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W.P.No.11190 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.11190 of 2012

and

M.P.No.2 of 2012

M.Balakrishnan

...Petitioner

-Vs-

1.The Joint Registrar of Co-operative Societies,
Kancheepuram Region,
Kancheepuram District.

2.The Special Officer,
G.1686, Singaperumal Koil Primary,
Agricultural Co-operative Credit Society,
GST Road, Singaperumal Koil,
Chengalpattu Taluk,
Kancheepuram District.

3.K.Senbagavalli

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.6256/2009/A-3 dated 21.03.2011 and quash the same and consequently direct the respondents 1



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and 2 to promote the petitioner as Secretary in the 2nd respondent Society and pass such further orders.

For Petitioner : Mr.C.Prakasam
For R1 : Mr.S.Ravikumar
Special Government pleader
For R2 : Mr.L.P.Shanmugasundaram
For R3 : Mr.T.Meganathan

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the 1st respondent vide proceedings Na.Ka.6256/2009/A-3 dated 21.03.2011 and consequently direct respondents 1 and 2 to promote the petitioner as Secretary in the 2nd respondent Society.

2. The case of the petitioner is that he was appointed as salesman in the 2nd respondent society on 12.01.1979 and subsequently promoted as fertilizer salesman on 22.06.1991 and thereafter on 30.06.1994 he was promoted as Junior Clerk. On 31.03.1995 he was promoted as senior clerk and on 15.02.1998 he was promoted as Branch Manager in Maraimalai



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Nagar. The 3rd respondent herein was appointed as clerk in the 2nd respondent society after 1980 in an irregular manner i.e., on 01.08.1987, without through employment exchange and without following Rule 149(2) of the Tamil Nadu Cooperative Societies Rules and subsequently, the 3rd respondent was promoted as senior clerk in the 2nd respondent society on 30.06.1994.

3. Learned counsel for the petitioner submitted that the 3rd respondent appointment was made in an irregular manner without following any procedure i.e., not through Employment Exchange and hence her service was not at all regularized till the year 2007 and only on 05.03.2007, her service has been regularized. In that order, it has been very clearly stated that her regularization of service is subjected to the outcome of the writ pending before this Court in W.A.No.2501 of 2001 and that regularization has been passed by the 1st respondent herein, knowing fully that the writ appeal was dismissed by this Court on 24.10.2002, but the 1st respondent passed regularization order on 05.03.2007 i.e., the 1st respondent wantonly and deliberately suppressed the matter that the above writ appeal was already dismissed on 24.10.2002 and the same was upheld by the Hon'ble Supreme Court on 28.07.2004 and reported in 2005 MLJ (6) SC 78.



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4. Learned counsel further submitted that the 2nd respondent passed resolution No.17 dated 19.06.2009 whereby the 3rd respondent was promoted as Assistant Secretary, against which the petitioner preferred revision under Section 153 of the Tamil Nadu Cooperative Societies Act before the 1st respondent. But the 1st respondent passed orders in his proceedings Na.Ka.No.6256/2009/A-3 dated 21.03.2011 and rejected the revision filed by the petitioner against which the petitioner preferred a review application under Section 154 of the Tamil Nadu Cooperative Societies Act before the Registrar of Cooperative Societies as it was not maintainable.

5. Learned counsel further submitted that the 3rd respondent appointment and regularization of her service are illegal, but both respondents 1 and 2 passed the impugned order, which is illegal and the promotion given in favour of the 3rd respondent as Assistant Secretary and promoted as Secretary is illegal and arbitrary.

6. Learned counsel further submitted that respondents 1 and 2 failed to consider that respondents 1 and 2 rejected the petitioner's seniority



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on the ground that the petitioner was appointed as salesman and hence he cannot seek any promotion in the society, whereas the Registrar of Cooperative Societies issued circular in Na.Ka.No.119653/97/PACB-1 dated 08.12.1997. According to which, the salesman can also be promoted to the higher post of the society, whereas the very same Registrar of Cooperative Societies issued circular in Na.Ka.No.152654/02/Sa.Pa.3 dated 13.11.2006, which very clearly stated that irregular appointments cannot be promoted to the higher post, but respondents 1 and 2 without looking over the Registrar circular as well as Supreme Court judgment and promoting the 3rd respondent as Secretary is illegal and arbitrary. Respondents 1 and 2 failed to consider that when they admitted in their order that there is no specific order for regularization of the 3rd respondent, they promoted the 3rd respondent as Secretary. Aggrieved by the order passed by the 1st respondent dated 21.03.2011, the petitioner has come forward with the present writ petition.

7. A counter affidavit was filed on behalf of the 1st respondent.

8. Learned Special Government Pleader appearing for the 1st respondent submitted that the petitioner was appointed in the 2nd respondent



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society as salesman on 01.07.1994 and he was irregularly promoted as clerk purely on contingency reasons, as the post of salesman is not the feeder category for promotions to the post of clerk and the promotion of the petitioner is therefore illegal. Whereas the 3rd respondent was appointed directly as clerk as she possessed sufficient educational qualification and age as early as 1987 and therefore, she is senior to the petitioner for further promotion. In fact, the petitioner himself admitted that the senior grade clerk post that was granted to the petitioner subsequent to the promotion of the 3rd respondent is sufficient proof that she is senior to the petitioner. Only the 3rd respondent is eligible for further promotion and not the petitioner as she is fully qualified. Accordingly, she has been promoted to the post of Secretary.

