
(2001) 03 MAD CK 0003
In the Madras High Court
Case No : W.A. No. 690 of 1998

A. Devaraju

APPELLANT

Vs

The Secretary to Government Goods and Cooperative
Consumer Protection Department, Registrar of Co-operative
Societies, The Tamil Nadu Consumer Co-operative Federation
Ltd. and The Salem District Central Cooperative Bank Limited

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Citation : (2001) 03 MAD CK 0003

Hon'ble Judges : V.S. Sirpurkar, J;V. Kanagaraj, J

Bench : Division Bench

Advocate : K.V. Ananthakrishnan, for the Appellant; T. Kokilavani, G.A., for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—Unsuccessful writ Petitioner has challenged the judgment of the learned single Judge in this appeal. Petitioner is an

employee of the Tamil Nadu Consumer Cooperative Federation Limited. The fourth Respondent is the Salem District Central Co-operative Bank

Limited, again a Cooperative Society.

2. The Petitioner complained before the learned single Judge in his petition that the Government was not implementing the order by which the

Government exempted the 4th Respondent Bank from the operation of some of the rules in exercise of its power u/s 170 of the Tamil Nadu Co-

operative Societies Act for the purpose of enabling the 4th Respondent to absorb the services of the Petitioner. The 3rd Respondent Federation,

where the Petitioner was working, was probably facing financial debacle and was

about to close. Therefore, the Government wanted to assess the staff strength and wanted to find the surplus staff for absorption in the other Co-operative institutions. In pursuance of this, it was found that some staff were surplus in the 3rd Respondent Federation. Therefore, the Petitioner was asked as to whether he was prepared to be absorbed as an employee in the other Co-operative institutions. He, accordingly gave his consent on 30-6-1993 for being absorbed in the 4th Respondent Bank.

It seems, on that basis the Petitioner, who was the Manager in the 3rd Respondent Federation, was sought to be absorbed and for that purpose, the consent of the 4th Respondent Bank was also sought for the said absorption. The Government therefore, exempted the said Bank as also the Petitioner from the operation of Rule 149(1) of the Tamil Nadu Co-operative Societies Rules, stipulating the "Co-operative training" as a necessary qualification for being employed in the Co-operative institutions and also from Rule 149(3) of the Rules, which stipulated about the "age of appointment". On the part of the Petitioner, he already gave an undertaking to the effect that he agreed to be appointed as the "junior to the junior most" in the services in the 4th Respondent Bank after being redeployed from the 3rd Respondent Federation. A Government Order, therefore, came to be passed by the Government accepting the suggestion of the Registrar of Co-operative Societies to exempt the 4th Respondent Bank from the provisions of Rules 149(1) and (3) of the Tamil Nadu Co-operative Societies Rules for accommodating the Petitioner, who was deemed to be a surplus employee of the 3rd Respondent Federation. It was also noted that the Petitioner was then to be appointed as "Assistant Manager in the 4th Respondent Bank. At the relevant time, the 4th Respondent Bank was under a Special Officer and by order, dated 7-8-1996, the Special Officer passed an order appointing the Petitioner as "Assistant Manager". The Petitioner was to join duty after receiving the relieving orders from the 3rd Respondent Federation and he was to be placed as junior to the junior most employee in the cadre of Assistant Manager and was to also forego previous rights and seniority conferred on him. After this order, however it seems that the union in the 4th Respondent Bank did not approve of this and contested the appointment of the Petitioner probably because one important post would have been lost to the existing

employee of the 4th Respondent Bank for ever. It seems that the Petitioner was telegraphically informed by the Special Officer, who was in charge

of the 4th Respondent then, on almost next day, i.e. on 9-8-1996. By this telegram, the Petitioner was informed that his appointment order dated

7-8-1996 was temporarily kept in abeyance. The matters did not move further and on 9-5-1997, there appears to be an order passed by the

Government Vide G.O. No. 332, dated 9-5-1997. In this order, the Government had taken a decision not to deploy the surplus employee

identified in Consumer Co-operative stores to other Cooperative institutions. It seems that thereafter, the Petitioner was asked by a letter dated

