



W.P.No.314 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 12.02.2025

ORDER PRONOUNCED ON : 21.03.2025

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.314 of 2022

and WMP.No's. 347 and 349 of 2022

- 1.P.Durairajan
- 2.K.Gopinath
- 3.R.Balachander
- 4.J.Loganathan
- 5.J.Anthony Raj
- 6.B.Bhuvaneswari
- 7.M.Sriram Saravana

... Petitioners

Vs.

- 1.The State of Tamil Nadu rep. by its
Additional Chief Secretary,
Cooperation, Food and Consumer Protection Department,
Fort St. George, Chennai- 600 009.
- 2.The Additional Registrar/Managing Director,
Tamil Nadu Cooperative Union,
170, E.V.R. Periyar salai,
N.V.N. Maaligai, Kilpauk, Chennai- 600 010.
- 3.Thiru. Sivaprakasam,
Cooperative Development Officer (CDO),
Thyagi Sankaralinganar Institute
of Cooperative Management,
S.R.Naidu Nagar, Sattur, Virudhunagar District.

... Respondents



W.P.No.314 of 2022

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Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the order of the 1st respondent made in G.O.(2D).No.35, Cooperation, Food and Consumer Protection (CK) Department dated 25.10.2021 and that of 2nd respondent's proceedings made in Na.Ka.No.573/2011/A1 dated 18.11.2021, to quash the same and to consequently direct the 1st and 2nd respondents to appoint any eligible person to the post of Cooperative Development Officer (CDO) as per Service Rules and Bye Law.

For Petitioners : Mr. L.Chandrakumar

For Respondents : Mr. P.Ganesan

Government Advocate
for RR1 & 2

Mr.K.M.Ramesh

Senior Counsel
for Mr.P.Kannan Kumar
for R3

ORDER

The petitioners aggrieved by the appointment of the 3rd respondent as Cooperative Development Officer vide impugned Government Order dated 25.10.2021 and 18.11.2021 have filed the above writ petition.



W.P.No.314 of 2022

2. The petitioners are all working in various posts under the 2nd respondent.

The 1st and 2nd petitioners though already working in the post of Cooperative Development Officer joined hands with the other petitioners, as the induction of the 3rd respondent as Cooperative Development Officer was in gross violation of the rules and in the deprivation of the other petitioners opportunity for being considered for promotion as Cooperative Development Officer. According to the petitioners, the 3rd respondent was completely ineligible and fully disqualified for being considered for appointment to the post of Cooperative Development Officer, in view of the specific prohibition and embargo imposed by the Government in G.O.(D).No.31, Cooperation, Food and Consumer Protection Department, dated 14.03.2018. The petitioners further contended that, the 3rd respondent was ineligible even as per the statutory rules and therefore the impugned order was unsustainable. The petitioners stated that the 3rd respondent was initially appointed as Junior Assistant and while working as such, sought for transfer from Madurai region to Chennai region, on the ground that his father was suffering from cancer and that he was required to be in Chennai for specialized treatment of his father.



W.P.No.314 of 2022

The 3rd respondent therefore made a request for transfer of appointment and permanent absorption basis to Chennai region. The said request of the 3rd respondent was sympathetically considered in accordance with the rules and G.O.(D).No.31, Cooperation, Food and Consumer Protection Department, dated 14.03.2018 was issued, transferring the 3rd respondent to Chennai region on certain conditions namely, he would be a new entrant, junior most Junior Assistant, he will be placed in the minimum time scale of pay and he shall forgo already rendered services and shall not claim any seniority with respect to the said services. In flagrant violation of the aforesaid G.O, the 3rd respondent was promoted as Assistant and as Secretary and in gross violation of statutory requirements in the feeder category, now promoted as Cooperative Development Officer by the impugned order.

2(i) The petitioners contend that they all belong to a feeder category and therefore fully eligible to be considered for promoted to the post of Cooperative Development Officer but the illegal promotion of the 3rd respondent deprived the petitioners their legitimate opportunity to be considered for



W.P.No.314 of 2022

promotion/appointment. The petitioners relying on Rule 29 of the Special by law, submitted that the appointment of the 3rd respondent was in gross violation of the rule and hence deserved to be set aside. The petitioners therefore stated that they were left with no other alternative, efficacious remedy, but to approach this court by filing the present writ petition for the aforesaid relief.

