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W.P.No.34465 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.34465 of 2012

and

M.P.No.1 of 2012

S.Venkatesan

... Petitioner

Vs.

1.The Joint Registrar Of Co-Op. Societies,
Dharmapuri Region,
Dharmapuri District.

2.The Special Officer
K.K.27, Jarthalava Primary Agricultural Co-Op.
Credit Society,
Jarthalav, Palacode Taluk,
Dharmapuri District.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, Calling for the records relating to the impugned proceedings Na.Ka. No.9302/10 Sa.Pa. dated 31.01.2011 passed by the 1st respondent herein and quash the same and consequently direct the 2nd respondent to appoint the petitioner to the post of Senior Clerk in the 2nd



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respondent society. AMENDED As calling for the records relating to impugned final Order dated 24.07.2010 of the 2nd respondent and the impugned proceeding in Na.Ka.No.9302/10 Sa.Pa. dated 31.01.2011 passed by the 1st respondent herein and quash the same and consequently direct the 2nd respondent to appoint the petitioner to the post of Senior Clerk in the 2nd respondent Society.

(Prayer amended as per order dated 11.01.2024 in WMP.33823/2023 in WP.34465/22012 by DNRJ)

For Petitioner : M/s.L.G.Sahadevan
for Mr.A.Ilaya Perumal
For Respondents :
(for R1) : M/s.V.Jeevagiridharan, AGP
(for R2) : M/s.M.S.Palaniswamy

ORDER

The above writ petition was originally filed to call for the records relating to the impugned proceedings Na.Ka.No.9302/10 Sa.Pa. dated 31.01.2011 passed by the 1st respondent herein and quash the same and consequently direct the 2nd respondent to appoint the petitioner to the post of Senior Clerk in the 2nd respondent society and was later amended as one to call for the records relating to impugned final Order dated 24.07.2010 of the 2nd respondent and the



impugned proceeding in Na.Ka.No.9302/10 Sa.Pa. dated 31.01.2011

passed by the 1st respondent herein and quash the same and consequently direct the 2nd respondent to appoint the petitioner to the post of Senior Clerk in the 2nd respondent Society.

2.The brief facts are as follows:-

2.1. The Petitioner would submit that he was appointed as an Attender on 18.11.1993 in the 2nd respondent's Society. He had discharged his duties to the utmost satisfaction of his superiors. Taking into account his sincerity the erstwhile Board of the Society had promoted him to the post of Assistant Secretary taking into account the 6 years of service put in by him thereby superseding the post of a Clerk.

2.2. The petitioner would further submit that pursuant to his promotion he had been also discharging duties as Assistant Secretary and on 02.11.2009 he was additionally given charge to perform a duty of a Salesman. This additional post was given to overcome the contingency occurred in the Society and to ensure that the Public



Distribution Scheme proceed without any hitch.

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2.3. The petitioner would submit that on account of the his inexperience as a Salesman he was unable to handle the crowd as well as the billing and the disbursement of goods. On account of which certain shortages had occurred. For this he was suspended on 06.02.2010 and a charge memo dated 15.03.2010 was issued. A domestic enquiry was conducted and report was submitted on 20.07.2009. The petitioner had contested the enquiry stating that the shortage due under various receipts were repaid by him and there was no amounts due from his side.

2.4. The petitioner would submit that normally if any shortage is detected the Management would step in to repay the same. However, since there were persons inimically disposed of towards him, they had also raised the allegation of irregular promotion. The final orders were passed by the 2nd respondent on 24.07.2010 reverting the petitioner to the erstwhile post of Attender.

2.5. Thereafter, the petitioner had preferred a revision petition



on 22.09.2010 to the 1st respondent which was dismissed on 31.01.2011 upholding the final order of reversion passed by the 2nd respondent. Though the charge memo was given for deficit of stocks, the revision petition was decided on the basis of the irregular promotion which was not part of the charge memo. Challenging the same, the petitioner is before this Court.

3. Heard the counsels on either side.

4. In the course of arguments, three grounds were raised challenging the impugned order :-

- i. The Bye laws of the Society relating to conduct of an enquiry has not been followed.*
- ii. The Subsistence Allowance has not been paid.*
- iii. The Salary as Assistant Secretary has not been paid.*

5. In the instant case, the petitioner has not issued with a show cause notice in the first instance. However, he has later participated in the enquiry. After the enquiry, a second show cause notice has not been issued to the petitioner and therefore his explanation to the



enquiry report has not been obtained and he has not been given a personal hearing before the Disciplinary Authority.

6. Therefore, since the very enquiry procedure has been vitiated for not following the procedure, the writ petition has to necessarily be allowed and is accordingly allowed and the matter is remitted back to the 1st respondent.

7. The 1st respondent shall commence the proceeding by sending a second show cause notice to the petitioner who shall on receipt of the same submit his response to the enquiry report and thereafter the 1st respondent shall afford a personal hearing to the petitioner and pass orders.

8. It is informed by the learned counsel for the petitioner that the respondents have not paid the Subsistence Allowance to the petitioner, which has been refuted by the learned counsel for the respondents. Therefore, it is made clear that the respondents shall pay the entire Subsistence Allowance, if not already paid, as expeditiously as possible. No costs. Consequently, the connected Miscellaneous



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Petition is closed.

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Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

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Dharmapuri District.

2.The Special Officer
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P.T. ASHA. J.,

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(1/2)