14-5-1997 whether he was prepared to join as ""Junior Assistant"" in the 4th Respondent Bank. The Petitioner by his reply dated 28-5-1997

rejected the offer and insisted on being appointed as ""Assistant Manager"". The Petitioner again wrote on 12.6.1997 for the appointment but to no

effect. Ultimately, on 22-7-1997, the temporary absorption of the Petitioner was cancelled. It seems that the Special Officer was specifically

advised by the District Registrar by his letter dated 9.5.1997. Petitioner then sent a lawyer's notice and finding that his efforts failed, filed a writ

petition. This writ petition was dismissed by the learned single Judge, who took the view merely because the Government had relaxed the rules and

exempted the 4th Respondent Bank from the Operation of Rules 149(1) and (3), it did not mean that any ""right"" was created in the Petitioner. The

learned single Judge also took note of the fact that the Government had not directed any absorption and the mere exemption granted by the

Government could not set up a right in the Petitioner for appointing the Petitioner in the 4th Respondent Bank. Again, the learned single Judge also

noted that though the appointment order was passed, it was subsequently cancelled and, therefore, the dispute was now between the Petitioner

and the 4th Respondent and there was no question of the Government coming in between. The learned Judge also clarified that it was open to the

Petitioner to pursue his remedies against the cancellation of the appointment.

3. The Learned Counsel came very heavily on the order passed by the learned single Judge and pointed out that once a right was created in the

Petitioner of being appointed in the 4th Respondent Bank in the post of Assistant Manager and once the Government had also passed a

Government Order to that effect, there was no question of the Petitioner being refused the said appointment. The Learned Counsel also pointed

out that the 4th Respondent could not cancel its own order arbitrarily as it did and the State Government was bound to direct the 4th Respondent

to accommodate the Petitioner as Assistant Manager therein.

4. In our opinion, the order passed by the learned single Judge is absolutely correct and does not require any interference. We are in entire

agreement with the reasons given by the learned single Judge. Besides that, we would like to clarify that firstly, there is no question of any "right

being created in the Petitioner. After all, the Petitioner was never an employee of the 4th Respondent and it has been only by way of a Government

policy that the Petitioner was going to be redeployed from the 3rd Respondent Federation and was being re-employed as "Assistant Manager" in

the 4th Respondent Bank. So far it was all right. However, a proposal to that effect does not create any right in the Petitioner. It is an admitted

position that the Petitioner/Appellant is still working in the Federation in his own post. Therefore, nothing has happened to his own, post and he has

not even been released from his post which he is holding with the 3rd Respondent Federation. An employee can never claim a rightful employment

in an entirely different organisation like the 4th Respondent bank that too, where the Petitioner firstly did not have the necessary qualification and

experience.

5. The Learned Counsel for the Appellant brought to our notice that there were some employees, who were relieved from the 3rd Respondent and

were re-employed in the 4th Respondent Bank. Our attention was invited to one such order where some employees of the 3rd Respondent

Federation seem to have been re-employed in the 4th Respondent Bank. That may be so but, that would not mean that the Petitioner would have

any right to be employed as "Assistant Manager" or for that matter in any other post. The Petitioner simply cannot claim any right against the 4th

Respondent Bank and also against the Government.

6. In fact, even the writ petition was not maintainable for the simple reason, in this writ petition, the effective relief was claimed only against the 4th

Respondent Bank, which is a "Co-operative Society". The Learned Counsel for the Appellant tried to counter this argument by suggesting that he

was claiming a right against the Government. We do not agree. In fact, in pursuance of the Government policy, the Government had already offered exemption to the 4th Respondent Bank in respect of Rule 149(1) and (3), which were likely to come in the way of the appointment of the Petitioner as the "Assistant Manager" in the 4th Respondent Bank. Therefore, nothing was left by the Government to do. Even the 4th Respondent had proceeded to appoint the Petitioner as "Assistant Manager". However ultimately the 4th Respondent cancelled that order within two days of the marking of the same. Therefore, the only right that the Petitioner was claiming was against the 4th Respondent and the Court would have been required to issue a Writ against the 4th Respondent directing it to employ the Petitioner in the post of Assistant Manager. That would not have been possible. In fact, a larger Bench of this Court in *M. Thanigachalam v. Madhuranthagam Agricultural Producers, Cooperative Marketing Society Ltd.* rep. by its Special Officer and Ors. 2001 W.L.R.1 has already held that it is only under "extraordinary circumstances" that a writ may lie against a Co-operative Society and we do not find any such "extraordinary circumstance" in this Petition- at least none have been argued before us.

7. We find the appeal to be without any merits whatsoever and dismiss the same. No costs.