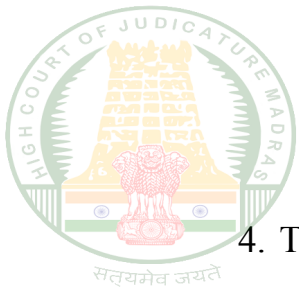
3. The respondents 1 and 2 filed detailed counter. After tracing the factual background of the litigation they contended that on the request of the 3rd respondent, the Registrar of Co-operative Societies requested the 1st respondent vide letter dated 03.09.2021, to pass necessary orders under section 170 of the Tamil Nadu Co-operative Societies Act, 1983 for exempting the 2nd respondent from the purview of rules 149 (1) & (3), 150(4) &(5) and 151 of the Tamil Nadu Co-operative Society Rules, 1988. Based on the request of the Registrar, Co-operative Societies, the 3rd respondent was promoted to the post of Co-operative Development Officer on conditions, as stipulated in the impugned orders. According to the respondents, the 3rd respondent was promoted by



W.P.No.314 of 2022

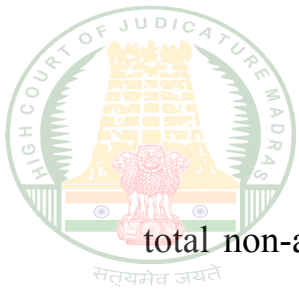
following the prescribed rules under the Tamil Nadu Co-operative Societies Rules

based on a policy decision taken on humanitarian grounds. According to the respondents, the 3rd respondent had the requisite educational qualification of B.Sc.LLB and D.Coop and he worked for 7 years as Secretary in the Thirumangalam Co-operative Thrift Society and hence, he was fully eligible for promotion to the post of Co-operative Development Officer. The respondents submitted that the impugned orders promoting the third respondent as Co-operative Development Officer were passed purely on humanitarian grounds in pursuance of a policy decision taken as per Section 170 of the Tamil Nadu Co-operative Societies Act, 1983, exempting the 2nd respondent from the purview of rules 149 (1) & (3), 154(4) & (5) and 151 of the Tamil Nadu Co-operative Societies Rules, 1988. The respondents therefore contended that the impugned orders were valid and justified. The respondents hence prayed that the writ petition be dismissed as merit-less.



W.P.No.314 of 2022

4. The learned counsel for the petitioner submitted that the 3rd respondent was not eligible and not entitled for promotion, because he was fully and totally disqualified for the post of Co-operative Development Officer, as he did not satisfy the statutory requirements for promotion either from feeder category or by direct requirement, moreso, when the rule prescribed only two methods of promotion, one from feeder category and other by direct recruitment. The learned counsel submitted that the 3rd respondent was transferred to Chennai region by G.O.(D).No.31, Cooperation, Food and Consumer Protection Department, dated 14.03.2018, under which, strict conditions were imposed for the transfer. The 3rd respondent accepted the transfer order without any protest and thereafter he could not claim seniority on the basis of the service rendered by him before joining the Chennai region. The learned counsel further submitted that when the transfer was on fresh appointment basis, the service should be reckoned only from the date of the Government Order i.e. 14.03.2018, and if so reckoned, the 3rd respondent not having completed 5 years in the feeder category was ineligible. The learned counsel finally submitted that the impugned order was liable to be quashed for

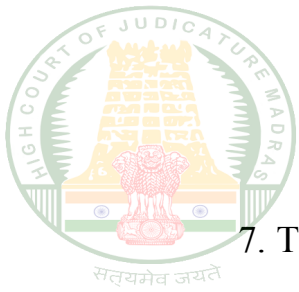


W.P.No.314 of 2022

total non-application of mind, arbitrary exercise of power in a colorable manner and for malice in law. The learned counsel therefore submitted that the impugned orders deserved to be set aside and the writ petition allowed.

