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W.P.No.24267 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.24267 of 2017

P.Dhanasekaran

... Petitioner

Vs.

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

2. The President,
Atomic Energy Employees Consumer Co-operative Stores Ltd G21160,
Kalpakkam – 603 102.

3. G.Paramasivam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to revert the 3rd respondent from the post of Assistant Manager to Senior Assistant and place him below the rank of the petitioner and thereby direct the 2nd respondent to promote the petitioner to the post of Manager with all consequential benefits as per the order of revision authority issued under section 153 of the Tamil Nadu Co-operative Societies Act in Na.Ka. No.7832/2011/A3 dated 30.4.2012.

For Petitioner : Mr.M.Ravi Bharathi

For R1 : Mr.S.Ravikumar

For R2 : Mr.K.Krishnan



For R3

: Mr.Rengaramanujam

ORDER

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This Writ Petition has been filed seeking a Writ of Mandamus, directing the 2nd respondent to revert the 3rd respondent from the post of Assistant Manager to the post of Senior Assistant and to place him below the rank of the petitioner and sought for a consequential direction to promote the petitioner to the post of Manager with all consequential benefits in terms of the order passed under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 in Na.Ka.No.7832/2011/A3 dated 30.4.2012.

2. It is the case of the petitioner that he was appointed as Godown Keeper in the respondent Society on 25.08.1999 through Employment Exchange and his services were also regularized in the said Society. While so, the 3rd respondent, who was working in the cadre of Senior Assistant, which is the feeder category to the petitioner of Godown Keeper was directly promoted to the post of Assistant Manager, three cadres above the cadre which was held by the 3rd respondent herein in violation of the bye-laws of the Society.



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3. It is also the case of the petitioner that though he was fully eligible for the post of Cashier and Assistant Manager, the respondents have not considered the case of the petitioner. Aggrieved by such an action, the petitioner stated to have filed a Revision under Section 153 of the Act, 1983 and the Revisional Authority, i.e., the respondent no.1 herein passed an order in proceedings dated 30.04.2012, directing the 2nd respondent to promote the petitioner to the post of "Cashier" and to set aside the promotion order dated 29.09.2011 issued in favour of the 3rd respondent as "Assistant Manager".

4. It is the grievance of the petitioner that the respondents have not complied with the said order dated 30.04.2012. Though the 3rd respondent herein was due to retire in the month of May 2018, with ill-intention the 3rd respondent is being continued illegally in the post of "Manager", contrary to the orders dated 30.04.2012 passed by the respondent no.1 herein. The respondent no.1 filed counter-affidavit contending that the order dated 30.04.2012 passed by the respondent no.1 was fully complied with and the same was also taken note of by this Court in W.P.No.33136 of 2012, which was filed by the petitioner herein seeking implementation of the order dated 30.04.2012 and the said Writ Petition was closed by this Court by an order



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dated 08.09.2023. It is also case of the respondents that the said order in W.P.No.33136 of 2012 has become final.

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5. Further, it is also stated in the additional counter-affidavit filed by the 2nd respondent stating that the respondent no.3 has retired from service on attaining the age of superannuation in the year 2018 and consequently, the respondent Society, by passing an unanimous Board Resolution settled the retirement benefits of the 3rd respondent in the feeder category only i.e., Senior Assistant in which the 3rd respondent worked before he was appointed as “Assistant Manager” on promotion in terms of the proceedings dated 30.04.2012. It is also stated that the appropriate action has also been taken consequent upon the illegal promotion granted in favour of the 3rd respondent. Thus, it is evident that the promotion of the 3rd respondent to the post of “Assistant Manager” and further promotion to the post of “Manager” were found to be not in accordance with law, as is evident from the orders passed by the 1st respondent dated 30.04.2012. Therefore, the claim of the petitioner to promote him to the post of “Assistant Manager” or to the post of “Manager”



cannot be accepted.

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6. Further, as seen from the counter-affidavit though the 1st respondent has directed for consideration of the case of the petitioner for promotion to the post of “Cashier” by order dated 30.04.2012, the case of the petitioner could not be considered by the respondents, as stated in Paragraph No. 4(e) of the counter-affidavit, which reads as under:-

“ e) It is submitted that the petitioner was in the habit of remaining absent from duty. The 1st orders on 30.04.2012 with a direction to the 2nd respondent Society to promote the petitioner on merits as Cashier. It is pertinent to note that from June 2009 to February 2012, there were 584 working days including holidays of which the petitioner was absent for 418 days during that period. Hence it is unable to consider the name of the petitioner for promotion. Further the petitioner was on medical leave from 1.09.2012 to 31.10.2012. In these circumstances, the 2nd respondent Management has given promotion to the petitioner as Cashier vide its order dt. 19.12.2012. Subsequently, the petitioner was promoted to the post of Assistant Manager on 16.06.2016. It is submitted that it is not correct to say that the petitioner is subjected to work under his junior which caused humiliation. In this connection, it is submitted that the petitioner was on deputation to another cooperative society for about one year and the 3rd respondent was working in a branch office at that time. Subsequently, the 3rd respondent attained superannuation on 31.05.2018. As such the question of the humiliation does not arise at all now.”



7. From the above, it is evident that the petitioner was subsequently promoted to the post of “Cashier”. Insofar as the claim of the petitioner for further promotions is concerned, the respondents have clarified their stand in Paragraph Nos.(i) and (j) of the Paragraph No.4 of the counter-affidavit, which reads as under:-

“ i) It is submitted that with regard to promote him as Manger, it is submitted that the Petitioner has been promoted to the post of next higher post i.e. cashier in the order dated 19.12.2012 with effect from 01.12.2012. Subsequently, in the normal course, the Petitioner was promoted to the post of Assistant Manager in 16.06.2016. As per Rule 149 of the Rules 1988, no person shall be eligible for appointment to the post of Manager, by promotion unless he has completed at least one year of service in the post and not less than six years of satisfactory service in the post held and the feeder category of post combined together. The petitioner has completed one year service in the post of Assistant Manager on 15.06.2017, but he has not completed six years of satisfactory service in the post of cashier and Assistant Manager combined together (cashier 01.12.2012; Assistant Manager; June 2016 Combined service; less than 4 years). As such, the Petitioner is not entitled for further promotion to the post of Manager till 30.12.2018.

j) At this juncture, it is pertinent to mention here that for certain serious irregularities, the petitioner was suspended and subsequently, charge memo was issued; Domestic Enquiry conducted, report obtained,



report of the Domestic Enquiry Officer was communicated and after adhering proper procedures, the petitioner was inflicted with a punishment of demotion from the post of Assistant Manager to Godown Keeper vide 2nd respondent Proc No.1/Estt dt.28.07.20. Further it is submitted that the petitioner was absconded from duty from 28.07.2020. Hence, the prayer in the writ petition for promotion to the post of Manager is not at all tenable.”

8. From the above, it is evident that the petitioner is absconding from duty from 28.07.2020 and he was also inflicted with a punishment. Subsequently, the petitioner was promoted to the post of “Assistant Manager” on 16.06.2015 and he was demoted from the post of “Assistant Manager” to the post of “Godown Keeper”, as a measure of punishment on 28.07.2020, from which date the petitioner is also absconding from duty.

9. In the light of the above, this Court does not find any merit in the Writ Petition and the same is accordingly dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

01.04.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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