9. The 2nd respondent has also filed the counter affidavit in June 2012.

10. Learned counsel for the 2nd respondent submitted that the petitioner has attained the age of superannuation on 30.06.2022 and all his benefits have been paid as per the rules and regulations of the society in force as on that date.



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11. Learned counsel for the 2nd respondent further submitted that the petitioner joined the service of the society on 12.01.1979 as salesman on a consolidated pay of Rs.100/- per month. At the time of joining the service, the petitioner possessed an old SSLC qualification and no cooperative training is required for salesman. The salesman cadre is in the 5th position in the approved cadre strength, whereas the 3rd respondent was appointed straight away as clerk on 01.08.1987, above the petitioner herein since she possessed plus two qualification with cooperative training, which is the requisite qualification for the post of clerk. The post of clerk is 4th position in the approved cadre strength. The petitioner passed the cooperative training during 1993-94 whereas the 3rd respondent passed the cooperative training in 1985-86. The petitioner was promoted to the post of clerk only on 01.07.1994, whereas the 3rd respondent was holding the post of clerk from 01.08.1987. The petitioner was promoted to the post of Manager only on 02.09.2013, whereas the 3rd respondent was holding the post of Manager/Assistant Secretary since 2009.

12. Learned counsel further submitted that the petitioner possessed



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only SSLC qualification with cooperative training on 19.06.2009 and no experience in the feeder category post of Manager, whereas the 3rd respondent possessed all the requisite qualifications and was posted as Assistant Secretary. Thereafter, the 3rd respondent was promoted to the post of Secretary on 01.03.2012 since she had qualified pattern of 10+2+3 with cooperative training together with feeder category post of experience as Assistant Secretary. The petitioner lacked these qualifications. Hence, he was not promoted to the post of Secretary. He did not pass plus two. However, he acquired degree through open university. However, the petitioner was promoted as 'Assistant Secretary' on 02.09.2013 and retired on 30.06.2022. From 19.06.2009 to 29.02.2012, the 3rd respondent was holding the post of Assistant Secretary. Thereafter, she was promoted to the post of Secretary on 01.03.2012. The 3rd respondent is continuing in service. Her retirement date is 30.04.2026. The petitioner was retired on 30.06.2022 and he had received all the terminal benefits. There are no dues payable to him.

13. Learned counsel further submitted that the petitioner had already challenged the promotion of 3rd respondent before the Revision Authority under Section 153 of the TNCS Act, which was dismissed on



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21.03.2011, which is under challenge in the present writ petition.

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14. Learned counsel further submitted that for the posts of Assistant Secretary and Secretary, the prescribed qualifications are plus two with cooperative training. From the year 2012, the qualification was prescribed as degree with cooperative training in the regular pattern of 10+2+3. Since one Mr.Sridharan, Assistant Secretary, was retired, the society vide its resolution No.17 dated 19.06.2009 posted Tmt.K.Shenbagavalli / 3rd respondent as Assistant Secretary in charge to run the affairs of the society without any monetary benefits. (This resolution is challenged by the petitioner in the present writ petition).

15. Heard both sides and perused the materials available on record.

16. It is an admitted fact that the petitioner joined the service of the 2nd respondent society as salesman on a consolidated pay of Rs.100/- per month on 12.01.1979. The petitioner possessed SSLC qualification and no cooperative training is required for salesman. The 3rd respondent was appointed as clerk on 01.08.1987. Since he possessed plus two qualification with cooperative training, which is required for the post of clerk. The



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petitioner passed cooperative training during 1993-94 whereas the 3rd respondent passed cooperative training in 1985-86. The petitioner was promoted to the post of clerk only on 01.07.1994, whereas the 3rd respondent was holding the post of clerk from 01.08.1987. The petitioner was promoted to the post of Manager only on 02.09.2013, whereas the 3rd respondent was holding the post of Manager/Assistant Secretary since 2009.

17. The petitioner possessed only SSLC qualification with cooperative training on 19.06.2009 and no experience in the feeder category post of Manager. The 3rd respondent possessed all the requisite qualifications and she was posted as Assistant Secretary. Thereafter, the 3rd respondent was promoted to the post of Secretary on 01.03.2012 since she had qualified pattern of 10+2+3 with cooperative training together with feeder category post of experience as Assistant Secretary. The petitioner lacked these qualifications. Hence, he was not promoted to the post of Secretary. He did not pass plus two. However, he acquired degree through open university. However, the petitioner was promoted as 'Assistant Secretary' on 02.09.2013 and retired on 30.06.2022. From 19.06.2009 to 29.02.2012, the 3rd respondent was holding the post of Assistant Secretary. Thereafter, she was



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promoted to the post of Secretary on 01.03.2012.

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18. In view of the above facts, it is crystal clear and evident that the 3rd respondent is senior to the petitioner. She was posted as Assistant Secretary in the year 2009. On 01.03.2012, she was promoted to the post of Secretary. She is still continuing in service and her retirement date is 30.04.2026.

19. In view of the above factual matrix of the case, the order passed by the 1st respondent vide proceedings Na.Ka.6256/2009/A-3 dated 21.03.2011 is hereby confirmed and that does not warrant any interference by this Court.

20. In the result, the **writ petition stands dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

21.03.2024

cda

Index : Yes / No

Speaking / Non Speaking Order



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J.SATHYA NARAYANA PRASAD, J.

cda

To

- 1.The District Collector,
Krishnagiri,
Krishnagiri District.
- 2.The Mandal Revenue Officer,
Thali, Krishnagiri District.

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