5. The learned Government Pleader appearing for the respondents 1 and 2, reiterated the stand taken in the counter affidavit and submitted that by virtue of the power vested in the Government, under Section 170 of the Tamil Nadu Co-operative Act, 1983, necessary exemption from operation of rules 149 (1) & (3), 150 (4) & (5) and 151 of the Tamil Nadu Co-operative Society Rules, 1988, were obtained and only thereafter, the impugned order was passed on the humanitarian grounds. According to the respondents 1 and 2, the promotion of the 3rd respondent to the post of Co-operative Development Officer was legally valid, and was in accordance with the Rules and hence, the same did not call for any interference by this court.

6. I have heard both the learned counsels and perused the materials on record.

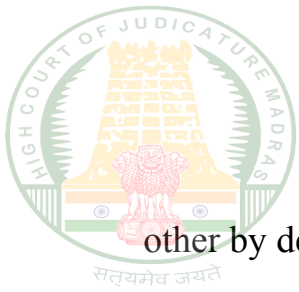


W.P.No.314 of 2022

7. The facts are undisputed and as the same are narrated above they are not traversed to avoid replication. The core issue to be decided in the writ petition is whether the appointment of the 3rd respondent to the post of Co-operative Development Officer by the impugned orders is valid. In this regard, Rule 29 of the Special By-law is extracted for the better appreciation of the issues arising in the case.

“Rule – 29: 11 post of CDO has to be filled up with TNCU Staff by promotion from feeder category i.e., Senior Assistants and Private Secretary and the remaining 18 posts have to be filled by deputation from the staff of the Cooperative Institutions in District and their qualification has to be prescribed as Graduates and 5 years experience in the post of Secretary/Manager or in the cadre of Chief Executives of Primary Societies/District Level Societies and communication skill is essential.”

A bare reading of the above Special By-law, shows that two modes of recruitment for the post of Co-operative Development Officer are provided, one by promotion from feeder category of Senior Assistants and Private Secretary, the



W.P.No.314 of 2022

other by deputation from the staff of Co-operative Institutions in Districts based on their qualification as Graduates with 5 years of experience in the post of Secretary/Manager or in the category of Chief Executives of Primary Societies/District Level Societies and with communication skills. The 3rd respondent is not eligible for the post of Co-operative Development Officer either by promotion or by deputation. The reason being that on the 3rd respondent's request for transfer he was transferred from Madurai region to Chennai region vide G.O.(D).No.31, dated 14.03.2018, on the following four conditions.

That he shall be (i) a new entrant, (ii) junior most Junior Assistant being placed as a junior below the Approved Probationer in the said cadre, (iii) he will be in the minimum of the time scale of pay and (iv) he shall forego the already rendered services and shall not claim any seniority with reference to the said services.

8. It is seen from the impugned order that the appointment of the 3rd respondent as Co-operative Development Officer was a direct recruitment and not by way of promotion or deputation. In my view, both the petitioners as well as



W.P.No.314 of 2022

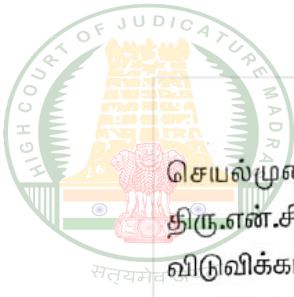
respondents misread and misconceived the appointment order. The petitioners as

well as respondents have proceeded, as if, the appointment of the 3rd respondent to

the post of Co-operative Development Officer was by way of

promotion/deputation. In the impugned order dated 18.11.2021, it was clearly

stated as follows:



எனவே, பார்வை 5ல் கண்டுள்ள தமிழ்நாடு கூட்டுறவு ஒன்றிய கூடுதல் பதிவாளர், செயல்முறை ஆணையின்படி இளநிலை உதவியாளராக பணியமர்த்தம் செய்யப்பட்ட திரு.என்.சிவப்பிரகாஷ் அவர்கள் 18.11.2021 பிற்பகல் முதல் இளநிலை உதவியாளர் பணியிலிருந்து விடுவிக்கப்பட்டு பார்வை 6ல் கண்டுள்ள அரசாணையின்படி திரு.என்.சிவப்பிரகாஷ் தமிழ்நாடு கூட்டுறவு ஒன்றியத்தில் நேரடி நியமன கூட்டுறவு வளர்ச்சி அலுவலர் பணியிடத்தில் கீழ்க்கண்ட நிபந்தனைகளுக்குட்பட்டு பணியமர்த்தப்படுகிறார்.

