

R.P. No.3/2015

BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES, PUDUCHERRY.

R.P. No. 3/2015

**Present : Dr. A.S. SIVAKUMAR,
Registrar of Co-operative Societies,
Puducherry.**

Thiru R. Thamizhkumaran,
No.3, Thoppur Street,
Pooranasingupalayam,
Puducherry - 605 107

.. Petitioner

Vs.

The Administrator,
Kothapurinatham Primary Agricultural Co-operative
Credit Society Ltd., No. P. 130,
Kothapurinatham,
Periyababusamuthram (post),
Puducherry - 605 102

.. Respondent

ORDER

(Issued under Section 141 of the Puducherry Co-operative Societies Act, 1972)

This revision petition filed under Section 141 of the Puducherry Co-operative Societies Act, 1972 is from the Junior Clerk of Kothapurinatham Primary Agricultural Co-operative Credit Society Ltd., No. P. 130 (for brevity 'the society') against the Administrator of the society.

THE AVERMENTS

2. Filtering out unnecessary details, the factual background relevant for adjudication of the present revision petition is that the petitioner is working as Junior Clerk on daily rated basis from 18.1.2007. In view of his ill health, he was on medical leave. On expiry of leave, when he attempted to rejoin duty, he was prevented by the respondent from rejoining post. When he gave the joining report along with the fitness certificate obtained from the doctor to the Manager of the society, the said Manager refused to receive the report stating that the petitioner has to get the approval of the respondent to rejoin duty. The

2



respondent did not respond to his request and he was thus prevented from rejoining duty.

3. According to the petitioner, the act of the respondent in not permitting him to rejoin duty caused him mental tension and such an act of the respondent is alien to natural justice.

4. The petitioner prays intervention in this matter to direct the respondent to take him back to service.

THE DENIAL

5. Per contra, the respondent filed the counter refuting the allegations made by the petitioner. The gist and kernel of the counter would run thus:

5.1 The revision petition is an attempt to get away the disciplinary action contemplated against the petitioner.

5.2 The petitioner is a daily rated employee and habitually he absents himself without any notice. Between 2007 and July 2014, he absents himself for 893 days, of which absented without notice for 483 days. The petitioner is not only irregular to his duty, but lacks devotion and has absolutely no inclination to work. Even though sufficient opportunities were given to discipline him, he continues to be irregular and casual in his approach.

5.3 The petitioner filed a writ petition before the Hon'ble High Court of Madras challenging the reinstatement of the Manager of the society. He contended therein that the Registrar has no authority to entertain a revision petition. When he is not aggrieved by the reinstatement of the Manager, he preferred the writ petition without locus standi.

6. Taking into reckoning the conduct of the petitioner and his misdemeanor, the respondent prays to dismiss the revision petition.

THE REJOINDER

7. A copy of the counter filed by the respondent was forwarded to the petitioner. In his rejoinder, the petitioner contended that he was within his right to seek remedy under Section 141 of the Act by filing a revision petition. When the petitioner has put in so many years of daily rated service, he is



entitled for regularization. He sought reinstatement of service rejecting the untenable rebuttal of the respondent.

THE SUBMISSIONS

8. The revision petition came up for hearing on 8th May 2015. Both the parties were present.

9. In his arguments the petitioner submitted that the Manager of the society has developed some animosity against him and was ill-treating him. He, therefore, challenged his reinstatement in the society by filing writ petition in W.P. No. 21152 of 2014 on the file of the Hon'ble High Court of Madras. As he could not work in the society peacefully, he sought to transfer him to any other society. He admitted that he has not given any representation to the Administrator of the society on the attitude of the Manager towards him.

10. Piloting his arguments, the Administrator stated that the petitioner was engaged as a daily rated clerk by the then President without sanctioned strength and without the approval of the Registrar. As per the approved strength, the society has only one Manager. As he is only a daily rated employee appointed without the sanctioned strength, he cannot maintain the revision petition. Further, he absents himself from job without prior intimation and all the steps taken by the society to reform him ended in smoke. The petitioner does not deserve any sympathy and he is not a desirable element for the growth of the society.

THE POINT FOR DETERMINATION

11. On listening to the rival submissions of the parties, two issues emerge for consideration in this revision petition, viz.,:

- (i) As a daily rated employee appointed without the sanctioned strength, is the revision petition filed by the petitioner maintainable?
- (ii) If yes, what relief is he entitled for?

On issue No. 1

12. As per the subsidiary regulations governing the service conditions of the employees of the society, the Schedule 'A' contains only the post of Manager, Grade III. The engagement of the petitioner as Junior Clerk on daily rated basis has no approval and is not against any vacancy in the said cadre.

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13. When the petitioner sought to regularize him in service of the society and to reemploy him in any other society in case the society is ordered to be wound up, my learned predecessor in Revision Petition No. 4/2013 dated 18.9.2013 rejected both his claims and held that the petitioner has not disclosed a cause of action to maintain his plea to regularize him as Junior Clerk as a matter of right. Since the prayer for regularization in service itself was not maintainable, his request for re-employment in case the society is wound up was held out of question.

14. In the backdrop of the above scenario, I give my thoughtful consideration on the maintainability of the revision petition when the petitioner was engaged only as a daily rated employee and does not hold a regular or sanctioned post.

15. It is the prerogative of the management of the society to create posts considering the work load. When a person is engaged on daily rated disregard to the qualification of the said post, a direction cannot be issued by any authority to create a post to regularize the appointment made. The law is well settled by a decision of the Hon'ble Apex Court in *State of Maharashtra vs. R.S. Bhonde*, (2005) 6 SCC 751: AIR 2005 SC 3740, wherein it was held :

"There is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Court."

16. In a recent decision, the Hon'ble Supreme Court in *Nand Kumar vs. State of Bihar and others*, AIR 2015 SC 133 observed thus:

"Therefore, considering the facts of the present case, it appears to us that the appellants were never appointed through a proper procedure. It is not in dispute that they all served as daily wagers. Therefore, it was within their knowledge all the consequences of appointment being temporary, they cannot have even a right to invoke the theory of legitimate expectation for being confirmed in the post..... The daily wagers are not appointees in strict sense of 'appointment'. They do not hold a post." [Emphasis applied]

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17. Going by the dictums of the Hon'ble Supreme Court cited above, I am of the considered view that engagement of the petitioner is not an appointment in strict sense as he does not hold any post, per se. He cannot, therefore, maintain the revision petition seeking a direction for reinstatement. When the respondent finds that the petitioner does not fit into the job as a daily rated employee, he cannot maintain this revision petition and no cause of action is disclosed to answer his prayer for reinstatement. This issue, therefore, goes against the petitioner.

On second issue

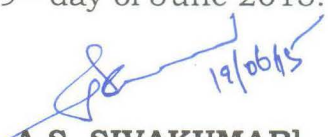
18. As the first issue is answered in negative, the second issue does not survive for consideration.

THE OUTCOME

19. In view of my aforesaid analysis, the revision petition being sans substratum, stands dismissed without any order as to cost.

Pronounced in open forum on this day 19th day of June 2015.




[Dr. A.S. SIVAKUMAR]
REGISTRAR OF CO-OPERATIVE SOCIETIES

To
The parties