 149(2)(ii) it cannot be held that as a matter of law or course, it is incumbent upon any other Co-operative Society in the State of Tamil Nadu to absorb surplus employees of other Societies should be made as is contended by the appellant. Such a contention being wholly misconceived, we do not find any merit in the said contention.

21. Even the fourth respondent in her representation to the second respondent on 07.10.2022 has not claimed that she is senior to the writ petitioner. She had only requested for promotion in Krishnapuram Society. The fair price shop being under the control of Krishnapuram Society, naturally the service register of the fourth respondent and other records were managed by Krishnapuram Society. Only due to lack of permanent staff at Pudupatti Society, the fair price shop of the said Society has been transferred to Krishnapuram Society. Therefore, merely because Krishnapuram Society exercises supervisory control over the fourth respondent, the fourth respondent can never be construed to be an employee of the Krishnapuram Society.



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22.In view of the above said facts, this Court is of the considered opinion that the second respondent herein without passing any order on the re-transfer of fair price shop from Krishnapuram Society to Pudupatti Society, has shown some special interest in pursuing the case of promotion of the fourth respondent. If the second respondent has chosen to pass orders to re-handover the fair price shop to Pudupatti Society, the issue would not have arisen at all.

23.In view of the bar under Rule 149 (2-A) of Tamil Nadu Co-operative Societies Rules, 1988, the fourth respondent can never be construed to have become an employee of Krishnapuram Society. Even her deputation to Krishnapuram Society could only be continued for a period of three years and not beyond that. It is also an admitted fact that Pudupatti Society is alive and the second respondent has addressed a letter to Pudupatti Society on 19.01.2019 and hence, admittedly, the merger of both the Societies has not taken place. When the fourth respondent is not an employee of Krishnapuram Society, the question of issuing show cause notice for not promoting her in Krishnapuram Society is clearly without jurisdiction and therefore, this Court is inclined to entertain the writ petition challenging the show cause notices.



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(D).Conclusion:

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24.In view of the above said deliberations, the show cause notices impugned in the writ petition are set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

06.12.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

1.The Joint Registrar of Co-operative Societies
Office of the Joint Registrar of Co-operative Societies
Virudhunagar Region
Virudhunagar

2.The Deputy Registrar of Co-operative Societies
Office of the Deputy Registrar of Co-operative Societies
Aruppukkottai Circle
Virudhunagar District



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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and W.M.P(MD).Nos.22272 &22273 of 2023

06.12.2023