நிபந்தனைகள்:

- * தமிழ்நாடு கூட்டுறவு ஒன்றியத்தில் கூட்டுறவு வளர்ச்சி அலுவலராக இவரது பணிநியமனம் புதிய பணிநியமனமாகக் கருதப்படும்.
 - * தமிழ்நாடு கூட்டுறவு ஒன்றியத்தில் கூட்டுறவு வளர்ச்சி அலுவலராக இவரது பணிநியமனம் புதிய பணிநியமனமாகக் கருதப்படும்.
 - * தமிழ்நாடு கூட்டுறவு ஒன்றியத்தில் கூட்டுறவு வளர்ச்சி அலுவலர் பணியிடத்திற்கான குறைந்தபட்ச ஊதியம் பெறவேண்டும். (Minimum in the time scale of pay)
 - * திருமங்கலம் கூட்டுறவு சிக்கன நாளையச் சங்கத்தில் பணியாற்றிய பணிக்காலத்தை இழப்பதோடும், இவர் தமிழ்நாடு கூட்டுறவு ஒன்றியத்தில் இளநிலை உதவியாளராக பணியாற்றிய பணிக்காலத்தை இழப்பதோடும், இதன் தொடர்பாக எதிர்காலத்தில் பணிமூப்பு மற்றும் யாதொரு நிதிப்பயன்களையும் கோரக்கூடாது.
- 1) இவர் உடல் நலத்தகுதி குறித்த அசல் சான்றிதழை Assistant Civil surgeon நிலைக்கு குறையாத அரசு மருத்துவ அலுவலரிடம் பெற்று பணியில் சேரும்போது சமர்ப்பிக்கப்பட வேண்டும். இவர் உடல் நலத்தகுதியற்றவர் என்று பின்னர் கண்டுபிடிக்கப்பட்டால் இவரது ஆணை இரத்து செய்யப்படும்.
 - 2) இவர் 7 தினங்களுக்குள் தவறாமல் பணியில் சேர வேண்டும். அவ்வாறு சேரத் தவறினால் இப்பணி நியமன ஆணை எவ்வித முன்னறிவிப்புமின்றி இரத்து செய்யப்படும்.
 - 3) இவர் தமிழ்நாடு கூட்டுறவு ஒன்றிய தலைமையகத்தில் தனது பணிசேர் அறிக்கையினை சமர்ப்பிக்குமாறு அறிவுறுத்தப்படுகிறார். அதன் பிறகு இவருக்கு பணி ஒதுக்கீடு ஆணை தனியாக வழங்கப்படும்.

- 4) இவரது தகுதிகாண் பருவம் தமிழ்நாடு கூட்டுறவு ஒன்றிய பணி நிபந்தனைகள் அடங்கிய சிறப்பு துணைவிதிகளில் உள்ளவாறு 2 ஆண்டு காலமாக இருக்கும். இவரது தகுதிகாண் பருவ காலத்தில், இவரது பணி அல்லது நடத்தை திருப்திகரமாக இல்லையெனில் தமிழ்நாடு கூட்டுறவு ஒன்றிய பணி நிபந்தனைகள் அடங்கிய சிறப்பு துணைவிதிகளில் குறிப்பிட்டபடி உரிய நடவடிக்கை எடுக்கப்படும்.
- 5) இவர் பணியில் சேரும்போது பணி காப்புறுதித் தொகையாக ரூ.5,000/- (ரூபாய் ஐந்தாயிரம் மட்டும்) ரொக்கமாக தமிழ்நாடு கூட்டுறவு ஒன்றியத்திற்கு செலுத்த வேண்டும்.
- 6) பணிக்காலத்தில் இவருக்கு கூட்டுறவு வளர்ச்சி அலுவலர் தகுதிக்குரிய ரூ.23300-75800 என்ற ஊதிய ஏற்றமுறையில் ஊதியமும், அதற்குரிய இதரப் படிகளும் வழங்கப்படும்.
- 7) இவர் தற்போது அமுலில் உள்ள தமிழ்நாடு கூட்டுறவு ஒன்றிய துணைவிதிகள், ஆணைகள் அதன் மீது அவ்வப்போது திருத்தம் செய்யப்படுகின்ற துணைவிதிகள் மற்றும் ஆணைக்குட்பட்டு நடக்க வேண்டுமென பணிக்கப்படுகிறார்.
- 8) இவர் தமிழ்நாடு கூட்டுறவு ஒன்றியத்தின் செயல்பாடு குறித்து எந்தவித இரகசியத்தையும் யாருக்கும் நேரடியாகவோ (அல்லது) வேறு எந்த விதமாகவோ தெரிவிக்கக்கூடாது.
- 9) இந்த ஆணையானது நீதிமன்ற வழக்குகளுக்கும், தீர்ப்புகளுக்கும் கட்டுப்பாட்டதானும் இவ்வாணை பெற்றுக் கொண்டமைக்கான ஒப்புக்கையை உடன் வழங்குமாறு கேட்டுக்கொள்ளப்படுகிறார்.



