



Writ Appeal No.3307 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
18.06.2024

PRONOUNCED ON
09.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.3307 of 2023
and C.M.P.No.26865 of 2023**

KK.142, Pottaneri Primary Agricultural
Co-operative Credit Society Ltd.,
Represented by its President,
Ponnaneri Post,
Mettur Taluk, Salem District.

Vs

... Appellant

1.S.Rajesh

2.The Joint Registrar of Co-operative
Societies,
Salem Region, Salem.

3.The Deputy Registrar of Co-operative
Societies,
Omalur Circle,
Salem District.

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to
set aside the order dated 19.09.2023 made in W.P.No.6042 of 2020 and



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pass such further order.

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For Appellant : Mr.P.S.Sivashanmuga Sundaram
For R1 : Mr.M.S.Palaniswamy
For RR2 & 3 : Mr.G.Krishna Raj
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Instant Writ Appeal had been preferred challenging the order of the learned Single Judge wherein a direction had been issued to consider the claim of the first respondent for compassionate appointment in any suitable post within a time frame.

2. Heard Mr.P.S.Sivashanmuga Sundaram, learned counsel for the appellant, Mr.M.S.Palaniswamy, learned counsel appearing on behalf of the first respondent and Mr.G.Krishna Raj, learned Additional Government Pleader appearing on behalf of the respondents second and third respondents.

3. Mr.P.S.Sivashanmuga Sundaram, learned counsel for the



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appellant submit that the father of the first respondent was engaged as a night watchman on temporary basis in the appellant Society. He would further submit that the appointment of the first respondent's father was not in conformity with the provisions contained in Rule 149 Sub Rule (1) and (2) of the Tamil Nadu Co-operative Societies Rules 1988. Therefore, he would contend that the father of the first respondent was not a regular employee of the appellant's Co-operative Society.

4. Relying upon the judgement of the Hon'ble Apex in *Uma Rani's case* reported in **2004 (7) SCC 112**. He would claim that the father of the first respondent had no right for being regularised in the services of the appellant's Society and when that being so, the first respondent is not entitled for seeking compassionate appointment as his father was not a regular employee. He would submit that according to him, the learned Single Judge relying upon the judgment of the Hon'ble Apex Court and this Court which cannot be applied at any stretch of imagination to the present facts of this case had issued a direction to consider the claim of the first respondent for compassionate appointment in any suitable post within a



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period of six weeks. He would submit that compassionate appointment are only a concession given to save the family of a deceased employee who had been appointed only on a regular basis and not otherwise. Since, the first respondent's father was not a regular employee, he cannot claim for any compassionate appointment and hence, he would seek interference of the order passed by the learned Single Judge.

5. Countering his arguments, Mr.M.S.Palaniswamy, learned counsel appearing on behalf of the first respondent would contend that the father of the first respondent is a regularly employed employee of the appellant Society. He would submit that Section 18(1) Settlements have been reached between the employees with the Society, wherein the time scale of pay had also been fixed and the father of the first respondent has also been shown as an employee of the appellant Society. He would further submit that the father of the first respondent was employed in the appellant Society from the year 2000 and he died on 21.07.2017, while he was in service. At the time of death of his father, he was survived by the first respondent, the mother, his wife and a daughter as his legal heirs. Immediately, on death of



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his father, the first respondent had made an application seeking for compassionate appointment along with no objection given by his mother and sister. He would further submit that on the death of the father, the family had got into penurious circumstances. Considering the said claim, the Society by its Resolution dated 18.02.2019 had also resolved to recommend the name of the first respondent for compassionate appointment to any other Society to the third respondent herein, in view that there were no substantial vacancy in the Appellant's Society. He would further contend that if it was the case of the appellant that the father was not a regular employee then no such recommendation would have been made by the Society. He would further submit that pursuant to the said recommendation, the third respondent had also directed the Sub Registrar to enquire into the claim and submit a report. He would further submit that the said Sub Registrar had also conducted an enquiry and submitted its report to the third respondent. Placing reliance upon the said report, he would submit that the said Sub Registrar after verifying the records of the Appellant Society had given a report that the father of the first respondent had been properly appointed in the said post. In such circumstances he



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would submit that the claim of the appellant is nothing but an after thought with a view to deny the benefits that is available to the first respondent and his family. Hence, he would submit that there is no infirmity in the order passed by the learned Single Judge which warrants interference of this Court.

6. Learned counsel for the appellants, replying to the arguments made by the learned counsel appearing for the first respondent would submit that the first respondent's father was originally appointed on a consolidated basis and thereafter, brought at time scale of pay. Even though, the name of the first respondent's father found placed on the 18(1) Settlement, he was not a regular employee and he had been made permanent pursuant to the policy decision taken by the Government. He would vehemently contended that there is a difference between a permanent employee and a regular employee. A permanent employee would not be entitled to the status of the regular employee and cannot seek any benefit on par with a regular employee. In that context, he had relied upon a judgment of the Hon'ble Apex Court in **2020 (10) SCC 496** to contend that the first respondent cannot be considered for compassionate appointment.



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7. We have heard the submissions made by the learned counsel appearing on either side and also perused the materials available on record before this Court.

8. It is not disputed that the father of the first respondent was in service of the appellant Society. The appellant had claimed that the father of the first respondent even though, a permanent employee is not a regular employee as not being appointed by following due process. On the other hand, the learned counsel for the first respondent had heavily relied upon the recommendation of the appellant as well as the report of the Sub Registrar working under the third respondent to contend that the father of the appellant had been appointed on a regular basis. We do not propose to delve upon this disputed question of fact. We also do not propose to do so for the simple reason that the appellant itself had made a recommendation to the third respondent to grant him compassionate appointment in any other Society where there is vacancy. It is also not disputed by the parties that such recommendation is still pending with the third respondent. It is



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also seen that a report had been submitted by the Sub Registrar under the third respondent. We also do not wish to dwell upon the veracity of such a report, since the entire issue is pending with the third respondent.

9. We direct the third respondent to consider the claim of the first respondent pursuant to the recommendation of the appellant dated 18.02.2019 on merits and in accordance with the law. Such exercise shall be completed by the third respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. In view of the aforesaid conclusion, this Writ Appeal is disposed of and the order made in W.P.No.6042 of 2020, dated 19.09.2023 is modified to the terms indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.) (K.B., J.)
09.07.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
gba

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- 1.The Joint Registrar of Co-operative Societies,
Salem Region, Salem.
- 2.The Deputy Registrar of Co-operative Societies,
Omalur Circle, Salem District.



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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
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09.07.2024



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