W.P.No.314 of 2022

Hence, it is lucid from the impugned order that the 3rd respondent was directly appointed and for such direct appointment, the Government invoking the power conferred under section 170 of the Tamil Nadu Co-operative Societies Act, exempted the 2nd respondent/Society from the purview of Rules 149(1), 149(3), 150(4), 150(5) and 151 of the Tamil Nadu Co-operative Society Rules, 1988. The said rules relate to exemption from the method of recruitment, exemption from the rule of reservation for appointment applicable to Government servants, exemption from recruiting through recruitment board, exemption from recruitment through recruitment bureau for Revenue District and exemption from the procedure to be followed by recruitment bureau. On the basis of the said exemptions, the 3rd respondent was directly appointed as Co-operative Development Officer.

9. When the Government is vested with powers to exempt any registered Society from any of the provisions of the act, except those excepted in the said provisions, the exercise of such power unless it is clearly and cogently established by materials on record to be arbitrary or malafide cannot be interfered. The fact



W.P.No.314 of 2022

that the 3rd respondent had earlier requested for transfer on the ground of his fathers ailment and the same having been permitted on certain conditions imposed therein, cannot disentitle him from being directly appointed by invoking the powers vested in the Government under Section 170 of the Tamil Nadu Co-operative Societies Act, 1983. In my view, there is no violation of the recruitment rule, because the 3rd respondent was neither promoted nor appointed by deputation. As the 3rd respondent's appointment was only by way of direct recruitment after according the requisite exemptions, there is absolutely no infirmity in his appointment. Further it is nobody's case that the third respondent was ineligible for direct recruitment. Merely because the Government accorded certain exemptions invoking Section 170 the Co-operative Societies Act, to the second respondent it cannot be inferred that the impugned order was tainted with malafide. The petitioner's on a misconception that the 3rd respondent was promoted as Co-operative Development Officer in violation of Rule 29 of special by-law challenged the appointment order. The basic fallacy in the pleadings of the parties is exposed by the appointment order itself, which clearly states that the



W.P.No.314 of 2022

appointment was by direct recruitment. Therefore, I find no infirmity or illegality in the impugned orders dated 25.10.2021 and 18.11.2021.

In view of the above discussions, I find no merits in the writ petition and therefore, the same is dismissed. However, there shall be no order as to costs. Consequently, connected Writ Miscellaneous Petitions are closed.

21.03.2025

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation:Yes/No

dsn/ah

To

1.The Additional Chief Secretary,
Cooperation, Food and Consumer Protection Department,
Fort St. George, Chennai- 600 009.

2.The Additional Registrar/Managing Director,
Tamil Nadu Cooperative Union,
170, E.V.R. Periyar salai,
N.V.N. Maaligai, Kilpauk, Chennai- 600 010.



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W.P.No.314 of 2022

N.MALA,J.

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Pre-Delivery Order in W.P.No.314 of 2022

Order Pronounced on 21.03.2025